

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Managing Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah state government. The Office of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <https://rules.utah.gov/>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <https://rules.utah.gov/> for additional information.

Office of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2019 Medicaid Rate Changes

Effective June 1, 2019, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>

Health Health Care Financing, Coverage and Reimbursement Policy

Amendment to 1115 Demonstration Waiver

The Utah Department of Health, Division of Medicaid and Health Financing (DMHF), will hold a second public hearing to discuss an amendment to Utah's 1115 Demonstration Waiver.

DMHF is requesting authority to amend the State's 1115 Demonstration Waiver to implement the provisions of Senate Bill 11- "Medicaid Dental Coverage Amendments", which passed during the 2019 Utah Legislative Session. The provisions of this amendment will include:

1. Authority to provide full state plan dental benefits to Medicaid eligible individuals, age 65 and older.
2. Authority to provide Medicaid funds for porcelain and porcelain-to-metal crowns for Medicaid eligible individuals age 65 and over, as well as for Targeted Adult Medicaid beneficiaries who are eligible to receive dental benefits under the State's 1115 Demonstration Waiver.
3. Providing benefits through a fee-for-service model, and by contracting with an entity that:
 - a. Has demonstrated experience working with individuals who are being treated for both a substance use disorder and a major oral health disease;
 - b. Operates a program, targeted at the individuals described in this amendment, that has demonstrated, through a peer-reviewed evaluation, the effectiveness of providing dental treatment to those individuals;
 - c. Is willing to pay for an amount equal to the program's non-federal share of the cost of providing dental services to the population described.

A copy of the DMHF waiver amendment is available online at <https://medicaid.utah.gov/waiver-application>.

Public Hearing:

DMHF will conduct a second public hearing to discuss the waiver amendment. The date, time, and location is listed below:
Thursday, May 16, 2019
2:00 p.m. to 4:00 p.m. (as part of the Medical Care Advisory Committee (MCAC) meeting)
Cannon Health Building
288 N 1460 W, Salt Lake City, Utah
Room 125

A conference line is available for those who would like to participate by phone: 1-877-820-7831, passcode 378804#.

Individuals requiring an accommodation to fully participate in this meeting may contact Jennifer Meyer-Smart at 801-538-6338.

Public Comment:

The public may comment on the proposed waiver amendment during the 30-day public comment period, which began May 6, 2019, and will continue through June 5, 2019. Comments may be submitted:

Online: <https://medicaid.utah.gov/public-comments-0>

Email: Medicaid1115waiver@utah.gov

Mail:

Utah Department of Health

Division of Medicaid and Health Financing

PO Box 143106

Salt Lake City, UT 84114-3106

Attn: Jennifer Meyer-Smart

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 16, 2019, 12:00 a.m., and May 01, 2019, 11:59 p.m. are included in this, the May 15, 2019, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Office of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least June 14, 2019. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 12, 2019, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Agriculture and Food, Plant Industry
R68-27
Cannabis Cultivation

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43684

FILED: 04/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule sets forth the licensing and operation requirements for individuals seeking to cultivate medical cannabis in accordance with Title 4, Chapter 41a, Cannabis Production Establishments.

SUMMARY OF THE RULE OR CHANGE: This proposed rule sets forth the licensing requirements for those interested in competing for a cannabis cultivation facility license. It establishes the facility requirements, as well as the additional requirements for the operation plan. This proposed rule establishes minimum requirements for storage and handling of cannabis and the uses and storage of pesticides, fertilizers, and other agricultural chemicals that may be used in the facility. In addition, this proposed rule establishes violation categories with the range of fines that may be assessed for violations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-103(1)(i) and Subsection 4-41a-103(5) and Subsection 4-41a-302(3)(b)(ii) and Subsection 4-41a-404(3) and Subsection 4-41a-405(2)(b)(iv) and Subsection 4-41a-701(2) and Subsection 4-41a-801(1)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** As this is a new program, the state will have the significant startup cost of hiring personnel and buying equipment necessary to effectively run the medical cannabis program. The Department of Agriculture and Food (Department) will need to hire and train employees to inspect these facilities. In addition to inspectors, the Department will need to hire administrative staff to help issue the agent registration cards, to do background checks for all employees, and those with 2% or greater financial or voting interest in the cannabis cultivation facility. The inspector will need to be out doing quarterly inspections of the facility and will need the equipment necessary to conduct the inspection. In total the cost of the employees is estimated at \$360,449.57 for the first year. In addition to the cost of the employees there is \$35,000 cost for the equipment and training for these employees to effectively regulate this product. Transportation cost are anticipated at \$3,600. Additionally, the Department will need to help with the purchase and upkeep of the electronic verification system as required by Title 4, Chapter

41a. The Department anticipates contributing at least \$165,000 to maintaining the system as it is key to the program. Total cost in the first year are than anticipated to be \$563,549.57. In the second year, the Department anticipates that cost will stay much the same with a slight increase in the amount of inspections that are necessary as more of the facilities reach their capacity. There will need to be increased time spent on reviewing records for pesticide or fertilizer use, as well as maintaining of records in the inventory control systems and electronic verification system. Due to the increased review of records and inspections, the cost of employees will be \$364,816.52. The other cost will remain the same. The total cost of the second year is anticipated to be \$567,916.52. It may be necessary to hire more inspectors as the program grows in the third year, but the Department anticipates that the cost for the program will remain similar to the second year in the third year. The Department anticipates an application fee of \$10,000 for each applicant. In addition, the successful cannabis cultivation facility will have a \$100,000 licensing fee. By statute, the Department may not issue more than ten cannabis cultivation licenses. While the Department cannot anticipate the number of entities who will apply for a license, it is anticipated that there will be at least ten interested parties. Thus, the amount of revenue generated could be at least \$1,100,000 in application and licensing fees for the first year. The licensee will not have to pay the application fee after having successfully received a license. The revenue for years two and three will decreased to \$1,000,000.

◆ **LOCAL GOVERNMENTS:** Local governments may experience an increase in law enforcement cost do to the nature of the crop being grown. However, the Department cannot adequately estimate the cost or benefits to local governments.

◆ **SMALL BUSINESSES:** This rule allows for the growth of a controlled substances in the state of Utah. This is a new and controlled industry in the state. As it has not been allowed before, the proposed rule does not place any additional cost to the business aside from the anticipated application fee of \$10,000 and the licensing fee of \$100,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule allows for the growth of medical cannabis in the state. It will allow for qualified patients to have access to a quality-controlled product. However, due to the nature of the industry, it is impossible for the Department to estimate the costs or benefits to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a \$10,000 application fee for all those who chose to apply for a license. Those who are awarded the license will then have a \$100,000 licensing fee. Due to this being a controlled substance and still federally illegal, there has been no prior legal growing in the state. Therefore, the only cost to the affected persons is the application and licensing fees. All other costs are the costs of engaging in the growing of medical cannabis.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a newly created program which will allow the growth of a controlled substance for medical use. It is necessary for the Department to ensure the safe growing, processing, and transportation of this product for the safety of the qualified patients. The application and licensing fees are necessary for the department to run the program effectively to ensure that qualified patients receive a quality product.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 PLANT INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Melissa Ure by phone at 801-538-4976, or by Internet E-mail at mure@utah.gov
 ♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/05/2019 02:00 PM, Dept. of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Kerry Gibson, Commissioner

Appendix: Regulatory Impact Analysis for Small and Non-Small Businesses

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$563,549.57	\$567,916.52	\$567,916.52
Local Government	\$0	\$0	\$0
Small Businesses	\$1,110,000	\$1,000,000	\$1,100,000
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$1,673,549.57	\$1,567,916.52	\$1,567,916.52
Fiscal Benefits			
State Government	\$1,110,000	\$1,000,000	\$1,000,000
Local Government	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$1,110,000	\$1,000,000	\$1,000,000
Net Fiscal Benefits:	-\$563,549.57	-\$567,916.52	-\$567,916.52

*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

Title 4, Chapter 41a, only allows for the issuance of 10 cannabis cultivation facility licenses. This proposed rule will allow for the controlled growing cannabis to provide to qualified patients. As the cultivation of cannabis has previously been illegal under state law, the full impact to these businesses cannot be estimated as the necessary data is not available to the Department.

The Commissioner of the Department of Agriculture and Food, Kerry Gibson, has reviewed and approved this fiscal analysis.

R68. Agriculture and Food, Plant Industry and Conservation.

R68-27. Cannabis Cultivation.

R68-27-1. Authority and Purpose.

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(2), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis cultivation license.

R68-27-2. Definitions.

As used in the rule:

1) "Applicant" means any person or business entity who applies for a cannabis cultivation facility license.

2)a) "Cannabis" means any part of a marijuana plant;

b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.

3) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

5) "Department" means the Utah Department of Agriculture and Food

6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

- 7) "Lot" means the quantity of:
- flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
 - trim, leaver, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.
- 8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

- A cannabis cultivation license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.
- A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.
- An applicant shall be a resident of the State of Utah, as defined by Utah State Tax Commission rules.
- A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.
- Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.
- Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.
- The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses that will be issued.
- The license shall expire on December 31st.
- A license may not be sold or transferred.

R68-27-4. Cannabis Cultivation Facility Requirements.

- A cannabis cultivation facility operating plan shall contain a blue print of the facility containing the following information:
 - for indoor cannabis cultivation, the square footage of the areas where cannabis is to be propagated;
 - for indoor cannabis cultivation, the square footage of the areas where cannabis is to be grown;
 - the square footage of the areas where cannabis is to be harvested;
 - the areas where cannabis is to be dried, trimmed and cured;
 - the square footage of the areas where cannabis is to be packaged for wholesale;
 - the total square footage of the cultivation facility;
 - the square footage and location of areas to be used as storerooms;
 - the location of the toilet facilities and hand washing facilities;
 - the location of a break room and location of personal belonging lockers; and
 - the location of the areas to be used for loading and unloading of cannabis products for transportation.

- For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:
 - the area where cannabis to be propagated; and
 - the area where cannabis is to be grown.
- A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.
- An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.
- A cannabis cultivation facility shall have written emergency procedures to be followed in case of:
 - fire;
 - chemical spill; or
 - other emergency at the facility
- A cannabis cultivation facility operating plan shall include:
 - a pest management plan;
 - when and how fertilizers are to be applied during the production process;
 - water usage and waste water disposal; and
 - a waste disposal plan.
- A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.
- A cannabis cultivation facility shall use a standardized scale which is registered with the department when cannabis is:
 - packaged for sale by weight;
 - bought and sold by weight;
 - weighed for entry into the inventory control system.
- A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises including proper and timely removal of all litter and waste.
- The cannabis cultivation facility shall compartmentalize all areas in the facility based on function.
- A cannabis cultivation facility shall limit access to the compartments to appropriate agents.

R68-27-5. Security Requirements.

- At a minimum, each cannabis cultivation facility shall have a security alarm system on all perimeter entry points and perimeter windows.
- At a minimum, a licensed cannabis cultivation facility shall have complete video surveillance system:
 - with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and
 - that retains footage for at least 45 days.
- All cameras shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.
- All entrances and exits, or ingress and egress vantage points shall be recorded.
- All cameras shall record continuously.
- For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Controlled areas included an area within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, trimmed, or stored or where cannabis waste is being moved, processed, stored, or destroyed.

9) Any gate or entry point must be lighted in low-light conditions.

10) All visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

11) All visitors shall be escorted by a facility agent at all times while in the facility.

12) A log shall be kept showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

13) The visitor log shall be maintained for a minimum of one year.

14) The visitor log shall be made available to the department upon request.

R68-27-6. Inventory Control.

1) Every cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through all phases of production.

2) Every cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.

3) Unique identification numbers cannot be reused.

4) Each cannabis plant, lots of usable cannabis trim, leaves, and other plant matter cannabis products, test lots, harvest lots, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.

5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) movement of seedling or clone to the vegetation production area;

b) when plants are partially or fully harvested or destroyed;

c) when cannabis is being transported to other facilities;

d) all samples used for testing and the testing results;

e) a complete inventory of all cannabis, cannabis seeds, plant tissue, seedlings, clones, plants, trim or other plant material;

f) weight of all harvested cannabis plants immediately after harvest;

g) weight and disposal of post-harvest waste materials;

h) the identity of who disposed of the waste and the location of waste receptacle; and

i) theft or loss, or suspected theft or loss, of cannabis.

7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received,

and any differences between the quantity specified in the transport manifest and the quantities received.

8) For plants under eight inches, the cultivation facility shall keep record of:

a) the number of cannabis seeds or cuttings planted;

b) the date on which they were planted;

c) the date the plants were moved into the vegetation area and tagged;

d) the strain of the seeds or cuttings;

e) the number of plants grown to maturity;

f) the number of plants disposed of; and

g) the date of disposal.

R68-27-7. Cannabis Cultivation Facility Agents.

1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the fee.

3) The cannabis production establishment agent registration card shall contain:

a) the agent's full name;

b) the name of the cannabis cultivation establishment;

c) the type of cannabis production establishment;

d) the job title or position of the agent; and

e) a photograph of the agent.

4) A cannabis cultivation facility is responsible to ensure that all agents have received the department approved training as specified in Utah Code 4-41a-301.

5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis facility agents shall have their state issued identification in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis cultivation facility.

R68-27-8. Pesticide and Fertilizer Use

1) A cannabis cultivation facility shall maintain:

a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis which shall be accessible to all agents;

b) the original label or a copy thereof for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis; and

c) a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis.

2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.

3) Pesticides, fertilizers, and other agricultural chemicals are to be stored in a separate location apart from cannabis.

4) Pesticides shall be used consistent with the label requirements.

5) Commercial fertilizers registered with the department under the Utah Fertilizer Act may be used in the production and handling of cannabis

6) Cannabis exposed to unauthorized pesticides, soil amendments, or fertilizers is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-9. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;

b) physical address and license number of the receiving location;

c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;

d) date and time of departure;

e) estimated date and time of arrival; and

f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.

4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.

5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving cannabis establishment shall document at time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) Cannabis shall be:

a) shielded from the public view during transportation;

b) secured during transportation; and

c) temperature controlled if perishable during transportation.

8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-10. Recall Protocol.

1) The department may initiate a recall of cannabis or cannabis products if:

a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;

b) evidence exists that residual solvents are present on or in cannabis or cannabis products;

c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or

d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.

2) A cannabis cultivation facility's recall plan shall include, at a minimum:

a) designation of at least one member of the staff who serves as the recall coordinator;

b) procedures for identifying and isolating product to prevent or minimize distribution to patients;

c) procedures to retrieve and destroy product; and

d) a communications plan to notify those affected by the recall.

3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-27-11. Minimum Requirements for the Storage and Handling of Cannabis.

1) All storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.

2) All stored cannabis shall be at least six inches off the ground.

3) All cannabis shall be stored away from all other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.

4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

R68-27-12. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) All cannabis waste shall be rendered unusable prior to leaving the cannabis cultivation facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable based grease or oils.

