

State of Utah  
Administrative Rule Analysis  
Revised May 2023

OAR File No. 55847

PURE FILED 10/12/2023 # updates

10/24/23

NOTICE OF PROPOSED RULE

TYPE OF FILING: Amendment

Title No. - Rule No. - Section No.

Rule or Section Number:

R156-46a

Filing ID: Office Use Only

Agency Information

1. Department:	Department of Commerce	
Agency:	Division of Professional Licensing	
Room number:		
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
City, state and zip:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state and zip:	Salt Lake City UT 84114-6741	
Contact persons:		
Name:	Phone:	Email:
Tracy Taylor	801-530-6621	trtaylor@utah.gov

Please address questions regarding information on this notice to the persons listed above.

General Information

2. Rule or section catchline:

Hearing Instrument Specialist Licensing Act Rule

3. Purpose of the new rule or reason for the change:

The proposed amendments update the rule in accordance with statutory changes made by SB 12 passed in the 2023 Legislative General Session.

4. Summary of the new rule or change:

In accordance with statutory changes made by SB 12, Sections R156-46a-302a and R156-46a-302b are removed in their entirety and replaced by R156-46a-302 and R156-46a-302.5 to remove the requirement to take the ILE examination, to clarify internship supervision provisions, and to align the rule with the statutory changes. Additionally, Subsection R156-46a-303(2)(b) is updated to provide that a hearing instrument intern license may be renewed for a term of three years if the hearing instrument intern presents evidence satisfactory to the Division and board that the intern is on a course reasonably expected to lead to licensure, and a circumstance of hardship arose beyond the licensee's control to prevent the completion of the licensure process. Formatting changes are also made throughout the rule consistent with OAR's current Rule Writing Manual and to update citation references. The Division also notes the suggestion of Office of Administrative Rules staff that the "Table" in Section 502d be created as a Word "table". However, the Division will be keeping this Table as is since it is a document template to be used by licensees in their practice. The wording is not conducive to a formatted type table.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:

A) State budget:

The proposed amendments are not expected to have any fiscal impact on state government revenues or expenditures. The proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

B) Local governments:

The proposed amendments are not expected to have any fiscal impact on local government revenues or expenditures. The proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

C) Small businesses ("small business" means a business employing 1-49 persons):

The proposed amendments are not expected to have any fiscal impact on small business revenues or expenditures. The proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):

The proposed amendments are not expected to have any fiscal impact on non-small business revenues or expenditures. The proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

**E) Persons other than small businesses, non-small businesses, state, 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*):

The proposed amendments are not expected to have any fiscal impact on affected persons. The proposed amendments merely update and clarify provisions and conform the rule to statutory changes.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

The proposed amendments are not expected to impose any compliance costs on any affected persons.

**G) Regulatory Impact Summary Table** (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 will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this fiscal analysis.

The Division of Professional Licensing ("Division") proposes amendments to update the R156-46a, the Hearing Instrument Specialist Licensing Act Rule. The proposed amendments are required by SB 12, which was passed in the 2023 General Legislative Session. Sections were removed to take out the requirement of the International Hearing Society's licensing examination (ILE). Clarification has been for internship supervision provisions and to update the requirement of hearing instrument intern license, which may be renewed for a term of three years. The Division has made formatting changes throughout the rule to conform the rule to the Officer of Administrative Rules' Formatting Manual in accordance with Executive Orders 2021-1 and 2021-12.

**Small Businesses (less than 50 employees):**

The Division does not foresee any foreseeable impact on small businesses since these amendments are made to make the rule comport to the requirements of SB 12 and the Office of Administrative Rules *Rule Writing Manual*.

**Regulatory Impact to Non-Small Businesses (50 or more employees)**

These amendments will have no expected fiscal impact for non-small businesses in Utah for the same rationale as described above for small businesses. These costs are either inestimable, for the reasons stated above, or there is no fiscal impact.

