

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

- * The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- * Please address questions regarding information on this notice to the agency.
- * The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- * The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:

44153

Date filed:

10-29-2019

State Admin Rule Filing Id:

Time filed:

	Agency No.	Rule No.	Section No.
Utah Admin. Code Ref (R no.):	R 156	- 1	-
Changed to Admin. Code Ref. (R no.):	R	-	-

1. **Agency:** Commerce/Division of Occupational and Professional Licensing
- Room no.:**
- Building:** Heber M. Wells Building
- Street address 1:** 160 East 300 South
- Street address 2:**
- City, state, zip:** Salt Lake City UT 84111-2316
- Mailing address 1:** PO Box 146741
- Mailing address 2:**
- City, state, zip:** Salt Lake City UT 84114-6741
- Contact person(s):**
- | Name: | Phone: | Fax: | E-mail: |
|-------------------|--------------|--------------|----------------------------|
| Deborah Blackburn | 801-530-6060 | 801-530-6511 | deborahblackburn @utah.gov |

(Interested persons may inspect this filing at the above address or at the Division of Administrative Rules during business hours)

2. **Title of rule or section (catchline):**
General Rule of the Division of Occupational and Professional Licensing
3. **Type of notice:**
New ___; Amendment XXXX; Repeal ___; Repeal and Reenact ___
4. **Purpose of the rule or reason for the change:**
The Division proposes these amendments to clarify and establish the application procedures for a criminal history determination pursuant to new Section 58-1-310 enacted by 2019 HB 90.
5. **This change is a response to comments from the Administrative Rules Review Committee.**
No XXXX Yes ___
6. **Summary of the rule or change:**

New Section R156-1-310 establishes the application form and clarifies that an individual must submit a separate application for each license type determination. This section also clarifies that a determination will be based solely on the information contained in the application and supporting documents, that a "complete criminal conviction history" includes pleas in abeyance and nolo contendere and current firearms restrictions, and that an individual whose application has been denied as incomplete or who has received an unfavorable determination may submit a request for agency review. The following non-substantive formatting changes are also made in this filing: Sections R156-1-111a and R156-1-111b are merged for clarity, the obsolete license classification "Construction Trades Instructor" is deleted from R156-1-308a, and former Section R156-1-310 is renumbered to R156-1-501.1.

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No ; Yes XXXX

The Division expects these proposed amendments to have no impact on the Division or other state agencies over and above the impact described in the Fiscal Note for 2019 HB 90, available online at:

<https://le.utah.gov/~2019/bills/static/HB0090.html>, as the rules merely establish and clarify the Division's application procedures in accordance with the mandates of new Section 58-1-310. There will be a minimal cost to the Division of approximately \$75 to disseminate the rule once the proposed amendments are made effective.

B) Local government:

Affected: No XXXX Yes

These proposed rules are not expected to impact local government as they will not affect local government practices or procedures.

C) Small businesses ("small business" means a business employing fewer than 50 persons):

Affected: No XXX; Yes

These proposed rules will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and are not expected to impact small business over and above the impact described in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>.

D) Persons other than small businesses, businesses, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):

Affected: No XXXX Yes

These proposed rules will affect an estimated 456 individuals annually who will seek an advance criminal history determination from the Division. Because the rules merely establish and clarify procedures in accordance with the mandates of Section 58-1-310, they are not expected to impact these persons over and above the impact described in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>.

8. Compliance costs for affected persons:

The Division estimates that these proposed amendments will have no compliance cost on any affected persons over and above that already included in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>.

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The Division proposes these amendments to clarify and establish the application procedures for a criminal history determination pursuant to new Section 58-1-310 enacted by 2019 HB 90. New Section R156-1-310 establishes the application form and clarifies that an individual must submit a separate application for each license type determination. This section also clarifies that a determination will be based solely on the information contained in the application and supporting documents, that a "complete criminal conviction history" includes pleas in abeyance and nolo contendere and current firearms restrictions, and that an individual whose application has been denied as incomplete or who has received an unfavorable determination may submit a request for agency review. Non-substantive formatting changes are also made in this filing: Sections R156-1-111a and R156-1-111b are merged for clarity, the obsolete license classification "Construction Trades Instructor" is deleted from R156-1-308a, and former Section R156-1-310 is renumbered to R156-1-501.1. Small Business (less than 50 employees): These proposed rules will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and there is no expected impact to small businesses over and above the impact described in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>. Non-Small Businesses (50 or more employees): These proposed rules will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and there is no expected impact to non-small businesses over and above the impact described in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>.