- 8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:
 - a) paper waste;
 - b) cardboard waste;
 - c) plastic waste; or
 - d) soil.
- 9) Cannabis waste includes:
 - a) cannabis plant waste including roots, stalks, leaves, and stems;
 - b) excess cannabis or cannabis products from any quality assurance testing;
 - c) cannabis or cannabis products that fail to meet testing requirements; and
 - d) cannabis or cannabis products subject to a recall.

R68-27-13. Change in Operation Plans.

- 1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, prior to making any changes to:
 - a) ownership or financial backing of the facility;
 - b) the facility's name;
 - c) a change in location;
 - d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
 - e) change in square footage or acreage of cannabis intended to be cultivated.
- 2) A cultivation facility may not implement changes to the approved operation plan without department approval.
- 3) The department shall respond to the request for changes within 15 business days.
- 4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.
- 5) The department shall specify reason for the denial of approval for a change to the operation plan.

R68-27-14. Renewals.

- 1) A cannabis cultivation facility shall submit a notice of intent to renew and the licensing fee to the department by December 1st.
- 2) If the licensing fee and intent to renew are not submitted by December 31st the licensee may not continue to operate.
- 3) The department may take into consideration violations issued in determining license renewals.

R68-27-15. Violations Categories.

- 1) Public Safety Violations: \$3,000 - \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:
 - a) use of unapproved pesticides or unapproved agricultural soil amendments;
 - b) cannabis sold to an unlicensed source;
 - c) cannabis purchased from an unlicensed source;
 - d) refusal to allow inspection;
 - e) failure to comply with testing requirements;
 - f) a test result for high pesticide residue in the cannabis produced or cannabis product;
 - g) unauthorized personnel on the premises;

- h) permitting criminal conduct on the premises; or
- i) engaging in or permitting a violation of the Utah Code 4-41a.
- 2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:
 - a) failure to maintain alarm and security systems;
 - b) failure to keep and maintain records;
 - c) failure to maintain traceability;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements;
 - f) engaging in or permitting a violation of Utah Code 4-41a or this rule; or
 - g) failure to maintain standardized scales.
- 3) Licensing Violations: \$500 - \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:
 - a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
 - d) failure to follow the operating plan as approved by the department;
 - e) engaging in or permitting a violation of this rule or Utah Code 4-41a; or
 - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.
- 5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

KEY: marijuana, cannabis cultivation facility
Date of Enactment or Last Substantive Amendment: 2019
Authorizing, and Implemented or Interpreted Law: 4-41a-404(3); 4-41a-103(5); 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

Education, Administration
R277-493
 Kindergarten Supplemental Enrichment
 Program

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 43683
 FILED: 04/30/2019

RULE ANALYSIS
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-493 has been amended to provide high standards to local education agencies (LEAs), which must share in a limited pool of available funding.

SUMMARY OF THE RULE OR CHANGE: The amendments to Section R277-493-4 provide greater specificity of the criteria by which an LEA receiving funding through the kindergarten supplemental enrichment program will be judged.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X Section 3 and Subsection 53E-3-401(4) and Subsection 53F-4-205(7)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule change are not expected to have a fiscal impact on state government revenues or expenditures. These rule changes provide greater specificity of the criteria by which a LEA receiving funding through the kindergarten supplemental enrichment program will be judged. These amendments are intended to provide high standards to LEAs, which must share in a limited pool of available funding. Eligible schools that received program funds for the 2018-19 school year may reapply to receive program funds for the 2019-20 school year if the eligible school performs better than the state average in at least three of the four performance measures outlined in Subsection R277-493-4(1). An eligible school that does not meet the performance standards outlined in Subsection R277-493-4(2) (a) may not apply for program funds for the 2019-20 school year. The funding for the program remains the same so this change will not have a fiscal impact.

◆ **LOCAL GOVERNMENTS:** These rule changes may have a fiscal impact on local governments' revenues or expenditures. These rule changes provide greater specificity of the criteria by which a LEA receiving funding through the kindergarten supplemental enrichment program will be judged. These amendments are intended to provide high standards to LEAs, which must share in a limited pool of available funding. Eligible schools that received program funds for the 2018-19 school year may reapply to receive program funds for the 2019-20 school year if the eligible school performs better than the state average in at least three of the four performance measures outlined in Subsection R277-493-4(1). An eligible school that does not meet the performance standards outlined in Subsection R277-493-4(2)(a) may not apply for program funds for the 2019-20 school year. The overall funding for the program remains the same. However, depending on student performance, some LEAs currently receiving funding may not be eligible for funding for the 2019-2020 school year. Performance data is not available yet so the specific fiscal impact to LEAs cannot be estimated yet.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on small businesses' revenues or expenditures. This rule applies to the kindergarten supplemental enrichment program which is a state program funded from the Education Fund and Temporary Assistance for Needy Families (TANF) Reserve funds, and thus does not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule changes are not expected to have any fiscal impact on persons other than small businesses, businesses,

or local government entities revenues or expenditures. This rule applies to the kindergarten supplemental enrichment program which is a state program funded from the Education Fund and TANF Reserve funds, and thus does not apply to other individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). These rule changes have no fiscal impact on LEAs and will not have a fiscal impact on non-small or small businesses. The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are 1,241 entities with a NAICS code 611110 (Elementary and Secondary Schools) operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are schools including public schools, charter schools, and private schools. Of the 1,241 entities, there are 15 private businesses, all of which are small businesses (there are no non-small businesses with a NAICS code 611110). Thus, this rule change is not expected to have any fiscal impact on non-small businesses' revenue or expenditures because there are no applicable non-small businesses and it does not require any expenditures or generate revenues for large businesses.

The Program Analyst at the Utah State Board of Education, Jill Curry, has reviewed and approved this fiscal analysis.

R277. Education, Administration.

R277-493. Kindergarten Supplemental Enrichment Program.

R277-493-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(c) Subsection 53F-4-205(7), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer ~~[Section 53F-4-205-K]the kindergarten [S]supplemental [E]enrichment [P]program established in Section 53F-4-205.~~

R277-493-2. Definitions.

(1)(a) "Eligible school" has the same meaning as defined in Subsection 53F-4-205.

(b) "Eligible school" does not include a school that receives funds under Section 53F-2-507, Enhanced kindergarten early intervention program.

(2) "Kindergarten supplemental enrichment program" has the same meaning as defined in Subsection 53F-4-205.

R277-493-3. Program Administration.

(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program funds by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:

(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;

(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students to target for the kindergarten supplemental enrichment program;

(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;

(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53F-4-205(4);

(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind; and

(f) other information as requested by the Superintendent.

(3)(a) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(b) If an LEA submits a renewal application for a school that has previously been deemed eligible and received funding through the kindergarten supplemental enrichment program, the Superintendent may continue to deem the school as eligible based on the school's eligibility described in Subsection 53F-4-205(1)(b) from its initial application year.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53F-4-205(2).

(5) An eligible school that receives kindergarten supplement enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-[5]3.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

R277-493-4. Eligibility to Apply for 2019-20 School Year Grant Funds.

(1) The Superintendent shall review data gathered from 2018-19 kindergarten entry and exit assessments to determine the following performance measures:

(a) average percentage of students state-wide with increases in literacy scores;

(b) average percentage of students state-wide with increases in numeracy scores;

(c) average percentage of students state-wide with decreases in literacy scores;

(d) average percentage of students state-wide with decreases in numeracy scores;

(2)(a) An eligible school that received program funds for the 2018-19 school year may reapply to receive program funds for the 2019-20 school year if the eligible school performs better than the state average in at least three of the four performance measures outlined in Subsection (1).

(b) An eligible school that does not meet the performance standards outlined in Subsection (2)(a) may not apply for program funds for the 2019-20 school year.

KEY: kindergarten, supplementals, enrichments

Date of Enactment or Last Substantive Amendment: [~~June 7, 2018~~2019]

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53F-4-205(7)

**Health, Disease Control and
Prevention, Environmental Services
R392-110
Food Service Sanitation in Residential
Care Facilities**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 43660
FILED: 04/17/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized under Sections 26-1-5 and 26-15-2, and Subsections 26-1-30(9), 26-1-30(23), and 26-39-301(1). The rule has been modified to expand the applicability of Rule R392-110 to include youth and adult residential care facilities. This modification was done at the request, and with the participation, of the Department of Human Services (DHS) and the local health departments. As

part of the license approval procedure, DHS requires residential care facilities to submit a completed food safety inspection report from the local health department. Until now, this was done using Rule R392-100 as guidance for the inspectors and operators. These changes will standardize the inspection criteria throughout the state. In addition, the modifications simplify the rule, remove outdated language and redundancies, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: This rule establishes minimum standards for the sanitation, operation, and maintenance of food service sanitation in residential care facilities, and provides for the prevention and control of health hazards associated with residential care facilities that are likely to affect public health including risk factors contributing to injury, sickness, death, and disability.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-15-2 and Section 26-7-1 and Subsection 26-1-30(23) and Subsection 26-1-30(9) and Subsection 26-39-301(1)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Repealing and reenacting Rule R392-110 will not result in a cost or benefit to the state budget because the reenacted rule does not require a change to state operations, programs, or procedures and it does not include requirements for the payment of fines or fees to any state agency.

♦ **LOCAL GOVERNMENTS:** Repealing and reenacting Rule R392-110 will not result in a direct cost or benefit to local governments because no construction, equipment, or operational changes are required by this rule. The reenacted rule does not include requirements for a permit or permit fee. A local health officer may conduct an inspection of the facility at the request of the facility owner or operator. The reenacted rule makes a provision for local governments to assess an inspection fee to offset the cost of the inspection. These inspections have already been taking place prior to enactment of this rule modification. Inspection frequency is not specified in this rule, as inspections will be conducted by request only.

♦ **SMALL BUSINESSES:** Repealing and reenacting Rule R392-110 will not result in a direct cost or benefit to small businesses because no construction, equipment or operational changes are required by this rule. Any currently licensed residential care facility has already received an inspection and paid the associated fee as a requirement of licensure. Thus, the inspection fee described in Subsection R392-110-4(1) in the reenacted rule is not a new cost to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing and reenacting Rule R392-110 will not result in a direct cost or benefit to any one specific person, as defined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons are as follows. State: Utah Department of

Health; Utah Department of Human Services. There are no compliance costs for the affected persons. Local Governments: 13 local health departments. There are no compliance costs for the affected persons. Small businesses: public businesses such as residential treatment programs, residential support programs, recovery residences, and certified or licensed child care facilities, including residences, that provide care for 16 or fewer children. There are no compliance costs for the affected persons. Persons: No specific person will be affected by this rule, therefore, there are no compliance costs for the affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact because no construction, equipment or operational changes are required.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrishnelson@utah.gov or mail at PO Box 142104, Salt Lake City, UT 84114-2104

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0

Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are 68 non-small businesses in the industry in question operating in Utah under the NAICS codes of 621420, 623210, 623220, and 624120. These businesses will likely not experience a direct cost or benefit because this rule requires no construction, equipment, or operational changes. Any currently licensed non-small residential care facility has already received an inspection and paid the associated fee as a requirement of licensure. Any non-small residential care facility licensed after this rule is repealed and reenacted will not pay any additional fee that was not already in place as a requirement for licensure prior to rule reenactment. Thus, the inspection fee described in Subsection R392-110-4(1) of the proposed reenacted rule is not a new cost to non-small business.

The head of Utah Department of Health, Dr. Joseph Miner, has reviewed and approved this fiscal analysis.

R392. Health, Disease Control and Prevention, Environmental Services.

~~**[R392-110. Home-based Child Care Food Service. R392-110-1. Authority and Purpose.**~~

~~This rule establishes food service inspection standards for certified or licensed child care providers that provide care for 16 or fewer children. It is authorized by Sections 26-15-2, 26-1-30, 26-1-5, and 26-39-301(1).~~

~~**R392-110-2. Applicability.**~~

~~This rule applies to food service provided in certified or licensed child care facilities, including residences, that provide care for 16 or fewer children, notwithstanding the provisions of R392-100. R392-100 governs food service provided in facilities that care for more than 16 children.~~

R392-110-3. Inspection Request, Report.

After request and payment of the fee established by the local health department, a local health department shall inspect a child care provider's food service based on the standards established in this rule and using an inspection form approved by the Department. Upon satisfactory inspection, the local health department shall issue a report to the child care provider stating that the food service provided by the child care provider poses no serious sanitation or health hazard to children.

R392-110-4. Standards.

(1) Food is obtained from sources that comply with law and are approved as outlined in R392-100-3-2.

(2) Food in a hermetically sealed container is obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

(3) Food is protected from contamination by storing the food in a clean, dry location where it is not exposed to splash, dust, or other contamination and stored above the floor.

(4) Food is not stored in toilet rooms or mechanical rooms, under sewer lines, under leaking water lines or under any source of contamination.

(5) Food brought in by parents to serve to other children in the facility is from approved sources that comply with law and are approved as outlined in R392-100-3-2.

(6) Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the child.

(7) Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.

(8) Canned or bottled opened baby food containers, except for dry products, are refrigerated and kept at 41 degrees F or below.

(9) Canned or bottled baby food, except for dry products, is discarded if not used within 24 hours of opening.

(10) Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.

(11) Refrigerators used to store food for children are maintained and cleaned to prevent contamination of stored food.

(12) Food products stored inside refrigerator are stored at 41 degrees F or below as outlined by R392-100-3-5.

(13) A calibrated thermometer is stored in the refrigerator to verify the temperature of food products.

(14) Food prepared at the day care facility meets the critical cooking, hot holding, cold holding, and cooling temperatures as outlined in R392-100-3-4 and 3-5.

(15) Each caregiver who prepares or serves food is trained in food safety and has a copy of a current food handler permit on file at the facility.

(16) Food is served on clean plates, single service plates, or a clean and sanitized high chair tray.

(17) If napkins are used at meals or snacks, then they must be single service.

(18) Clean cups or single service cups are provided at each beverage service.

(19) Before each use, reusable food holders, utensils, and preparation surfaces are washed with hot water and detergent solutions, rinsed with clean water, and sanitized as outlined in R392-100-4-501-114.

(20) Food employees clean their hands and exposed portions of their arms:

(a) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single service and single use articles;

(b) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(c) after using the toilet room;

(d) after caring for or handling any animal, including service animals;

(e) when switching between working with raw food and ready to eat food; and

(f) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(21) Hand washing facilities are located to allow convenient use by employees in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.

(22) When preparing food, employees wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep their hair from contacting exposed food, clean equipment, utensils, and linens, and unwrapped single service and single use articles.

(23) Food employees wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single service and single use articles.

(24) Poisonous or toxic chemicals are identified.

(25) Procedures are in place to ensure that poisonous or toxic chemicals are safely stored to prevent access by children.

(26) Poisonous or toxic materials are stored so they can not contaminate food, equipment, utensils, linens, and single service and single use articles.

(27) Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are in the food storage, preparation, and service areas.

(28) Menus for the current week are posted in plain sight and accessible for public review.]

R392-110. Food Service Sanitation in Residential Care Facilities.**R392-110-1. Authority and Purpose.**

(1) This rule is authorized by Sections 26-15-2, 26-1-30(9), 26-1-30(23), 26-1-5, 26-7-1, and 26-39-301(1).