**Citation Information**

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 58-1-106(1)(a) Section 58-46a-304	Subsection 58-1-202(1)(a)	Section 58-46a-101
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**Incorporations by Reference Information**

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

**A) 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 Office of Administrative Rules; *if none, leave blank*):

<b>Official Title of Materials Incorporated</b> (from title page)	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**B) 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 Office of Administrative Rules; *if none, leave blank*):

<b>Official Title of Materials Incorporated</b> (from title page)	
<b>Publisher</b>	
<b>Issue Date</b>	
<b>Issue or Version</b>	

**Public Notice Information**

**8. 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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 12/01/2023

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

<b>Date (mm/dd/yyyy):</b>	<b>Time (hh:mm AM/PM):</b>	<b>Place (physical address or URL):</b>
11/17/2023	9:00 AM	160 East 300 South - Conference Room 474 (4th floor) or via Google Meet  Google Meet Meeting link meet.google.com/ngx-fsph-bwc Join by phone (US) +1 302-440-5055 PIN: 550866830

**To the agency:** If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

**9. This rule change MAY become effective on:** 12/08/2023

**NOTE:** The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

<b>Agency head or designee and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	10/12/2023
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R156. Commerce, [~~Occupational and~~] Professional Licensing.

R156-46a. Hearing Instrument Specialist Licensing Act Rule.

R156-46a-101. Title - Authority - Organization.

(1) This rule is known as the "Hearing Instrument Specialist Licensing Act Rule."

(2) This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act.

(3) The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-46a-102. Definitions.

In addition to the definitions [~~as used~~] in Title 58, Chapter 1, Division of [~~Occupational and~~] Professional Licensing, and Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, [~~or this rule,~~] under Subsection 58-1-203(1)(e) "unprofessional conduct[~~7~~]" is further defined in [~~Subsection 58-1-203(1)(e), in~~] Section R156-46a-502a. [

~~R156-46a-103. Authority - Purpose.~~

~~This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 46a.~~

~~R156-46a-104. Organization - Relationship to Rule R156-1.~~

~~The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.~~

~~R156-46a-302a. Qualifications for Licensure - Examination Requirements.~~

~~(1)(a) In accordance with Subsections 58-46a-302(1)(d) and 58-46a-302(2)(e), the requirements for the examination of a hearing instrument specialist and of a hearing instrument intern are defined to require a minimum score of 75% on the Utah Law and Rules Examination for Hearing Instrument Specialists.~~

~~(b) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.~~

~~(2)(a) In accordance with Subsection 58-46a-302.5(1)(a), a hearing instrument intern shall obtain a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns.~~

~~(b) If a hearing instrument intern receives a failing score on any section of the exam, the intern may retake that section within 60 days. If the intern does not pass each failed section within the 60 day period, the intern shall retake the entire exam.~~

~~(3)(a) In accordance with Subsection 58-46a-302.5(2)(b), an applicant for licensure as a hearing instrument specialist shall obtain a passing score on the International Hearing Society's (IHS) International Licensing Exam (ILE).~~

~~(b) If a hearing instrument intern fails the ILE three times.~~

- ~~\_\_\_\_\_ (i) the intern shall request from the Division an authorization to test before each subsequent retake of the ILE; and~~
- ~~\_\_\_\_\_ (ii) the Division shall require as a condition for approval of an authorization to test that the intern and the intern's supervisor submit to the Division a written plan of study that includes appropriate subject matter to assist the intern in passing the ILE.~~

~~**R156-46a-302b. Qualifications for Licensure - Internship Supervision Requirements.**~~

~~\_\_\_\_\_ In accordance with Subsection 58-46a-102(7), the requirements for supervision of a hearing instrument intern are defined as follows:~~

- ~~\_\_\_\_\_ (1) A hearing instrument intern supervisor shall:~~
  - ~~\_\_\_\_\_ (a) supervise no more than one hearing instrument intern on direct supervision;~~
  - ~~\_\_\_\_\_ (b) supervise no more than two hearing instrument interns at one time;~~
  - ~~\_\_\_\_\_ (c) begin an internship program only after:~~
    - ~~\_\_\_\_\_ (i) the hearing instrument intern is properly licensed as a hearing instrument intern; and~~
    - ~~\_\_\_\_\_ (ii) the supervisor is approved by the Division; and~~
  - ~~\_\_\_\_\_ (d) notify the Division within ten working days if an internship program is terminated.~~
- ~~\_\_\_\_\_ (2) If a supervised internship program is terminated, then within 60 days of termination, the hearing instrument intern shall:~~
  - ~~\_\_\_\_\_ (a) obtain a new supervisor and notify the Division of the new supervised internship program; or~~
  - ~~\_\_\_\_\_ (b) surrender their hearing instrument intern license.]~~

**R156-46a-302. Qualifications for Licensure - Examination Requirements.**

(1) Under Subsections 58-46a-302(1)(d) and 58-46a-302(2)(c), the minimum score required to pass the Utah Law and Rules Examination for hearing instrument specialists and hearing instrument interns is 75%.