B) Name and title of department head commenting on the fiscal impacts:

Francine A. Giani, Executive Director

10 This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

Subsection 58-1-106(1)(a)

Section 58-1-308

Subsection 58-1-501(2)

11 This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Division of Administrative Rules; *if none, leave blank*):

	First Incorporation	Second Incorporation
Official Title of Materials Incorporated (from title page)		
Publisher		
Date Issued		
Issue, or version		
ISBN Number (optional)		
ISSN Number (optional)		
Cost of Incorporated Reference		
Action: Adds, updates, or removes		

(If this rule incorporates more than two items by reference, please attach additional pages)

12 The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 12/16/2019

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):

At (hh:mm AM/PM):

At (place):

12/03/2019

10:00 AM

160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$75	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$75	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	60
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$(75)	\$0	\$0

*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.

Appendix 2: Regulatory Impact to Non-Small Businesses

These proposed rules will only impact individuals who seek an advance criminal history determination from the Division as authorized by new Section 58-1-310, and are not expected to impact non-small business over and above the impact described in the 2019 HB 90 Fiscal Note, available online at: <https://le.utah.gov/~2019/bills/static/HB0090.html>.

Include agency head sign-off here. The head of the Department of Commerce, Francine Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.

R156-1. General Rule of the Division of Occupational and Professional Licensing.

R156-1-111[a]. Qualifications for Tax Certificate - Definitions - Application Requirements.

(1) In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

([1]a) "Psychiatrist", as defined under Subsection 58-1-111(1)(d), is further defined to include a licensed physician who is board eligible or board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

([2]b) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).]

~~**R156-1-111b. Qualifications for Tax Certificate - Application Requirements.]**~~

(2) An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

([1]a) the original application made available on the Division's website, containing the signed attestation of compliance; and

([2]b) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years

Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security C.P.A. Firm	March 31	odd years
Certified Court Reporter	December 31	even years
Certified Dietitian	May 31	even years
Certified Medical Language Interpreter	September 30	even years
Certified Nurse Midwife	March 31	odd years
Certified Public Accountant	January 31	even years
Certified Social Worker	December 31	even years
Chiropractic Physician	September 30	even years
Clinical Mental Health Counselor	May 31	even years
Clinical Social Worker	September 30	even years
[Construction Trades Instructor	November 30	odd years]
Contractor	November 30	odd years
Controlled Substance License renewal	Attached to primary license	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection	November 30	even years
Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator		
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Journeyman,		

Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years
Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years

Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the

board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that

reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(n) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-310. Application for Division Determination Regarding Criminal Conviction.

The application procedures for a Division determination pursuant to Section 58-1-310 are clarified and established as follows:

(1) An individual applying for a determination shall submit the Application for Criminal History Determination form made available on the Division's website, containing a signed attestation and release.

(2) An individual shall submit a separate application for criminal history determination with processing fee for each occupational or professional license that the individual is interested in seeking.

(3) Pursuant to Subsection 58-1-310(2), the individual's complete criminal conviction history shall include:

(a) criminal convictions, pleas of nolo contendere, and pleas of guilty or nolo contendere which are held in abeyance pending the successful completion of probation; and

(b) current restrictions from possession, purchase, transfer, or ownership of a firearm or ammunition.

(4) Pursuant to Subsection 58-1-310(2)(e), the individual shall provide any additional documentation that may be required by the Division to verify or evaluate the individual's representations made in their application.

(5) A determination shall be based solely on the information contained in the individual's application and supporting documents.

(6) An individual whose application has been denied as incomplete, or who has received an unfavorable determination that their criminal record would disqualify them from obtaining the license, may submit a request for agency review to the executive director within 30 days of the date of issuance of the denial or of the unfavorable determination.

R156-1-[310]501.1. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to

have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

Date of Enactment or Last Substantive Amendment: [~~November 8, 2018~~2019]

Notice of Continuation: December 6, 2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(2)