(2) This rule establishes uniform food service inspection standards for residence-based group care facilities.

R392-110-2. Applicability.

(1)(a) This rule applies to food service provided in certified or licensed child care facilities, including residences, that provide care for 16 or fewer children, notwithstanding the provisions of R392-100.

(b) Rule R392-100 governs food service provided in facilities that care for more than 16 children.

(2)(a) This rule applies to food service provided in facilities with a 24-hour group living environment for between four and 12 individuals unrelated to the owner, or provider, such as the following:

(i) residential treatment programs;

(ii) residential support programs; and

(iv) recovery residences.

(b) Rule R392-100 governs food service in a facility as described in R392-110-2(2)(a) that provides care for more than 12 individuals.

R392-110-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

- (1) "Department" means the Utah Department of Health.
- (2) "FDA Food Code" or "Food Code" means the most recent FDA Model Food Code as adopted by reference with amendments in Rule R392-100.
- (3) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment as defined in FDA Food Code.
- (4) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.
- (5) "Food processing facility" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, but does not provide food directly to a consumer, including any establishment that cans food, or packages food in packaging with a modified atmosphere, and is inspected by the local, state, or federal food regulatory agency having jurisdiction.
- (6) "Local health department" has the same meaning as provided in Section 26A-1-102(5).
- (7) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.
- (8) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.
- (9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a residential care facility.
- (10) "Provider" means a person with ownership or overall responsibility for managing or operating a residential care facility in Utah.
- (11) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).
- (12) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).
- (13) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).
- (14) "Service animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.
- (15) "Time/temperature control for safety food (TCS)" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation, along with all inclusions and exclusions defined in FDA Food Code.

R392-110-4. Facility Inspection and General Requirements.

- (1) After a provider requests an inspection and pays the inspection fee, a local health officer shall inspect a residential care facility based on the food safety standards established in Section R392-110-5.
- (2) A local health officer shall use an inspection form approved by the Department.
- (3) Upon satisfactory completion of the inspection, the local health officer shall issue a written report to the provider stating that the facility food services comply with Rule R392-110.
- (4) This rule does not require a construction change in any portion of a residential care facility if the facility was in compliance

with the law in effect at the time the facility was constructed, except as in R392-110-4(4)(a).

- (a) The local health officer may require construction changes if it is determined the residential care facility or portion thereof is dangerous, unsafe, unsanitary, or a nuisance.
- (5) The operator shall carry out the provisions of this rule.
- (6) Severability - If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.
- (7) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

R392-110-5. Food Safety Standards.

- (1) When conducting an inspection, a local health officer shall verify that the provider is maintaining a residential care facility according to the following standards:
 - (a) Potable water supply systems for use by group home, facility caregivers and clients are designed, installed, and operated according to the requirements set forth by:
 - (i) Plumbing Code;
 - (ii) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and
 - (iii) Local health department regulations.
 - (b) Food is obtained from a grocery store, permitted food establishment, or food processing facility. Whole produce may be obtained from a farmer's market
 - (c) Food has not been adulterated, as defined in Section 402 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.
 - (d) Food is protected from contamination by storing the food in a clean, dry location where it is not exposed to splash, dust, or other contamination, and is stored at least six inches above the floor.
 - (e) Food is not stored in toilet rooms or mechanical rooms, under sewer lines, under leaking water lines or under any source of contamination.
 - (f) Food brought in by friends or relatives to serve to other individuals in the facility is obtained from approved sources that comply with Rule R392-100.
 - (g) Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the child.
 - (h) Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.
 - (i) Time/temperature control for safety (TCS) food products stored inside a refrigerator, including canned or bottled opened baby food containers, are stored at 41 degrees F or below.
 - (j) Canned or bottled baby food, except for dry products, is discarded if not used within 24 hours of opening.
 - (k) Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.
 - (l) A refrigerator used to store food for children or residents is maintained and cleaned to prevent contamination of stored food.
 - (m)(i) A calibrated thermometer is conspicuously placed in the refrigerator.
 - (ii) In addition, a calibrated metal stem food temperature measuring device is provided and readily accessible.
 - (n) Time/temperature control for safety (TCS) food prepared at the residential care facility meets the critical cooking, reheating, hot holding, cold holding, and cooling temperatures as required in Rule R392-100.

(o) Each caregiver or client who works as a food handler:

(i) has a copy of a current food handler permit on file at the facility; and

(ii) abides by the employee health requirements described in Section 2-2 of FDA Food Code.

(p) Food is served on clean and sanitized plates, single service plates, or a clean and sanitized high chair tray.

(q) Properly laundered, or single-service napkins are used.

(r) Clean and sanitized cups or single service cups are provided at each beverage service.

(s) Before each use, reusable food holders, utensils, and preparation surfaces are cleaned and sanitized as required in Sections 4-5 and 4-6 of FDA Food Code.

(t) Food handlers clean their hands and exposed portions of their arms:

(i) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unpackaged single service and single use articles;

(ii) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(iii) after using the toilet room;

(iv) after caring for or handling any animal, including service animals;

(v) when switching between working with raw food and ready to eat food; and

(vi) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(u) Hand washing facilities are located to allow convenient use by food handlers in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.

(v) When preparing food, food handlers wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep their hair from contacting exposed food, clean equipment, utensils, and linens, and unwrapped single service and single use articles.

(w) Food handlers wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single service and single use articles.

(x) Poisonous or toxic chemicals are:

(i) properly identified;

(ii) safely stored to prevent access by children, or at-risk youth or adults; and

(iii) stored so they cannot contaminate food, equipment, utensils, linens, and single service and single use articles.

(y) Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are in the food storage, preparation, and service areas.

(2) The provider may elect to allow animals in a residential care facility when the following conditions are met:

(a) Only service animals assisting persons with disabilities are permitted in food storage and food preparation areas. Pets, emotional support animals, comfort animals, and therapy animals are not permitted in these areas.

(b) Except service animals, animals are only allowed in dining areas when food is not served, and only if surfaces are cleaned before the next food service.

(c) The provider removes animal hair, fur, feathers, feces, and soiled bedding as often as necessary to prevent unsanitary conditions or objectionable odors.

(b) Animal allergens, odors, noise, filth, and other nuisances do not cause a disturbance to residents.

KEY: child care providers, food service, residential support, residential treatment

Date of Enactment or Last Substantive Amendment: [September 18, 2006]2019

Notice of Continuation: April 26, 2016

Authorizing, and Implemented or Interpreted Law: 26-15-2[; 26-39-104]; 26-1-30(9); 26-1-30(23); 26-1-5; 26-7-1; 26-39-301(1)

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-401** Nursing Care Facility Assessment

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43687

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the annual assessment amounts for nursing care facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) for state fiscal year (SFY) 2020. The other purpose is to update reporting requirements, payment procedures, and penalties for failure to pay in full.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of \$24.61 per patient day, which is an increase from the previous \$23.04 per patient day assessment, based upon projected days. In Subsection R414-401-3(2), ICFs/IID are assessed at the uniform rate of \$8.28 per patient day, which is a decrease from the previous \$9.71 per patient day assessment, based upon projected days. These updates are based on estimates of patient days for SFY 2020 and the appropriation amounts. This amendment also updates facility reporting requirements, specifies remittance deadlines and procedures, and clarifies penalties for failure to pay within specified time periods.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and Title 26, Chapter 35a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The update to the assessment rates is anticipated to be state budget neutral as it does not impact general funds. Additionally, there are no costs or savings

associated with reporting requirements, as nursing care facilities and ICFs/IID already track census data for billing and reimbursement purposes.

◆ **LOCAL GOVERNMENTS:** Local governments that own nursing care facilities or have swing bed facilities would see an increase in the assessment cost, but would also realize increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that local government will realize an additional \$984,510 in costs; however, would realize approximately \$2,943,135 in additional revenues. Additionally, there are no costs or savings associated with reporting requirements, as nursing care facilities and ICFs/IID already track census data for billing and reimbursement purposes.

◆ **SMALL BUSINESSES:** Small businesses that own nursing care facilities would see an increase in the assessment cost, but would also realize increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that small businesses will realize an additional \$218,780 in costs; however, would realize approximately \$654,030 in additional revenues. ICFs/IID will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities. Additionally, there are no costs or savings associated with reporting requirements, as nursing care facilities and ICFs/IID already track census data for billing and reimbursement purposes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Businesses that own nursing care facilities or have swing bed facilities would see an increase in the assessment cost, but would also realize increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that businesses will realize an additional \$984,510 in costs; however, would realize approximately \$2,943,135 in additional revenues. ICFs/IID will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities. Additionally, there are no costs or savings associated with reporting requirements, as nursing care facilities and ICFs/IID already track census data for billing and reimbursement purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of \$1.57 per non-Medicare patient day from each nursing facility, and a decrease of \$1.43 per qualifying patient day for an ICF/IID. The overall gain for nursing each Medicaid-certified nursing facility depends on the size of the facility and the patient days provided. At a high level, an average facility could realize an increase in revenues of approximately \$50,610 per year. In addition, there would be an increase in costs to non-Medicaid-certified facilities as those facilities would be assessed the higher amount, and would not realize any payments from Medicaid. The average non-Medicaid-certified nursing facility would pay an additional \$909 per year in assessment. Moreover, a nursing care facility or ICF/IID

will not see costs associated with reporting requirements, as these facilities already track census data for billing and reimbursement purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses may see both an increase and decrease in costs due to the assessment rates, but it is not possible to provide an estimate due to the variability of patient days.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$984,510	\$0	\$0
Small Businesses	\$218,780	\$0	\$0
Non-Small Businesses	\$984,510	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Costs:	\$2,187,800	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Government	\$2,943,135	\$0	\$0
Small Businesses	\$654,030	\$0	\$0
Non-Small Businesses	\$2,943,135	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$6,540,300	\$0	\$0
Net Fiscal Benefits:	\$4,352,500	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

205 non-small business providers of nursing facility care and intermediate care for individuals with intellectual disabilities, will see both an increase and decrease in costs due to assessment rates. Overall, the assessment will increase revenue by about \$1,958,625.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-401. Nursing Care Facility Assessment.

R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by ~~Utah Code~~ Title 26, Chapter 35a.

~~(2) This rule implements reporting requirements, which allow the Department to have the required occupancy information needed to evaluate requests under Title 26, Chapter 18, Part 5.~~

~~(2)3) The rule is authorized by Section 26-1-30, [and Utah Code] Title 26, Chapter 35a, and Title 26, Chapter 18, Part 5.~~

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in Rule R414-1 apply to this rule.

(3) The definitions in Section 26-18-501 apply to the reporting and auditing requirements found in Section R414-401-4.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is ~~[\$23.04]~~24.61 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of ~~[\$9.74]~~8.28 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities. ~~[The Utah State Veteran's Home is exempted from this assessment and this rule.]~~

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the ~~[next]~~succeeding month, and

shall not combine payments of assessments with other nursing care facilities owned or controlled by a single entity.

~~[(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.]~~

R414-401-4. Reporting and Auditing Requirements.

Facilities subject to the assessment in Title 26, Chapter 35a, shall submit one report for each facility. The reporting and auditing requirements are as follows:

(1) Each nursing care facility, ~~shall~~ file with the Department a report for the month on or before the end of the succeeding month; ~~file with the Department a report for the month; and shall remit with the report the assessment required to be paid for the month covered by the report].~~

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify ~~[that]~~ the information is accurate ~~[to the best of the representative's knowledge].~~

(4) Each nursing care facility ~~[subject to this assessment]~~ shall maintain complete and accurate records. The Department may inspect ~~[each nursing care facility's]~~ the records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity ~~[may] shall not~~ combine reports. ~~[and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.]~~

~~[(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.]~~

~~[(7)6) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.~~

(7) Penalties for failure to submit the report are described in Section R432-150-8.

R414-401-5. Penalties and Interest.

(1) The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment are provided in Section 26-35a-105. The Department shall suspend all Medicaid payments to a nursing facility until the facility pays the assessment due in full or until the facility and the Department reach a negotiated settlement.

(2) The Department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26-35a-105(3)(a) if the facility does not pay in full ~~[(or file its report)]~~ within 45 days of a notice of deficiency of the assessment.

(3) The Department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection 26-35-105(3) (b) if the facility does not pay in full ~~[(or file its report)]~~ within 45 days of a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full ~~[(or file its report)]~~ within 60 days of a notice of deficiency of the assessment.

(4) The Department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection 26-35a-105(4) if the

facility does not pay in full [(or file its report)] within 45 days of a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full [(or file its report)] within 75 days of a notice of deficiency of the assessment.

KEY: Medicaid, nursing facility

Date of Enactment or Last Substantive Amendment: ~~July 1, 2018~~ 2019

Notice of Continuation: November 15, 2018

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-510**

Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43688
FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the process that will be used to transition interested individuals from Intermediate Care Facilities (ICFs) to home and community based services (HCBS). The amendment also provides additional information regarding how education about HCBS will be provided to both individuals residing in ICFs and those considering admission to ICFs.

SUMMARY OF THE RULE OR CHANGE: This amendment spells out criteria and procedures to admit individuals into the ICF Transition Program. Specifically, it lists the priority of admission for individuals who are both over and under 22 years of age, and outlines provisions of education for individuals who reside in ICFs and may want to receive HCBS, and for those considering admission to ICFs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** By fiscal year (FY) 2024, there is an annual cost of \$22,501,000 to implement the new ICF/Transition Program requirements.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not participate in the operation of the ICF Transition Program.

♦ **SMALL BUSINESSES:** Small businesses that provide HCBS may see an increase of \$29,955,000 in revenue by FY

2024 as more individuals gain access to HCBS, but small businesses that own ICFs will experience decreased revenue as individuals move out of ICFs and into HCBS. The loss in revenue is estimated to be approximately \$8,065,000 by FY 2024.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers that provide HCBS may see a portion of \$29,955,000 in revenue by FY 2024 as more individuals gain access to HCBS, but businesses that own ICFs will experience decreased revenue as individuals move out of ICFs and into HCBS. The loss in revenue is estimated to be approximately \$8,065,000 by FY 2024.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single entity that provides ICF services will experience decreased revenue as individuals move out of ICFs and into HCBS. The loss in revenue depends on the number of individuals who move out, and is estimated to be a portion of \$8,065,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Some businesses may see an increase in revenue as more individuals have access to HCBS, while others will experience decreased revenue as individuals move from ICFs into HCBS.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$22,501,000	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Costs:	\$22,501,000	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$7,296,600	\$0	\$0
Non-Small Businesses	\$7,296,800	\$0	\$0
Other Persons	\$7,296,600	\$0	\$0
Total Fiscal Benefits:	\$21,890,000	\$0	\$0
Net Fiscal Benefits:			
	-\$611,000	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

About 164 non-small business providers of home and community based services (HCBS) may see a share of \$29,955,000 in annual revenue. Conversely, about 17 non-small business providers that own intermediate care facilities (ICFs) may share in a loss of revenue that totals \$8,065,000, as individuals move from ICFs into HCBS. The net impact of \$29,955,000 minus \$8,065,000 equals \$21,890,000, which is reported as the total fiscal benefit in Appendix 1.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.