(2) If an individual's license as a hearing instrument intern expires before the individual becomes licensed as a hearing instrument specialist, the individual shall retake and pass the Utah Law and Rules Examination before the individual may reapply for licensure as a hearing instrument intern.

**R156-46a.302.5. Internship Supervision Requirements.**

(1) Under Subsection 58-46a-302(2)(d) and Section 58-46a-302.5, the supervision requirements for practice as a hearing instrument intern are established in this section.

(2) A supervising hearing instrument specialist shall:

(a) begin supervising a hearing instrument intern only after:

(i) the hearing instrument intern is licensed as a hearing instrument intern; and

(ii) the supervisor is approved by the Division under Subsection 58-46a-102(6)(c);

(b) supervise no more than one hearing instrument intern on direct supervision;

(c) supervise no more than two hearing instrument interns at one time; and

(d) notify the Division within ten working days if an internship program is terminated.

(3) To practice under indirect supervision as allowed by Subsection 58-46a-302.5(2), the hearing instrument intern shall:

(a) under Subsection 58-46a-302.5(2)(a), have received a passing score on each section of the International Hearing Society (IHS) Practical Examination for Hearing Instrument Interns, subject to the following:

(i) if the hearing instrument intern receives a failing score on one or more exam sections, the intern may retake that section or those sections within 60 days; and

(ii) if the hearing instrument intern does not pass each failed section within the 60-day period, the hearing instrument intern shall retake the entire exam; and

(b) under Subsection 58-46a-302.5(2)(b), have successfully completed the International Hearing Society (IHS) distance Learning for Professionals in Hearing Health Sciences Course.

#### **R156-46a-303. Renewal Cycle - Procedures.**

(1) [~~In accordance with~~] Under Subsection 58-1-308(1), the renewal date for the two-year renewal cycle [~~applicable to~~] for licensees under Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act is established [~~by rule~~] in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Sections R156-1-308c through R156-1-308l.

(3) Under Subsection 58-46a-303(2)(b), a hearing instrument intern may be renewed for a term of three years if the hearing instrument intern presents evidence satisfactory to the Division and board that:

(a) the licensee is on a course reasonably expected to lead to licensure, such as making reasonable progress toward passing the qualifying examination and completing required hours of supervision; and

(b) a circumstance of hardship arose beyond the licensee's control to prevent the completion of the licensure process.

#### **R156-46a-304. Continuing Education.**

[~~In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined as follows:~~]

(1) [A] Under Section 58-46a-304, a hearing instrument specialist shall complete continuing education requirements under this section for renewal of licensure.

(2) A hearing instrument specialist shall complete at least 16 hours of continuing education during each two-year renewal cycle.

(~~2~~)<sup>3</sup> Continuing education courses shall be in one or more of the following topics:

(a) acoustics;

(b) nature of the ear such as normal ear, hearing process, disorders of hearing;

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

- (h) ethical practice;
  - (i) state laws and regulations regarding the dispensing of hearing aids; and
  - (j) other topics approved by the Division.
- (~~3~~4) Continuing education courses shall be approved by:
- (a) the American Speech-Language-Hearing Association (ASHA);
  - (b) the American Academy of Audiology (AAA); or
  - (c) the International Hearing Society (IHS).
- (~~4~~5) A licensee may fulfill continuing education requirements by maintaining current National Board for Certification in Hearing Instrument Sciences (NBC-HIS) board certification.
- (~~5~~6) A licensee shall maintain documentation showing compliance with the requirements of this section, such as copies of transcripts or certificates of completion or of board certification, for two years from the end of the renewal period for which the continuing education is due.