R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF[~~AD~~]) Transition Program, and the education process required for individuals currently residing in ICFs and those considering ICF admission. ICF Transition Program participation is voluntary and allows an individual to transition from

a[~~n~~] privately-owned ICF[~~AD~~] to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

(1) "Departments" means the Utah Department of Health and the Utah Department of Human Services.

(~~1~~)2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(~~2~~)3) "Guardian" means an individual, who is legally authorized to make decisions on an individual's behalf.

(~~3~~)4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately-owned intermediate care facilities for individuals with intellectual disabilities.

(~~4~~)6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state of Utah. The Departments consider[s] a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence.

(~~5~~)7) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(~~6~~)8) "State staff" means employees of the Division of Medicaid and Health Financing or the Division of Services for People with Disabilities.

(~~7~~)9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(~~8~~)10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

R414-510-3. Eligibility Requirements for the Transition Program.

Waiver services are potentially available to an individual who:

- (1) receives ICF[~~AD~~] benefits under the Medicaid State Plan;
- (2) has been diagnosed with an intellectual disability or a related condition;
- (3) meets ICF[~~AD~~] level of care criteria defined in Section R414-502-8;
- (4) meets state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and
- (5) has at least a 12-month length of stay in any Medicaid-certified, privately-owned ICF[~~AD~~] located in Utah.

R414-510-4. Transition Program Access.

(1) Each state fiscal year, [the Utah Department of Health (Department)] shall determine if there are sufficient funds available to initiate the Transition Program and identify the amount of funds

available for the Transition Program]the Departments shall identify the number of people projected to participate in the Transition Program.

(2) Based on the funds available for the Transition Program in a given state fiscal year, the Departments shall enroll individuals into the [CSW]Waiver through the Transition Program until available funds are exhausted.

(3) In a given state fiscal year, if the funds available for the Transition Program are sufficient to enroll all individuals who have expressed interest in participating in the Transition Program, and meet the requirements in Section R414-510-3, the Departments shall enroll all identified individuals. The Departments shall prioritize community transition to all individuals under 22 years of age.

(4) In a given state fiscal year, if the funds available for the Transition Program are not sufficient to allow transition of all individuals who express interest and who meet the requirements in Section R414-510-3, the Departments shall:

(a) Prioritize community transition to all individuals under 22 years of age;

(b) For individuals over 22 years of age, each interested individual will receive a weighted-score, and be ranked based on that score, from highest to lowest score. Scores shall be based on:

(i) The number of years the person has expressed interest in participating in the Transition Program since State Fiscal Year 2013;

(ii) Whether the applicant has applied for home and community based services and is currently on the DSPD waiting list;

(iii) Length of consecutive stay in an ICF in the state of Utah; and

(iv) If there are multiple individuals with the same weighted-score, the Departments shall rank individuals based on greatest length of stay.

(c) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF and who meets the eligibility criteria in Section R414-510-3, the Departments shall include the spouse in the Transition Program that same year.

(5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian and the individual retains the right to amend his or her choice at any time.

(6) In cases where an individual does not initially express a choice to transition to the community or to remain in the ICF, the Departments will identify the individual as "undecided." For individuals identified as "undecided," the Departments will engage in additional in-reach and education to build relationships with the individual, the guardian or representative;

(a) After engaging in additional education, the Departments will re-determine whether individuals are interested in moving to the community or continuing to reside in ICFs; and

(b) For remaining individuals who are incapable of expressing choice, the Departments will identify the individuals as "undetermined";

(7) In cases where an individual has been identified as "undetermined," the Departments will utilize a formal assisted decision-making process to support the individual and their guardian to make an informed choice.

(3) If the Department has initiated the Transition Program in a given year, the Department shall make direct contact with potentially

eligible ICF/ID residents by phone or in person to determine interest in participating in the Transition Program.

(4) If the Department has initiated the Transition Program in a given year, the Department shall publicize the availability of the Transition Program in the following manner:

(a) The Department shall provide a letter to each potentially eligible ICF/ID resident (or to the guardian or other identified representative, if the individual has a guardian or other identified representative). The letter shall, at a minimum:

(i) describe the purpose and operation of the Transition Program, including the availability of funding;

(ii) identify the enrollment method to be used for the Transition Program in the given year;

(iii) state that Transition Program participation is voluntary; and

(iv) provide the phone number and other contact information for state staff who are available to answer questions about the Transition Program.

(b) The Department shall notify the administrator of each privately-owned ICF/ID.

(c) The Department shall post information about the Transition Program on the Utah Medicaid website and the DSPD website.

(5) To introduce and provide general education about the Transition Program in a given year, state staff shall hold at least one meeting at each private ICF/ID. The Department will send notice of the meeting via letter to each eligible ICF/ID resident (or to the guardian or other identified representative, if the individual has a guardian or other identified representative). The Department shall notify the administrator of each privately-owned ICF/ID of the date and time of the meeting. The meeting shall provide detailed education about the Transition Program to allow the individual or their guardian the freedom to make an informed choice regarding the setting for receiving services. Meeting elements shall include:

(a) a description of the purpose of the Transition Program;

(b) a provision of materials and detailed information regarding how individuals' needs can be met in home and community based services or in the ICF/ID where the individual currently resides;

(c) a description of how the Transition Program operates with available funds;

(d) a description of how residents or guardians can express interest in participating in the Transition Program;

(e) a time period for questions and answers;

(f) the opportunity for state staff to schedule more detailed individual meetings with interested individuals, and their guardians or representatives; and

(g) the phone number and other contact information for state staff who are available to answer questions about the Transition Program.

(6) At the time of the meeting, individuals or their guardians may inform state staff of their choice regarding participation in the Transition Program.

(7) For individuals who express a choice at this time, state staff will document the choice in writing.

(8) Using a method described below in Subsection R414-510-4(8)(a) or (b), the Department will place the name of each potentially interested individual on both a weighted-score list and a random list.

~~_____ (a) On the weighted-score list, the Department will rank each individual, from highest to lowest score. Scores shall be based on:~~

~~_____ (i) the number of times the person has applied to participate in the Transition Program since Fiscal Year 2013;~~

~~_____ (ii) whether the applicant has applied for home and community based services and is currently on the DSPD waiting list; and~~

~~_____ (iii) length of consecutive stay in an ICF/ID in the state of Utah.~~

~~_____ (A) If there are multiple individuals on the weighted score list with the same score, the Department will rank individuals based on greatest length of stay.~~

~~_____ (b) On the random list, the Department ranks each interested individual based on a computerized random selection.~~

~~_____ (c) At least 70 percent of the individuals selected to participate in the Transition Program in a given year will be selected based on their ranking in the weighted-score list.~~

~~_____ (9) Except for individuals who have made their preferences known as per Subsection R414-510-4(6) and (7), state staff will contact individuals on the two lists to provide detailed education about the Transition Program in order to allow the individual or their guardian the freedom to make an informed choice regarding the setting to receive services. The contact will also be used to determine if additional education is needed or wanted.~~

~~_____ (a) For individuals without guardians, state staff will contact the individual and will provide Transition Program education. Upon completion of the education process, state staff will ask the individual to express their preference regarding whether they want to participate in the Transition Program. State staff will document and act upon the individual's decision.~~

~~_____ (b) For individuals with guardians, state staff will contact the guardian and will rely on the decision rendered by the guardian regarding whether they want additional Transition Program education.~~

~~_____ (i) If more in-depth, individualized training is requested by the guardian, state staff will schedule the training, and will document the guardian's choice regarding an individual's participation in the Transition Program.~~

~~_____ (ii) If additional training is not requested, state staff will document and act upon the guardian's decision.~~

~~_____ (10) For individuals who express a desire to participate in the Transition Program, state staff will:~~

~~_____ (a) work with the individual or their guardian, if the individual has a guardian, to schedule a meeting to conduct a service needs assessment and develop the individual's support plan and a timeline for anticipated transition;~~

~~_____ (b) inform the ICF/ID administration of the individual's intent to transition, including information about the likely transition timeline;~~

~~_____ (c) facilitate collaboration between the ICF/ID and home and community-based services providers to assist the individual in a safe and orderly transition.~~

~~_____ (11) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF/ID and who meets the eligibility criteria in Section R414-510-3, the Department shall include the spouse in the Transition Program.~~

~~_____ (12) Based on available funding, the Department shall continue to select eligible individuals through the aforementioned~~

~~process until the Department exhausts the amount of funds committed to the Transition Program.]~~

R414-510-5. ICF Transition Program Education for Current ICF Residents.

~~_____ (1) Education about the ICF Transition Program and home and community based services shall be provided by state staff to all individuals residing in ICFs. Education efforts shall be provided on an ongoing basis by state staff and will include, but are not limited to:~~

~~_____ (a) Displaying Transition Program and state staff contact information in conspicuous locations within each ICF;~~

~~_____ (b) Meeting with individuals living in ICFs, and with their guardians or representatives on a recurring basis;~~

~~_____ (c) Providing opportunities for individuals living in ICFs, their guardians or representatives to visit home and community based services settings; and~~

~~_____ (d) Providing opportunities for individuals living in ICFs, their guardians or representatives to receive support from peers who have experienced moving from an ICF to home and community based services.~~

~~_____ (2) Education about the ICF Transition Program and home and community based services shall be provided in multiple ways and in a manner that is responsive to each person's method of communication. Examples include in-person, one-on-one or group discussions, interactions in community based settings, and communication over the telephone or through email. Educational materials will be provided in print or other mediums.~~

~~_____ (3) As ongoing education about community based services is provided to individuals without guardians, state staff will work with the individual and anyone the individual invites to participate. At recurring intervals, state staff will work with the individual and anyone the individual invites to participate to express whether he or she wants to participate in the Transition Program. At each interval, state staff shall document and act upon the individual's decision.~~

~~_____ (4) As ongoing education about community based services is provided to individuals with guardians, state staff will work with the guardian and anyone the guardian invites to participate. State staff will rely on the decision rendered by the guardian regarding whether the guardian wants the individual to participate in the Transition Program.~~

~~_____ (5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian, and the individual retains the right to amend his or her choice at any time.~~

R414-510-6. Education and Referral for Individuals Seeking ICF Services.

~~_____ (1) Prior to admission to an ICF, an individual or guardian must contact state staff to receive education of and referral to local resources.~~

~~_____ (a) For individuals under 22 years of age, the state agencies shall perform an additional evaluation of services to determine whether community based services are available to assure informed choice before admission to an ICF. The Director of the Division of Medicaid and Health Financing (or designee) and the Director of the Division of Services for People with Disabilities (or designee) shall authorize in writing all ICF admissions of individuals under 22 years of age.~~

(b) ICFs shall not admit an individual under 22 years of age, unless the admission has been authorized as stated in Subsection R414-510-6(1)(a) above. After admission, the ICF shall keep a copy of the written authorization in the individual's medical record. An individual who admits to an ICF, who meets the requirements described in Section R414-510-3, is eligible to participate in the Transition Program.

(c) Upon completing education and referral with state staff, individuals who are over 22 years of age and decide to move into an ICF, shall be given a written confirmation to demonstrate that the education process occurred prior to admission.

(d) ICFs shall not admit an individual who has not received the required state staff education and referral. After admission, the ICF shall keep a copy of the written confirmation form in the individual's medical record.

(2) Due to an urgent or emergency need, an individual may be admitted to an ICF immediately, and education and assistance with resources shall be provided after the placement.

(a) The ICF must:

(i) notify the Departments of the admission;

(ii) explain the reason the admission was considered urgent or emergency; and

(iii) provide contact information for the individual, guardian, or representative.

(3) Education shall be provided within 30 days of ICF admission unless an individual's health or other external factors make it necessary to provide the education at a later date.

(4) Once education has been provided, the Departments will provide the ICF with a written confirmation of education form, and the ICF will keep a copy of the form in the individual's medical record.

R414-510-[5]7. Service Coverage.

Services and limitations of the Transition Program may be found in the Waiver State Implementation Plan.

R414-510-[6]8. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with the Department to set rates for waiver-covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 27, 2018~~ **2019**

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-522
Electronic Visit Verification
Requirements for Personal Care and
Home Health Care Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43689

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement the electronic visit verification (EVV) requirements for personal care services and home health care services in accordance with Section 12006 of the 21st Century Cures Act.

SUMMARY OF THE RULE OR CHANGE: This rule outlines EVV provisions for personal care services and home health care services that require an in-home visit by a provider. Specifically, the rule requires record availability upon request, lists the types of data that an EVV system must include, ensures the system complies with federal privacy standards, sets forth Department audit procedures, and spells out provisions for disallowances.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Due to post-payment audit requirements, the state may see costs associated with increased staffing necessary to perform audit work should existing resources not be sufficient. Post-payment review costs and other state costs may reach \$314,000 in total funds by state fiscal year (SFY) 2021.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not furnish the types of services identified in the rule.

♦ **SMALL BUSINESSES:** Small businesses incur additional costs if they perform the personal care and home health care services described in the rule, and need to develop or purchase software or equipment to meet the EVV requirements to contract with another entity. Small businesses would incur a share of the \$627,000 estimated impact by SFY 2021.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Businesses and Medicaid providers incur additional costs if they perform the personal care and home health care services described in the rule, and need to develop or purchase software or equipment to meet the EVV requirements to contract with another entity. These businesses would incur a share of the \$627,000 estimated impact by SFY 2021.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single person, organization, or business may see a share of the estimated impact of \$627,000 in total funds by SFY 2021.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This unfunded federal mandate is estimated to increase costs for the State and for businesses by \$941,000 by FY 2021.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Net Fiscal Benefits:	\$-470,500	\$-470,500	\$0
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*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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

About 265 non-small business agencies and providers of home health care and personal care services, will share an estimated cost of \$627,000, to implement electronic visit verification (EVV) requirements in accordance with federal law.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-522. Electronic Visit Verification Requirements for Personal Care and Home Health Care Services.

R414-522-1. Introduction and Authority.

This rule implements the electronic visit verification requirements for personal care services and home health care services in accordance with Section 12006 of the 21st Century Cures Act. Electronic visit verification requirements apply to all personal care services or home health care services provided under the Medicaid State Plan or a waiver of the State Plan, which require an in-home visit by a provider. This rule is authorized by Section 26-18-3.

R414-522-2. Definitions.

(1) "Electronic visit verification" (EVV) means the use of telephone or computer-based technology to verify the data elements related to the delivery of a Medicaid-covered service.

(2) "EVV system" means the combination of the data collection component and the aggregator component used by a provider to comply with EVV requirements established by the Department.

(3) "Home health care services" means services described in Subsection 1905(a)(7) of the Social Security Act, and provided under the Medicaid State Plan or under a 1915(c) waiver of the State Plan.

(4) "Personal care services" means personal care services provided under the Medicaid State Plan or under a waiver of the State Plan.

R414-522-3. Electronic Visit Verification Requirements.

EVV is required for all personal care services and home health care services effective July 1, 2019. A provider must select an EVV service vendor and have records available for review upon request. While a specific type of software is not mandated, an EVV system must comply with the provisions of the 21st Century Cures Act, and meet the standards of privacy set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health (HITECH) Act. An EVV data system must include:

- (1) the type of service performed;
- (2) the individual receiving the service;
- (3) the date of the service;
- (4) the location of service delivery;

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$156,825	\$156,825	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$47,055	\$47,055	\$0
Non-Small Businesses	\$109,795	\$109,795	\$0
Other Persons	\$156,825	\$156,825	\$0
Total Fiscal Costs:	\$470,500	\$470,500	\$0
Fiscal Benefits	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0

- (5) the individual providing the service;
- (6) the time the service begins and ends; and
- (7) the date of creation of the electronic record.

R414-522-4. Evaluation of Provider Compliance with Electronic Visit Verification Requirements.

(1) The Department shall conduct annual post-payment reviews of claims requiring EVV for all home health care service and personal care service providers to assess compliance with the requirements.

(2) At random, and for each provider, the Department will select a calendar month within the previous 12-month period and will include as part of its audit, all claims for which a provider has service dates and has received reimbursement. The Department will also include in the audit, encounters paid through managed care within the selected month.

(3) For any claims and encounters for which an associated EVV record cannot be located, or when the EVV record may not be sufficient to meet the requirements in Section R414-522-3, the Department shall present the findings to the provider and allow for an opportunity to refute the findings or request consideration through the fair-hearing process.

(4) Claim and encounter disallowances for personal care services, which do not meet EVV requirements, shall become effective January 1, 2020.

(5) Claim and encounter disallowances for home health care services, which do not meet EVV requirements, shall become effective January 1, 2023.

(6) The Department shall recover funds for claims that do not comply with the provisions of Section 26-18-20.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Human Resource Management,
Administration
R477-1
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43670

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments is to correct a definition that was too narrow in scope, update names of reports, correct references, and clarify definitions.

SUMMARY OF THE RULE OR CHANGE: These changes: 1) revise the definition of Administrative Adjustment to better reflect practices in Subsection R477-1-1(6); 2) rename the

Detailed Position Record Management Report to Position Management Report in Subsection R477-1-1(33); 3) revise and update citations to multiple employment laws in Subsections R477-1-1(41), R477-1-1(43), R477-1-1(53), R477-1-1(54), and R477-1-1(56); 4) clarify that the rule is adding relations to Employee's Family Member that are not included in statute in Subsection R477-1-1(46); and 5) revise the Post Accident Drug and Alcohol Test to clarify policy in Subsection R477-1-1(89).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-15 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a job or salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:
 (a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and
 (c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

- (i) unit number;
- (ii) cost centers;
- (iii) geographic locations;
- (iv) agency programs.

(b) positions identified by a set of essential functions, including:

- (i) position analysis data;
- (ii) certificates;
- (iii) licenses;
- (iv) special qualifications;
- (v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) ~~Position~~ Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) Direct Supervisor: An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.

(37) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(38) Disciplinary Action: Action taken by management under Rule R477-11.

(39) Dismissal: A separation from state employment for cause under Section R477-11-2.

(40) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(41) Drug-Free Workplace Act: A ~~congressional act~~, 41 U.S.C. Section 8101, et seq. ~~[34 CFR 84 (2008)]~~, requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(42) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(43) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 ~~[(1988)]~~ that employers verify the identity and eligibility of individuals for employment in the United States.

(44) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at

straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(46) Employee's Family Member: An employee's relative or household member as defined in Section 52-3-1 but also including, step-siblings, step-parents, and[-] step-children.

(47) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(48) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(49) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(50) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(51) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(52) GOMB: Governor's Office of Management and Budget.

(53) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(7)(4)(e).

(54) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-501[406] and the rules promulgated by the Career Service Review Office.

(55) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(56) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383[~~January 18, 2006~~];

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(57) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional

appointment to a specific position created in the DHRM approved recruitment and selection system.

(58) HRE: Human Resource Enterprise; the state human resource management information system.

(59) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(60) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(61) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(62) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(63) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(64) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(65) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(66) Job Requirements: Skill requirements defined at the job level.

(67) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(68) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

(69) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(70) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(71) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(72) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(73) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(74) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(75) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(76) Nonfeasance: Failure to perform either an official duty or legal requirement.

(77) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(78) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(80) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employee's grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(85) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(88) Position Identification Number: A unique number assigned to a position for FTE management.

(89) Post Accident Drug or Alcohol Test: A ~~Drug~~ drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) ~~[where a fatality occurs]~~ the employee was performing safety-sensitive functions with respect to the vehicle the employee was operating and the accident involves the loss of human life;

(b) ~~[where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage]~~ the driver receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involved;

(i) the loss of human life or bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other vehicle; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(90) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(91) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(92) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(93) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(94) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(95) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(96) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(97) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(98) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(99) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(100) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for

administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(101) **Reclassification:** A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(102) **Reduction in Force: (RIF)** Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(103) **Reemployment:** Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(104) **Requisition:** An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(105) **Salary Range:** Established minimum and maximum rates assigned to a job.

(106) **Schedule:** The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(107) **Separation:** An employee's voluntary or involuntary departure from state employment.

(108) **Settling Period:** A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(109) **Structure Adjustment:** An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources.

(110) **Tangible Employment Action:** A significant change in employment status, such as ~~fringe~~ dismissal, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(111) **Transfer:** An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(112) **Uniformed Services:** The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(113) **Unlawful Discrimination:** An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(114) **USERRA:** Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a

military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(115) **Veteran:** An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(116) **Veteran Employment Opportunity Program (VEOP):** A program designed to appoint a qualified veteran through an on the job examination period.

(117) **Volunteer:** Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(118) **Wage:** The fixed hourly rate paid to an employee.

(119) **Work Period:** The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions

Date of Enactment or Last Substantive Amendment: ~~July 1, 2018~~ 2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-15; 67-19-18

Human Resource Management, Administration **R477-4** Filling Positions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43671

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes clarify management responsibilities when filling positions and the requirement for background checks for certain positions.

SUMMARY OF THE RULE OR CHANGE: These changes clarify management responsibilities when filling positions at Subsection R477-4-1(2), and the requirement for background checks for certain positions in Subsection R477-4-2(6).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
- ◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
- ◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.**R477-4. Filling Positions.****R477-4-1. Authorized Recruitment System.**

(1) Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

(2) Agency management shall notify DHRM of filling of any position at least 3 working days prior to the employee's start date.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or

(b) be Schedule TL, in which the employee is hired to work on a time limited basis;

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection R477-4-8.

(6) Agency management shall ensure that all new hire appointees in Schedules AB, AC, AD, AR and AS submit a disclosure statement[s] pursuant to Utah Code Section 67-16-7 and submit to a background check.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitments shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A transfer may not include an increase but may include a decrease in actual wage.

(d) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(e) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they

received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

- (2) A reassignment or transfer may include assignment to:
 - (a) a different job or position with an equal or lesser salary range maximum;
 - (b) a different work location; or
 - (c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

- (a) Classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and
- (b) Placed at or below the employee's wage at the time of retirement. Employees cannot be placed below the minimum of the established salary range of the job.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall be based on documented job related criteria and include the following:

- (a) an initial, impartial screening of the individual's qualifications;
- (b) an impartial evaluation and results; and
- (c) reasonable accommodation(s) for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, career service status subject to R477-5-2, and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-6(10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

R477-4-15. Hiring of Administrative Law Judges.

(1) Utah Code Section 67-19e-104.5 applies to hiring Administrative Law Judges. Utah Code Section 67-19e-104.5 does not apply to:

(a) An administrative law judge who is appointed by the governor; or

(b) Procurement of administrative law judge service under Utah Code Section 63G-6a-116.

(2) The hiring panel shall consist of:

(a) The head or designee of the hiring agency;

(b) The Executive Director, DHRM or designee; and

(c) The head of another agency, as appointed by the Executive Director, DHRM. The appointed agency head may select a designee to serve on her or his behalf.

(3) Only the agency heads described in subsection (2) may designate another individual to serve on the hiring panel on the agency head's behalf in consultation with the designee of the Executive Director, DHRM.

(4) In addition to the panel members established in subsection (2), the hiring agency may select one or more additional subject matter experts to serve on the panel, in consultation with DHRM.

R477-4-16. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2018]~~2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

Human Resource Management,
Administration
R477-5
Employee Status and Probation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43672

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes revise this rule to correct outdated information, and clarify requirements for hiring lists.

SUMMARY OF THE RULE OR CHANGE: These changes remove language from Subsection R477-5-1(3) which imposes a requirement that is not possible under two of the three conditions, and adding "public" to Subsection R477-5-1(3)(b).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-16(5)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT

ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses
 These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0

R477. Human Resource Management, Administration.

R477-5. Employee Status and Probation.

R477-5-1. Career Service Status.

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range[~~to the previous career service position held~~], when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;

(b) the employee was hired from a public hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) or Veterans Employment Opportunity Program (VEOP) and successfully completed a six month on the job examination period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers

compensation leave, temporary transitional assignment, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period including when changing agencies unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position including a career mobility assignment. Each new appointment to a career service position shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

R477-5-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees

Date of Enactment or Last Substantive Amendment: [~~July 1, 2018~~]2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

Human Resource Management, Administration **R477-6** Compensation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43673

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes address an incomplete explanation of career mobility wage changes.

SUMMARY OF THE RULE OR CHANGE: These changes specifically outline what occurs with an employees wage at the beginning of a career mobility assignment in Subsection R477-6-6(10).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
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Non-Small Businesses	\$0	\$0	\$0
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Total Fiscal Costs:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-6. Compensation.

R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

(a) Each job description shall include a salary range.

(b) Agency approved wage increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment when all agencies involved agree to resolve budgetary impacts prior to implementation; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges may not be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments that require legislative funding. Adjustments that impact deputy directors or issues addressed in state code must be approved by GOMB.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact or all agencies involved agree to resolve budgetary impacts prior to implementation.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments may not be approved for cross agency jobs unless all agencies involved agree to resolve budgetary impacts prior to implementation.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

R477-6-6. Salary.

(1) Promotions.

(a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the

employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management, the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(e) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

(a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

(b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

(a) A wage change at the commencement of a career mobility is governed by the rules governing the underlying action including, but not limited to:

(i) promotion;

(ii) reassignment; or

(iii) transfer.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

R477-6-7. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by the DHRM Executive Director or designee.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

R477-6-8. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the

current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(ii) Hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance;

(iii) Hourly wage \$28.85 or higher shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) salary at the rate of:

(i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch for schedule AC, AD, AE, AR, AS or AT employees; or

(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB employees; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

R477-6-12. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management

Date of Enactment or Last Substantive Amendment: ~~July 1, 2018~~ 2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

**Human Resource Management,
Administration
R477-7
Leave**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 43674
FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes make grammatical and numbering corrections, clarify use of administrative leave, implement the requirements of H.B. 173 from the 2019 General Session, eliminates the requirement for written application for FMLA, clarifies provisions related to FMLA use, and clarifies conditions under which employees on long term disability may return to work.

SUMMARY OF THE RULE OR CHANGE: These changes make a grammatical correction for clarity in Subsection R477-7-3(1), clarify use of administrative leave in Subsection R477-7-7(6), implement the requirements of H.B. 173 (2019) in Subsection R477-7-11(2), makes a readability revision in Subsection R477-7-13(3), adds a missing article in Subsection R477-7-14(1)(b)(ii), makes workweek into one word in Subsection R477-7-15(1), eliminates the requirement for written application for FMLA in Subsection R477-7-15(6), clarifies provisions related to FMLA use in Subsection R477-7-15(8), clarifies conditions under which employees on long term disability may return to work in Subsection R477-7-17(3), and corrects a numbering error in Section R477-7-19.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 39-3-1 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
- ◆ LOCAL GOVERNMENTS: These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
- ◆ SMALL BUSINESSES: These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses
 These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-7. Leave.

R477-7-1. Conditions of Leave.

- (1) An employee shall be eligible for a leave benefit when:
 - (a) in a position designated by the agency as eligible for benefits; and
 - (b) in a position which normally requires working a minimum of 40 hours per pay period.
- (2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.
- (3) An employee shall use leave in no less than quarter hour increments.
- (4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.
- (5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.
- (6) Management may not require employees to maintain a minimum balance of accrued leave.
- (7) An employee may not use any type of leave except military and jury leave to accrue excess hours.
- (8) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.
- (9) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.
 - (a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.
 - (b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.
 - (c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:
 - (i) leave without pay;
 - (ii) administrative leave specifically approved by management to be used after the last day worked;
 - (iii) leave granted under the FMLA; or
 - (iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.
 - (10) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.
 - (11) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

- (1) The following dates are paid holidays for eligible employees:
 - (a) New Year's Day -- January 1
 - (b) Dr. Martin Luther King Jr. Day -- third Monday of January

- (c) Washington and Lincoln Day -- third Monday of February
- (d) Memorial Day -- last Monday of May
- (e) Independence Day -- July 4
- (f) Pioneer Day -- July 24
- (g) Labor Day -- first Monday of September
- (h) Columbus Day -- second Monday of October
- (i) Veterans' Day -- November 11
- (j) Thanksgiving Day -- fourth Thursday of November
- (k) Christmas Day -- December 25
- (l) Any other day designated as a paid holiday by the Governor.
- (2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.
 - (a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.
 - (b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.
 - (3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.
 - (4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.
 - (5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

- (1) An eligible employee shall accrue leave based on the following years of [benefits eligible]benefits(s)-eligible state service:
 - (a) less than 5 years -- four hours per pay period;
 - (b) at least 5 and less than 10 years -- five hours per pay period;
 - (c) at least 10 and less than 20 years --six hours per pay period;
 - (d) 20 years or more -- seven hours per pay period.
- (2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:
 - (a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions; or
 - (b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.
 - (3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.
 - (4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.
 - (5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.
 - (6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children; or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service

limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006, but before January 4, 2014, shall be Program II sick leave hours.

(c) Sick leave hours accrued on or after January 4, 2014, shall be Program III sick leave hours, which shall have no benefit upon retirement.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of additional medical coverage under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5) (b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014;

and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 3, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personnel decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

(6) Administrative leave is not an employee right and management may grant it disparately within its workforce depending on agency needs.

R477-7-8. Witness and Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Utah Code Section 39-3-2. Military leave for part-time employees shall be based on a prorated basis that is no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for non-working days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12-month period to participate in disaster relief services for a non-governmental disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

(2) An employee who is absent from or late to work may not be dismissed if the absence or tardiness was a result of the employee acting as an emergency services volunteer as defined in Section 34-54-102.

(a) Management may request a written statement to verify the employee's status as an emergency services volunteer.