**R156-46a-502a. Unprofessional Conduct.**

"Unprofessional conduct" includes:

- (1) violating a ~~ny~~ state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;
- (2) failing to perform the minimum components of an evaluation for a hearing aid ~~[as set forth]~~ in Section R156-46a-502b;
- (3) dispensing a hearing aid without:
  - (a) the patient having received a medical evaluation as required by Subsection 58-46-502(5) within the six-month period ~~[prior to]~~ before the purchase of the hearing aid; or
  - (b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.~~[421]~~422, except a person under the age of 18 years may not waive the medical evaluation;
- (4) engaging in unprofessional conduct specified in Subsection 58-1-501(2) ~~[(h)]~~ (a)(viii), including:
  - (a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices;
  - (b) showing, demonstrating, or representing competitive models as being current when they are not; or
  - (c) using stalling tactics, excuses, arguing or attempting to dissuade the consumer, to prevent or delay the consumer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and
- (5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Code of Ethics of the International Hearing Society, adopted March 2009, which is ~~[hereby]~~ incorporated by reference.

**R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.**

- (1) [The] Under Subsection 58-46a-102(5), the minimum components of a hearing aid examination include:

(a) air conduction tests at frequencies of 250, 500, 1,000, 2,000, and 4,000 [~~Hertz~~]hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or non-test ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1,000, and 2,000 [~~Hertz~~]hertz, with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements, and uncomfortable levels of loudness (UCL) measurements; and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only if the procedures in Subsection (1)(a) are clearly impractical, may the licensee select the best instrument to compensate for the loss by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist, or another licensed hearing instrument specialist shall be accepted if they were performed within six months [~~prior to~~]before the dispensing of the hearing aid.

#### **R156-46a-502c. Calibration of Technical Instruments.**

The requirement in Subsection 58-46a-303 [~~(3)(b)~~] (1)(b)(ii) for calibration of each appropriate technical instruments used in practice is defined as follows:

(1) each audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

#### **R156-46a-502d. Form of Written Informed Consent.**

[~~In accordance with~~]Under Subsection 58-46a-502(4)(c), an agreement to provide hearing instrument specialist goods and services shall include the patient's informed consent in substantially the following form.

### TABLE

#### ACKNOWLEDGEMENT OF INFORMED CONSENT

As a consumer of hearing instrument specialist goods or services, you are required to be informed of certain information as provided in Utah Code Sections 58-46a-502 and 58-46a-503.

1. The list of goods and services to be provided to you include the following: (add additional lines as required)

Services:

Charge:

Goods (circle as applicable: new, used, reconditioned): Charge:

These goods (circle as applicable: are, are not) covered by a warranty or guarantee. Additional information about any warranty or guarantee is attached.



2. The licensees providing these goods and services are:

(add additional lines as required)

hearing instrument specialist:

name: license number:

hearing instrument [~~specialist~~]intern

name: license number:

3. The expected results of the goods and services are:

4. If the goods to be provided include a hearing instrument:

(a) Additional information is attached about hearing instruments that work with assisted listening systems that are compliant with ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the American with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.

(b) You have the right to receive a written receipt or written contract, which includes notice to you that you have a 30-day right to cancel the purchase and obtain a refund if you find the hearing aid does not function adequately for you.

(i) The 30-day right to cancel shall [~~commence~~]start from either the date the hearing aid is originally delivered to you or the date the written receipt or contract is delivered to you, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

(ii) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

5. If the goods and services provided do not substantially enhance your hearing as stated in the expected results, you are entitled to:

(a) necessary intervention to produce satisfactory recovery results consistent with the representations made above at no additional cost; or

(b) refund of the fees you paid for the hearing instrument within a reasonable period [~~of time~~]after finding that the hearing instrument does not substantially enhance your hearing.

I hereby acknowledge being informed of the above and consent to receive the goods and services.

Patient's Signature and Date

**KEY:** licensing, hearing aids, hearing instrument specialist, hearing instrument intern

Date of Enactment or Last Substantive Amendment: [~~December 10, 2020~~]2023

Notice of Continuation: October 2, 2023

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-46a-101; 58-46a-304