(b) An emergency services volunteer is not entitled to paid leave except as provided in 477-7-11(1), but may use their own accrued leave or leave without pay.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may ~~not be granted~~ be denied when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as a percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 workweeks of family and medical leave each calendar year for any of the following reasons:

- (a) birth of a child;
- (b) adoption of a child;
- (c) placement of a foster child;
- (d) a serious health condition of the employee; or
- (e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 workweeks of family and medical leave during a 12-month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

- (a) be employed by the state for at least 12 months;
- (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12-month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply ~~in writing~~ for the initial leave and when the reason for requesting family medical leave changes:

- (a) thirty days in advance for foreseeable needs; or
- (b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

- (i) Program III sick leave;
- (ii)(A) Compensatory time;
- (B) Excess leave; or
- (C) Annual leave;
- (iii)(A) Converted sick leave;
- (B) Program II sick leave; or
- (C) Program I sick leave.

(8) ~~[An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.]~~ When an employee chooses to use FMLA leave, the employing agency shall designate as FMLA leave all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken after childbirth or placement of a healthy child for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) Upon approval of an LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) ~~Conditions for return from~~ An employee who was not separated from employment may return to work following long term disability [include:] when they provide an administratively acceptable medical release allowing a return to work.

~~—(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held~~

~~position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.]~~

(4) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

~~(3)~~(2) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: ~~July 1, 2018~~2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14

Human Resource Management,
Administration

R477-8

Working Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43675

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes make grammatical corrections, revise rules for clarity of purpose, eliminate unnecessary requirements, and grant expands authority to pay down a certain leave type.

SUMMARY OF THE RULE OR CHANGE: These changes make "workweek" one word in Section R477-8-1 (two places), clarify requirements when an employee is late for work in Subsection R477-8-1(4), clarify telecommuting requirements in Subsection R477-8-2(1)(b), remove unnecessary requirements in Subsection R477-8-2(1)(e) and Subsection R477-8-3(4), allow agency head to designate a decision maker on pay out of excess leave in Subsection R477-8-13(1)(e)(iii), and clarify timing of notice in Subsection R477-8-18(1)(a).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 34A-2-114 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
- ◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
- ◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.**R477-8. Working Conditions.****R477-8-1. [~~Work Week~~]Workweek.**

(1) The state's standard [~~work week~~]workweek begins Saturday at [~~12:00am~~]12:00 a.m. and ends the following Friday at [~~11:59pm~~]11:29 p.m. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8:00 a.m. to 5:00 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason, including inclement weather, shall, with management approval, [~~make up~~]account for the lost time by using accrued leave, leave without pay, or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written [~~contract~~]agreement with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization [~~in the Utah Performance Management system~~].

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time [~~and regular scheduled lunch breaks less than 30 minutes~~] shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year

following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

- (i) at the end of the employee's established overtime year;
- (ii) upon assignment to another agency;
- (iii) changes FLSA status to nonexempt; or
- (iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

- (a) be a uniformed or plain clothes sworn officer;
- (b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;
- (c) have the power to arrest;
- (d) be POST certified or scheduled for POST training; and
- (e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

- (a) 171 hours in a work period of 28 consecutive days; or
- (b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

- (a) 212 hours in a work period of 28 consecutive days; or
- (b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (a) the Fair Labor Standards Act, Section 207(k);
- (b) 29 CFR 553.230;
- (c) the state's payroll period; and
- (d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

- (a) approved and unapproved overtime;
- (b) on-call time;
- (c) stand-by time;
- (d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
- (e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
- (ii) the employee is completely relieved from duty and allowed to leave the job;
- (iii) the employee is relieved until a definite specified time;

or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA non-exempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is

available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one-day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal period not required by federal law as implemented in Sections (4) and (5).

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head or designee.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The

ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) return to work from injury or illness except as prohibited by federal law;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with corrective action, performance or conduct issues, or discipline; or
- (4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(10).

(2) Temporary transitional assignments may also be part of any of the following:

- (a) when management determines that there is a direct threat to the health or safety of self or others;
- (b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
- (c) where there is a bona fide occupational qualification for retention in a position;
- (d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one-way commute, unless:

- (a) the change in work location is communicated to the employee at ~~[employment]~~appointment to the position requiring the change in location; or
- (b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Workers' Compensation Interference Prohibited.

(1) Agency management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Agency management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's noncompliance Utah Code Sections 34A-2 or 34A-3, or testifies or intends to testify in a workers' compensation proceeding.

R477-8-22. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2018]~~2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 34A-2-114; 67-19-6; 67-19-6.7; 20A-3-103

**Human Resource Management,
Administration
R477-9
Employee Conduct**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43676

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes clarify expectations regarding reporting drug free workplace violations, make grammatical corrections, and update a citation to an executive order.

SUMMARY OF THE RULE OR CHANGE: These changes clarify expectations regarding reporting of employee impairment in the workplace in Subsection R477-9-1(1)(a)(iii), make listing and grammar corrections in Subsections R477-9-1(1) and (3), and update a citation to an executive order in Subsection R477-9-4(6).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 5 USC Section 1502(a)(3) and Section 63G-7-2 and Section 67-19-19 and Section 67-19-6 and Utah Exec Order No. 2018-1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government

revenues or expenditures because these changes are administrative in nature and do not impact budgets.

◆ LOCAL GOVERNMENTS: These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

◆ SMALL BUSINESSES: These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-9. Employee Conduct.

R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including impairment caused by an employee's use of illicit drugs, controlled substances, [or] alcohol or other intoxicant[impairment], that may prevent the employee from performing their job effectively and safely; and

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or other intoxicant, including use of illicit drugs, non-prescribed substances, and misuse of volatile substances, shall be subject to administrative action in accordance with Section R477-10-2, Rule R477-11, and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-202 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to administrative action under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

(1) An employee shall notify agency management in writing of outside employment. Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action.

(2) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment may not interfere with an employee's performance.

(b) Outside employment may not conflict with the interests of the agency nor the State of Utah.

(c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(3) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(4) The provisions of this rule do not apply when two or more government positions are held by the same individual, unless the personal interest of the individual is not shared by the general public.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities may not interfere with an employee's performance, the interests of the agency nor the State of Utah.

(b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; any influence, power, authority or confidential information received in that position; nor state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order, 1/26/2010, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) As modified by the Hatch Modernization Act of 2012, 5 U.S.C. Section 1502(a)(3), the federal Hatch Act restricts the political activity of state government employees whose salary is 100% funded by federal loans or grants.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(a) The agency head shall consult with DHRM.

(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(c) Employees in violation of section R477-9-4(1)(b) may be disciplined up to dismissal.

(3) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(a) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(4) Any career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office.

(5) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(6) This rule incorporates by reference the Governor's Amended Executive Order of [~~March 5~~] August 4, 2018, regarding communications with legislators by state employees.

(7) Decisions regarding employment, promotion, demotion, dismissal, or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Reporting Protections.

(1) Under Section 67-21-3, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

- (a) the waste or misuse of public property, manpower, or funds;
- (b) gross mismanagement;
- (c) unethical conduct;
- (d) abuse of authority; or
- (e) violation of law, rule, or regulations.

R477-9-6. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

(i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-7. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-8. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the State of Utah or an agency;

(b) post the seal of the State of Utah, or trademark or logo of an agency;

(c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or

(d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-9. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

Date of Enactment or Last Substantive Amendment: [~~July 1, 2018~~] 2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19; 5 USC Section 1502(a)(3); Utah Exec Order No. 2018-1

**Human Resource Management,
Administration
R477-11
Discipline**

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43677
FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes correct a citation error, remove provisions in conflict with statute, and remove duplicated provisions.

SUMMARY OF THE RULE OR CHANGE: These changes: 1) correct a citation error in Section R477-11-2; 2) remove provisions in conflict with statute in Subsection R477-11-2(2) (b); and 3) remove duplicated provisions in Subsection R477-11-2(3).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
- ◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
- ◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact

to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-11. Discipline.

R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

- (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;
 - (b) work performance that is inefficient or incompetent;
 - (c) failure to maintain skills and adequate performance levels;
 - (d) insubordination or disloyalty to the orders of a superior;
 - (e) misfeasance, malfeasance, or nonfeasance;
 - (f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;
 - (g) no longer meets the requirements of the position;
 - (h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;
 - (i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;
 - (j) dishonesty; or
 - (k) misconduct.
- (2) Agency management shall consult with DHRM prior to disciplining an employee.
- (3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

- (a) written reprimand;
 - (b) suspension without pay up to 30 calendar days per incident requiring discipline;
 - (c) demotion in accordance with Section R477-1(32), reducing the employee's current actual wage, as determined by the agency head.
 - (d) dismissal in accordance with Section R477-11-2.
- (5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

- (a) paid administrative leave; or
- (b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2([3]2)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) A probationary employee or career service exempt employee may be dismissed or demoted for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head[~~or designee~~] to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

~~[(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.]~~

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the potential of the violations for causing damage to persons or property;

(i) the strength of the evidence of conduct;

(j) dishonesty or failing to disclose relevant information;

(k) the effect on agency operations, including:

(i) how the wrongdoing relates to the employee's job duties;

(ii) the potential of the conduct to adversely affect public confidence in the agency;

(iii) the potential of the conduct to adversely affect morale and effectiveness of the agency;

(l) willful or intentional conduct; or

(m) likelihood of recurrence.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

Date of Enactment or Last Substantive Amendment: ~~July 1, 2018~~2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

Human Resource Management, Administration **R477-12** Separations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43678

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes clarify abandonment of positions provisions and remove provisions which are inconsistent with statute.

SUMMARY OF THE RULE OR CHANGE: These changes clarify abandonment of positions provisions in Section R477-12-2, and remove provisions which are inconsistent with statute in Subsection R477-12-3(2)(a).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This

rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses
 These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of agency management.

(1) After giving a notice, withdrawal of a resignation or retirement may occur only with the consent of the agency head or designee.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. ~~Management shall inform the employee of the action in writing.~~

(a) Management shall send the employee notice ~~[of intent to separate]~~ that the agency accepts the employee's resignation to the employee's last known address.

(b) The employee ~~[shall have the right to appeal separation to]~~ may request that the agency head ~~reconsider accepting the~~

resignation within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

~~[(c) If the separation is appealed, management may not be required to prove intent to abandon the position.]~~

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

- (a) the categories of work to be eliminated;
- (b) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;
- (c) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and
- (d) When more than one employee is affected, employees shall be listed in order of retention points.
- (e) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP ~~[and given an opportunity to be heard by the agency head or designee]~~ may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service status with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

- (a) temporary employees in schedule IN or TL positions;
- (b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is identified for separation due to a RIF shall receive written notification of:

(a) the pending RIF; and

(b) final written notification of separation on the day of separation.

(6) An employee separated due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the date of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2018]~~**2019**

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18

Human Resource Management, Administration **R477-13** Volunteer Programs

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43679

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change clarifies when an employee may or may not volunteer.

SUMMARY OF THE RULE OR CHANGE: This change clarifies when an employee may or may not volunteer in Subsection R477-13-1(4).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-3 and Section 67-20-4 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
- ◆ **LOCAL GOVERNMENTS:** These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
- ◆ **SMALL BUSINESSES:** These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
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Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-13. Volunteer Programs.

R477-13-1. Volunteer Programs.

(1) Agency management may establish a volunteer program.

(a) A volunteer program shall include:

(i) documented agreement of the type of work and duration for which the volunteer services will be provided;

(ii) orientation to the conditions of state service and the volunteer's specific assignments;

(iii) adequate supervision of the volunteer; and

(iv) documented hours worked by a volunteer.

(2) A volunteer may not donate any service to an agency unless the volunteer's services are approved by the agency head or designee, and by DHRM.

(a) Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state.

(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment, if properly licensed and authorized to do so, and liability protection and indemnification.

(4) State employees who volunteer for any state agency may only perform services that are distinctly different from their primary work activities.

(5) The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, administrative rules, rules and procedures, volunteers

Date of Enactment or Last Substantive Amendment: ~~July 1, 2013~~ 2019

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-3; 67-20-4; 67-20-8

Human Resource Management,
Administration
R477-14
Substance Abuse and Drug-Free
Workplace

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43669

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes incorporate the Utah Medical Cannabis Act, make organizational revisions, strengthen the focus on preventing impairment in the workplace, and makes technical adjustments to citations.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) incorporate the Utah Medical Cannabis Act in Subsections R477-14-1(1), R477-14-1(3), and R477-14-2(2); 2) update citations found in Subsections R477-14-1(1) and R477-14-1(11); 3) modify policy to focus on preventing impairment in the workplace throughout Section R477-14-1; 4) modify the cutoff level for blood alcohol concentration (BAC) for non-safety sensitive positions in Subsection R477-14-1(12); 5) make organizational changes shifting content from the end of Section R477-14-1 into Section R477-14-2 and reorganizing that section for clarity; 6) revise provisions regarding rehabilitation in Subsection R477-14-2(3) and Section R477-14-3; and 7) revise Subsection R477-14-2(5) for clarity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-61a-111 and Section 63G-2-3 and Section 67-19-18 and Section 67-19-33 and Section 67-19-34 and Section 67-19-35 and Section 67-19-36 and Section 67-19-37 and Section 67-19-38 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

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COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

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 ♦ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
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Fiscal Benefits			
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Appendix 2: Regulatory Impact to Non-Small Businesses
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**R477. Human Resource Management, Administration.
 R477-14. Substance Abuse and Drug-Free Workplace.
 R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) ~~Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, this rule implements the federal Drug-Free Workplace Act of 1988, found at 41 USC 8101, et seq., the Omnibus Transportation Employee Testing Act of 1991, found at 49 USC 5331, et seq. [49 USC 2505; 49 USC 2701; and 49 USC 3102], and Section 67-19-36 authorizing drug and alcohol testing, in order to:~~

(a) Provide a safe, ~~and~~ productive work environment that is free from the effects of drug and alcohol abuse; ~~of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.]~~

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance ~~;~~ and

(c) Assure the protection and safety of employees, ~~and~~ the public, and property.

(2) State employees should report to work fit for duty and able to safely and effectively perform all job functions.

(a) State employees are not prohibited from lawful use and possession of prescribed or over-the-counter medications unless the medication adversely affects their ability to safely or effectively perform their job duties. Any employee taking prescribed or over-the-counter medications will be responsible for consulting the prescribing physician and/or pharmacist to ascertain whether the medication may

interfere with safe performance of his/her job. If the use of a medication could compromise the safety of employees, the public, or property it is the employee's responsibility to use appropriate personnel procedures (e.g. call in sick, use leave, request change of duty, notify supervisor, notify human resources) to avoid unsafe workplace practices.

(b) The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this rule to intentionally misuse and/or abuse prescription medication. Appropriate personnel action, up to and including dismissal from employment, may be taken if job performance deteriorates and/or other accidents occur.

[(2)](3) Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, state[State] employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if [any violations]the activity:

(i) directly affects the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more[-]; or

(ii) prevents the employee from performing his/her duties safely or effectively.

[(3)](4) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

[(4)](5) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

[(5)](6) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

[(6)](7) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

[(7)](8) Employees are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

[(8)](9) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

[(9)](10) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

[(10)](11) This rule incorporates by reference the requirements of 49 CFR 40.87[-(2003)].

[(11)](12) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and [-08].05 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

[(12)](13) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Policy and Procedures.

[(13)](14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

[(14)](15) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to [discipline]disciplinary action which may include dismissal.

[-(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level; or

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

]

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) [M]Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, management may take disciplinary action which may include dismissal[-] if:

(a) there is a verified positive test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the result of a chemical test is reported negative;

(d) an employee refuses a request to submit to testing under this policy;

(e) an employee substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so; or

(f) an employee violates any other portion of this rule.

[-(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

~~_____ (a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00; or~~

~~_____ (b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.~~

[(6)](3) An employee who has a [confirmed]verified positive test for use of a controlled substance or alcohol in violation of these rules may [be provided the opportunity for a last chance agreement and]be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

[(7)](4) An employee who has a [confirmed]verified positive test for use of a controlled substance or alcohol is subject to follow up testing.

[(8)](5) An employee who is convicted [for a violation under federal or state criminal statute which regulates]of manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, under federal or state criminal law, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Drug and Alcohol Test Records.

(1) A separate confidential file of drug and alcohol test results and documents related [to the last chance agreements] rehabilitation shall be maintained and stored in the agency human resource field office.

(2) Test results shall be retained in accordance with the retention schedule.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2017]~~2019

Notice of Continuation: October 31, 2016

Authorizing, and Implemented or Interpreted Law: 63G-2-3; 67-19-6; 67-19-18; 67-19-33; 67-19-34; 67-19-35; 67-19-36; 67-19-37; 67-19-38

**Human Resource Management,
Administration
R477-15
Workplace Harassment Prevention**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 43680

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes clarify the intent of the rule, correct grammatical errors, and update a citation to an executive orders.

SUMMARY OF THE RULE OR CHANGE: These changes: 1) clarify the intent of the rule in Section R477-15-1; 2) correct grammatical errors in Subsection R477-15-1(2)(b) and Subsection R477-15-6(1)(d); and 3) update a citation to an executive order.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-305 and Section 67-19-18 and Section 67-19-6 and Utah Exec Order No. 2019-1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

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◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This

rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/28/2019 10:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2019

AUTHORIZED BY: Paul Garver, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These amendments are not expected to have any fiscal impact on non-small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.

R477-15. Workplace Harassment Prevention.

R477-15-1. Policy.

It is the policy of the State of Utah to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state or federal law. This policy seeks to regulate behaviors that are harassing, discriminatory, or retaliatory regardless of whether the behavior would constitute a violation of applicable state or federal laws.

- (1) Workplace harassment includes the following subtypes:
 - (a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;
 - (b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.
- (2) An employee may be subject to discipline for violating workplace policies, even if:
 - (a) the conduct occurs outside of scheduled work time or work location; or
 - (b) the [the]-conduct is not sufficiently severe to constitute a violation of law.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-2. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

R477-15-3. Complaint Procedure.

Management shall permit employees who allege workplace harassment, retaliation, or both to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Employees who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify a witness(es), if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-4. Investigative Procedure.

(1) When warranted investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

R477-15-5. Workplace Harassment Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-6. Training.

(1) DHRM shall provide employees training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by the Division of Risk Management.

(b) Agencies shall ensure employees complete workplace harassment prevention training upon hire and at least every two years thereafter.

(c) Training records shall be submitted to DHRM including who provided the training, who attended the training, and when they attended it.

KEY: administrative procedures, hostile work environment

Date of Enactment or Last Substantive Amendment: ~~July 1, 2017~~ **2019**

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-305; E.O. No. ~~12~~ **2019-1 "Prohibiting Unlawful Workplace Harassment and Retaliation and Ordering a Mandatory Supervisor Training Program"** ~~(December 2006)~~

Human Services, Administration **R495-885** Employee Background Screenings

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43690

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah made changes to Section 62A-2-120 (the statute governing background screenings) via S.B. 128 in the 2019 General Session. These statutory changes align with Federal Legislation from the Families First Prevention Services act currently in effect regarding background screenings for employees in youth residential settings. This rule aligns rule with federal and state statutes.

SUMMARY OF THE RULE OR CHANGE: This amendment, in accordance with the Subsection R501-14-3(4), adds the requirement for state employees applying to work in a youth residential program to obtain out of state child abuse and neglect registry records from each state they have resided in during the past five years. Further rule changes are associated with this requirement. (EDITOR'S NOTE: The proposed amendment to Rule R501-14 is under Filing No. 43691 in this issue, May 15, 2019, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state of Utah will not incur any costs with this change due to the fact that the employee applicants who have resided out of state in the past five years will be responsible for incurring the cost of obtaining their own registry checks from other states.
- ◆ **LOCAL GOVERNMENTS:** This rule only governs the Department of Human Services (DHS) employees. There is no anticipated cost or savings to local governments.
- ◆ **SMALL BUSINESSES:** This rule only governs DHS employees. There is no anticipated cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is impossible to estimate how many employees applying to work in youth residential settings have lived out-of-state within the past five years. The employees will be held responsible for any fees associated with the cost (if any). The cost is inestimable as a result of not knowing how many individuals will apply and from which states (if any) they have resided in the past five years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will depend on each and amount of states lived in over the past five years. The cost is inestimable as a result of not knowing how many individuals will apply and from which states (if any) they have resided in the past five years. The cost is estimated to be negligible as many states don't charge fees or haven't implemented fees to accommodate this federal legislation requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 ADMINISTRATION
 ROOM DHS ADMINISTRATIVE OFFICE MULTI
 STATE OFFICE BUILDING
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the

narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule amendment is not expected to have any impact on medium or non-small business because it only implements necessary changes to align with background screening Rule R501-14 and Section 62A-2-120.

R495. Human Services, Administration.

R495-885. Employee Background Screenings.

R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

(4) This rule does not apply to Department of Human Services Employees and Volunteers whose clearances are performed and maintained by the Department of Health for the Utah State Hospital and the Utah State Developmental Center.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI Rap Back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable Adult" is defined in Section 62A-2-101.

(13) "Youth Residential Program" also known as "congregate care program" means a 24-hour living environment serving 4 or more youth.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who are not directly supervised at all times must

have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI Rap Back.

(3) Department employees and volunteers who may have direct access and are not directly supervised at all times shall:

(a) submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) submit fingerprints to the Department via a DHS-operated live-scan machine or

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department; or

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention to:

(i) BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code; or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI Rap Back.

(d) in accordance with R501-14-3(4) submit out of state child abuse and neglect registry records for each state resided in during the 5 years immediately preceding the date of the screening application if applying to work in a youth residential program.

(i) instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the OL website: <https://hslic.utah.gov/Out-of-state-registries>

(ii) DHS employees and contracted employees currently working in a youth residential program at the time this rule goes into effect are responsible for submitting child abuse and neglect registry records for all states resided in during the 5 years immediately preceding the effective date of this rule. They may continue working under their DHS background screening clearance unless the out of state child abuse and neglect registry records contain information that constitutes denial under R501-14 or 62A-2-120.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120:

(a) the DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3);

(b) the fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885.

(5) Screening results shall be reviewed in accordance with both the standards outlined by Section 62A-2-120 and this R495-885.

(6) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5) (a) are not eligible for work with the Department.

(7) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the employment eligibility status of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer when there are any offenses present as outlined in 62A-2-120.

(3) Review process for prospective or probationary employees and volunteers:

(a) Following a review of the background screening results for a prospective or probationary employee or volunteer, the Director may deny or terminate the employment of the prospective or probationary employee or refuse acceptance of the volunteer; or

(b) the Director may request further review of the background screening results by the Comprehensive Review Committee established under 62A-2-120. Review of background screening results for prospective or probationary employees or volunteers by the Comprehensive Review Committee is strictly related to the employment or volunteer eligibility of that person with DHS and is not related to the licensure of that individual by DHS, nor does it entitle any party to any of the rights granted to an applicant for licensure as defined in 62A-2-120.

(i) the Director shall notify the prospective or probationary employee that further review by the Comprehensive Review Committee has been requested.

(ii) the review for prospective employees and volunteers by the Comprehensive Review Committee shall follow the criteria outlined in 62A-2-120 and R501-14 as it relates to the process for review, the items or methods of consideration and the process and criteria used in making determinations.

(iii) Following the review, the Comprehensive Review Committee shall make one of the following findings:

(A) A determination to deny the background screening which will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse the acceptance of the volunteer; or

(B) A determination of employment eligibility or to permit acceptance of the volunteer.

(iv) the determination of the Comprehensive Review Committee to deny the background screening will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse acceptance of the volunteer and is final.

(v) Upon receiving the Comprehensive Review Committee determination of employment eligibility or to accept a volunteer A Director, in their sole discretion may;

(A) approve the employment or continued employment of the prospective or probationary employee or approve the acceptance of the volunteer; or

(B) deny or terminate the employment of the prospective or probationary employee or refuse the acceptance of the volunteer.

(vi) the determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) the following background screening findings shall be submitted to the Director:

(i) automatic denial offenses outlined in 62A-2-120(5)(a);

(ii) all other circumstances outlined in 62A-2-120(6)(a); and

(iii) any MIS supported or substantiated findings;

(b) the Director may consult with the Office of Licensing and shall consult with the Executive Director to evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult, or does not meet DHS high standards of conduct or promote public trust; the Director, Executive Director and Office of Licensing, if consulted, shall consider the factors and information outlined in 62A-2-120(6)(b).

(c) the Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-7. Compliance.

~~[The Department will set an implementation schedule to be in compliance with this rule no later than October 31, 2018.]~~The

Department will be required to initiate steps toward compliance with this rule immediately upon the effective date.

KEY: background, employees, human services, screenings
Date of Enactment or Last Substantive Amendment: [~~July 18, 2018~~2019]
Authorizing, and Implemented or Interpreted Law: 62A-1-118; 62A-2-120

**Human Services, Administration,
 Administrative Services, Licensing**
R501-14
**Human Service Program Background
 Screening**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43691
 FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah made changes to Section 62A-2-120 (the statute governing background screenings) via S.B. 128 in the 2019 General Session. These statutory changes align with federal legislation from the Families First Prevention Services act currently in effect regarding background screenings for employees in youth residential settings. This rule aligns rule with federal and state statutes.

SUMMARY OF THE RULE OR CHANGE: This amendment adds the following definitions for clarification: Applicant, Harm, OL (Office of Licensing within the Department of Human Services), and Youth Residential Program. In regards to the background screening procedure, this amendment adds the requirement of an applicant applying to work in a youth residential program who has resided outside of the state of Utah in the past five years to provide a child abuse and neglect registry record for each state in which the applicant has resided in that time. Further provisions to this requirement are included throughout this amendment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule change is not expected to have any fiscal impact to the state budget. The change deals with non-state employees working in youth residential programs and those applying to work in these programs.
- ◆ **LOCAL GOVERNMENTS:** It is not anticipated that local governments see any fiscal impact from these changes. The change to the applicants back ground screening application will not impact local governments.

◆ **SMALL BUSINESSES:** These rule changes are not expected to have any fiscal impact on any youth residential programs, as it places the responsibility for compliance on the applicants and not the businesses. Businesses have discretion to either supervise these employees until their clearances are completed (which is currently the process for all background screening applicants in all Department of Human Services (DHS) licensed settings) or not hire individuals who will experience delays in obtaining those registry checks as part of their background screenings or employment. In an effort to assist these providers and their potential employees, the Office of Licensing has compiled a comprehensive list of contacts and processes for applicants to follow to obtain these rule-required registry checks in every state across the country. This reference guide is posted on the OL website and is referenced in rule and on the screening application forms for further convenience to providers. This rule acknowledges potential long delays in obtaining out-of-state registry checks and will allow conditional clearance under strict circumstances that protect the vulnerable population served and meet the federal and state statutory mandates while assisting the program in meeting staffing needs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is impossible to estimate how many employees applying to work in youth residential settings have lived out-of-state within the past five years. The employees will be held responsible for any fees associated with the cost (if any). The cost is inestimable as a result of not knowing how many individuals will apply and from which states (if any) they have resided in the past five years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will depend on each state and amount of states lived in over the past five years. The cost is inestimable as a result of not knowing how many individuals will apply and from which states (if any) they have resided in the past five years. The cost is estimated to be negligible, as many states don't charge fees or haven't implemented fees to accommodate this federal legislation requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
 ADMINISTRATION, ADMINISTRATIVE SERVICES,
 LICENSING
 195 N 1950 W 1ST FLR
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
 ♦ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the

narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

It is not anticipated that non-small businesses see a fiscal impact as a result of this rule amendment. Youth Residential Programs licensed by the Office of Licensing are primarily small businesses.

R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Human Service Program Background Screening.

R501-14-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.

(2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "Severe Abuse", "Severe Neglect", and "Sexual Abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Adult-only Substance Use Disorder Program" is a program serving substance use disorder related clients that has declared to the Office of Licensing that they do not serve the following:

- (a) clients under the age of 18; or
- (b) those with any serious mental illness or cognitive impairments.

(3) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-120-1[-] (a).

(a) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(4) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), and adoption service provider, an attorney representing a prospective adoptive parent as defined in Section 78B-6-103([4]25), or DHS Division or Office. The background screening agents are the point of contact with the Office for the purpose of background screening.

(5) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(6) "Child" is defined in Section 62A-2-101.

(7) "Child Placing" is defined in Section 62A-2-101.

(8) "Comprehensive Review Committee" means the committee appointed to conduct reviews in accordance with Section 62A-2-120.

(9) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(10) "Direct Access" is defined in Section 62A-2-101.

(11) "Direct Service Worker" is defined in Section 62A-5-101.

(12) "Directly Supervised" is defined in 62A-2-101.

(13) "FBI Rap Back System" is defined in Section 53-10-108.

(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or background screening agent.

(15) "Foster Home" is defined in Section 62A-2-101.

(16) "Harm" is defined in R501-1-2(14) and for the purpose of background screenings also includes causing or threatening to cause financial damage or fraud.

(1[6]7) "Human Services Program" is defined in Section 62A-2-101.

(1[7]8) "Licensee" is defined in Section 62A-2-101.

(1[8]9) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(1[9]20) "Neglect" may include "Severe Neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2[0]1) "Office" is defined in Section 62A-2-101([27]30) and is also referred to as "OL".

(2[1]2) "Personal Care Attendant" is defined in Section 62A-3-101.

(2[2]3) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(2[3]4) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

(2[4]5) "Substantiated" is defined in Section 62A-4a-101.

(2[5]6) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(2[6]7) "Vulnerable Adult" is defined in Section 62A-2-101.

(28) "Youth Residential Program" is also known as "congregate care" and means a 24-hour group living environment serving 4 or more youth. This does not include foster homes or child placing agency certified homes.

R501-14-3. Initial Background Screening Procedure.

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) ~~The~~An applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(4) An applicant applying to work in a youth residential program who has resided outside of the state of Utah within the 5 years immediately preceding the date of the background screening

application shall provide a child abuse and neglect registry record for each State in which the applicant has resided within those 5 years.

(a) instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the OL website at: <https://hslic.utah.gov/Out-of-state-registries>.

(b) out of state child abuse and neglect registry records are not required to be produced to the Office of Licensing a second time for license renewal, screening transfer or screening renewal as long as a record from every state resided in over the past 5 years has been previously submitted and reviewed by the Office of Licensing.

(i) a current employee in a youth residential setting at the time this rule goes into effect shall submit all out of state registry records for all states resided in for the 5 years immediately preceding their background screening renewal application.

(c) applicants experiencing delays in receiving requested out of state(s) registry record(s) must be supervised while record(s) are pending, unless:

(i) documentation is obtained from the state(s) providing the record giving a time frame for expected receipt of record(s). This documentation may not be authored by anyone but the sending state(s) authorized personnel and;

(ii) the Office otherwise approves the applicant's background screening with no comprehensive review committee review required.

(d) any out of state registry record that contains information that constitutes background screening denial under this rule, shall result in a denial or revocation of background screening and the employee direct access to clients and client records must be terminated immediately upon notification.

([4]5) An applicant must present valid government-issued identification.

([5]6) An applicant who presents only a foreign country identification card may be required to submit an original or official copy of a government issued criminal history report from that country.

([6]7) The background screening application, personal identifying information, including fingerprints, and applicable fee shall be submitted to the background screening agent. The background screening agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review for completeness and accuracy and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

(d) The background screening agent may withdraw a background screening application at any point in the process.

R501-14-4. Renewal Background Screening Procedure.

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(3) The background screening application and personal identifying information shall be submitted to the background screening agent.

(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently enrolled in the FBI Rap Back System is not required to submit fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees unless:

(i) the applicant's most current background screening has lapsed as described in part 7 of this Section;

(ii) the human services program or background screening agent with which the applicant is associated requires a FBI Rap Back System search;

(iii) the applicant wishes to provide services with an additional licensee and has not submitted fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees; or

(iv) the renewal application is submitted on or after July 1, 2018 and the applicant is not already enrolled in the FBI Rap Back System.

(4) A background screening agent wishing to submit background screening renewal applications for multiple applicants may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in the FBI Rap Back System with the Office;

(ii) with a current approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

(A) criminal arrests or charges;

(B) supported or substantiated findings of abuse, neglect or exploitation; or

(C) any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant full legal name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A background screening agent choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain current documentation signed by each applicant, in which they attest to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The background screening agent shall:

(a) inspect the applicant's government-issued identification card and make a determination as to whether or not it appears to have been forged or altered; and

(b) review for completeness and accuracy and sign the application.

(7) Renewal applications from background screening agent and applicant shall be submitted to the Office no later than one year from the date of their most recent background screening approval. A screening that has lapsed for 30 days beyond that time is void and a new initial application must be submitted.

R501-14-5. General Background Screening Procedure.

(1) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(a) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall submit an application no later than two weeks from becoming associated with the licensee and shall be directly supervised in regards to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(a) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall submit renewal application within one year of the previous clearance date.

(b) If the screening approval lapses beyond 30 days, the applicant shall be directly supervised in regard to direct access of a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(c) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access to clients unless the Office approves a subsequent application.

(3) The applicant or background screening agent shall promptly notify the Office of any change of address while the application remains pending.

(4) A background screening agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The background screening agent shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a background screening agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

(c) A minor applicant that submitted a youth application with no fingerprint cards and is not currently on the FBI Rap Back System must submit fingerprints within 30 days prior to the minor's 18th birthday.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A background screening agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

R501-14-7. Application Processing and Results.

(1) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(a) The Office shall notify the applicant or the background screening agent or contractor when an applicant's background screening application is approved.

(i) Upon receiving notice from the Office, the background screening agent shall provide notice of approval to the applicant as required under Section 62A-2-120 (12)(a)(i).

(b) The approval granted by the Office shall be valid until a renewal approval is issued or the prior approval lapses.

(c) An approval granted by the Office shall not be transferable, except as provided in R501-14-10[4].

(2) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes.

(b) A background screening agent seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) Conditional approvals shall have expiration dates not to exceed 60 days.

(f) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall be directly supervised until such an approval is granted.

(g) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Section 62A-2-120.

(4) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

(5) The Office shall refer an application to the comprehensive review committee in accordance with Section 62A-2-120(6).

(a) Per Section 62A-2-120 (6)(a)(ii), all misdemeanor convictions except those listed in R501-14-7(5)(b), within the five years prior to submission of the application to the Office shall be reviewed by the comprehensive review committee.

(b) The following misdemeanors will not be reviewed except as described in (xiv) as listed below:

(i) violation of local ordinances related to animal licenses, littering, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park/access hours;

(ii) all misdemeanors listed in 41-6a except:

(A) part 4 accident responsibility Sections 401.3, 401.5 and 401.7;

(B) part 5 driving under the influence;

(C) part 17 miscellaneous rules Section 1716 if charged as a misdemeanor B and Section 1717;

(D) part 18 Section 1803;

(iii) all misdemeanors listed in 76-10-2, 76-10 part 1 Section 105, 76-10-21 and 76-10-27;

(iv) Failure to Appear: A misdemeanor charge under 77-7-22;

(v) Unauthorized Hunting of Protected Wildlife: A misdemeanor resulting from unauthorized hunting under 23-20-3;

(vi) Fishing Licenses: A misdemeanor resulting from a failure to have the appropriate fishing license under 23-19-1;

(vii) Boating Safety: A misdemeanor resulting from a failure to comply with the boating safety requirements outlined in 73-18-8;

(viii) Business License: A misdemeanor resulting from failure to have a business license as required under 76-8-410;

(ix) all juvenile misdemeanors except those listed in 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application.

(c) The Office shall refer an applicant to the comprehensive review committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6)(a) not previously considered by the comprehensive review committee.

(6) The Office may provide the status of an application to the sponsoring background screening agent, but shall not share any specific criminal history information.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the comprehensive review committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health; and

(g) the Office of Licensing.

(2) Comprehensive review committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the comprehensive review committee as a non-voting member.

(4) Four voting members shall constitute a quorum, not including the representatives from the Office of Licensing.

(5) The comprehensive review committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, outstanding warrants for any offenses that require a committee review, abuse, neglect or exploitation records, applicant submitted child abuse and neglect registry record(s) from other state(s) and related circumstances, in accordance with Section 62A-2-120(6).

R501-14-9. Comprehensive Review Investigation.

(1) The comprehensive review committee shall not review a background screening application without the Office first sending the applicant a written notice that:

- (a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;
- (b) the applicant is encouraged to submit any written statements or records that the comprehensive review committee needs to make a determination of risk of harm including but not limited to:
 - (i) original police reports;
 - (ii) investigatory and charging documents;
 - (iii) proof of any compliance with court orders;
 - (iv) any evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
 - (v) personal statements;
 - (vi) reference letters specific to the potential risk of harm and;

(vii) any other information that specifically addresses the criteria established in Section 62A-2-120(6)(b);

(c) the comprehensive review committee evaluates information using the criteria established by Section 62A-2-120(6)(b); and

(d) submissions must be received within 15 calendar days of the written notice unless an extension has been requested by the background screening agent or applicant and granted by the Office.

(2) The Office shall gather information described in Section 62A-2-120(6)(b) from the applicant and provide available information to the comprehensive review committee.

(3) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(4) A denied application may be re-submitted to the Office after 6 months or upon substantial change to circumstances.

R501-14-10. Comprehensive Review Determination.

(1) The comprehensive review committee shall only consider applications and information presented by the Office. The comprehensive review committee shall evaluate the applications and information provided to the committee through the Office.

(a) A background screening approval may be transferred to other human service programs when providing the same service under the same statutory screening requirements.

~~(b) the committee shall re-consider all previously cleared or denied screenings when the applicant requires a new clearance for a new type of service. [therefore the comprehensive review committee shall evaluate whether direct access should be authorized for all types of programs.]~~

(2) Each application that goes to the comprehensive review committee requires individual review by the comprehensive review committee.

(3) The comprehensive review committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the comprehensive review committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(4) The comprehensive review committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm as defined in 501-14-2(16) to a child or vulnerable adult.

(5) If the applicant fails to provide additional information requested by the Office, the comprehensive review committee may consider and weigh ~~[those omissions in the]~~ only what was submitted to them and only consider additional information that is publicly available in making their evaluation of the risk of harm to clients.

(6) The Office shall make the final determination to approve or deny the application after considering the comprehensive review committee's recommendation.

(7) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

R501-14-11. Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have their current background screening approval shared with or transferred to another human services program only if the applicant is currently enrolled in the FBI Rap Back System and the screening was run under the same statutory authority as the original screening.

(2) An applicant who wishes to have their current background screening shared with or transferred to another human services program shall complete a background screening application and identify the name of the original program and youth residential status in boxes indicated.

(i) transfers between youth residential programs is permitted. Transfers from a non-youth residential to a youth residential program shall require submission of out of state registry records when the applicant has resided in another state(s) within 5 years of the application.

(3) An applicant shall be directly supervised until the program receives written confirmation from the Office that the background screening is current and valid.

(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and background screening agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or has a new finding in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.

(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction listed in Section 62A-2-120(5)(a) or has a new finding in the Licensing Information System or the DAAS Statewide Database, after a background screening application is approved shall be directly supervised until after an application and personal identifying information have been resubmitted to the Office

and a current background screening approval is received from the Office.

(4) An applicant charged with an offense for which there is no final disposition and no comprehensive review committee denial, shall inform the Office of the current status of each case every 90 days.

(a) The Office shall determine whether the pending charge could require a denial or committee review, and if so, notify the applicant to submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(b) An applicant shall submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records; and fails to provide required current status information as described in (4) of this Rule or;

(b) has been convicted of any felony, misdemeanor or infraction listed in 62A-2-120(5) after a background screening approval had already been granted by the Office while charges were pending.

(6) The Office shall process identifying information received pursuant to R501-14-12(2) in accordance with R501-14.

(7) The background screening agent shall notify the Office of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120. The Office shall report the termination to BCI within five months if the individual has not transferred the clearance to a transfer-eligible program within that time frame. [A background screening agent shall notify the Office when an applicant is no longer associated with the program so that the Office may terminate the FBI Rap Back subscription.]

R501-14-13. Confidentiality.

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the applicant in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing adoption agency may provide the approval granted by the Office to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening Information.

(1) A human services program or department contractor shall retain the background screening information of all associated individuals for a minimum of ~~eight~~ seven years after the termination of the individual's association with the program.

R501-14-15. Expungement.

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with an official copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

(1) A Notice of Agency Action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

R501-14-17. Exemption.

(1) Section 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or department contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

(2) The substance abuse program exemption limits the exemption with regard to program directors and members. Ownership and management of a human services program, as included in the definition of member, for purposes of this rule means a person or entity who alone or in conjunction with other persons or entities has a majority voice in the decision-making and administration of the program.

KEY: licensing, background screening, fingerprinting, human services

Date of Enactment or Last Substantive Amendment: ~~February 23, 2018~~ **2019**

Notice of Continuation: September 29, 2015

Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.

Insurance, Administration **R590-186** Bail Bond Surety Business

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 43694

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes streamline the process for bail bond agencies to obtain initial and renewal licenses, eliminate provisions that duplicated the content of statutes, and streamline the process for obtaining input from the Bail Bond Oversight Board on investigations of code violations conducted by the Insurance Department (Department).

SUMMARY OF THE RULE OR CHANGE: The changes are as follows: 1) initial and renewal licenses can be obtained by submitting to the Department an application, proof that statutory financial requirements are met, and an application fee; and 2) when the Department completes an investigation of a possible code violation, it will report its findings and recommended disposition to the Board which will then

provide input, and after receiving this input, the Department makes the final decision on disposition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-35-104 and Subsection 31A-35-301(1) and Subsection 31A-35-401(2) and Subsection 31A-35-406(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It is expected that the state will see some savings because the Department will spend less time reviewing initial and renewal applications, and will require fewer steps in the process for the Bail Bond Board review of Department investigations. However, the potential savings cannot be calculated with any reasonable certainty.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments because the rule solely applies to the interactions between the Department and its licensees.
- ◆ **SMALL BUSINESSES:** Bail bond agencies should see some savings because they will spend less time preparing applications for an initial license and at renewal. The amount of savings cannot be determined with any reasonable certainty.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings for any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These rule changes are not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because this rule pertains only to bail bond agencies active in the state of Utah. All bail bond licensees within the state are properly classified as small businesses having fewer than 50 employees.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.**R590-186. Bail Bond [Surety] Business.****R590-186-1. Purpose.**

This rule establishes [uniform] criteria and procedures for [the initial and renewal] licensing [of] a bail bond agency [surety company]; and sets standards of conduct [for those in the bail bond surety business in the State of Utah].

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure [;] and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer [Chapter 35 of] Title 31A, Chapter 35;

(3) [Subsection 31A-35-401(1)(e) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) [Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond agency license applicants [applying for licensure]; and

(5) [Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond agency [surety company].

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond [surety] business.

R590-186-4. Initial and Renewal Agency [Company] License.

(1) Applications for an initial and a renewal bail bond agency license [Persons desiring to become licensed as bail bond surety companies] shall be filed with the [Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department] commissioner.

(2) The applicant shall provide the following with the application [pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following]:

(a) the initial or renewal license fee in R590-102-16;

(b) proof that the applicant satisfies the minimum financial requirements for a bail bond agency license set forth in Section 31A-35-404 [If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$300,000, including a minimum of \$100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date

of the application and an appraisal dated not more than two years prior to the date of the application:

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer:

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license:

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval:

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504].

R590-186-5. [Company License Renewal.

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section:

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$300,000, at least \$100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) if the bail bond agency is in its second or subsequent year of licensure, the following items are required:

(i) a certified appraisal report;

(ii) a current tax notice and a title letter or report; or

(iii) a current abstract of title from the county recorder.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to \$250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets:

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

~~_____ (4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).~~

R590-186-6. Agent Bail Bond Producer License and Renewal.

(1) Bail bond ~~agencies and~~ surety ~~[companies and]~~ insurers ~~[are required to] must~~ issue bail bonds ~~[only] through~~ licensed bail bond producers who ~~[agents that]~~ have been designated by the bail bond agency or have been contracted with and appointed by the surety insurer ~~[or designated by the bail bond surety company for whom they are issuing bail bonds].~~

(2) All persons doing business as bail bond producers ~~[agents]~~ must be licensed in accordance with ~~[Chapter 23 of]~~ Title 31A, Chapter 23a, 31A-35-406, and applicable ~~[department]~~ rules regarding individual producer ~~[agent]~~ licensing. Bail bond producer ~~[agent]~~ licenses are individual limited line licenses. These licenses are issued for a two ~~[]~~-year period and require no licensing examination or continuing education.

~~_____ (3) Individual bail bond producer [agent] licenses must be renewed at the end of the two []-year licensing period [in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal].~~

R590-186-7[6]. Unprofessional Conduct.

Persons in the bail bond ~~[surety]~~ business may not engage in unprofessional conduct. ~~[For purposes of this rule, u]~~ Unprofessional conduct means the violation of any applicable insurance law, rule ~~[,]~~ or valid order of the commissioner, or the commission of any of the following acts ~~[by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties]:~~

(1) having a professional or occupational license ~~[as a surety]~~ revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity ~~[or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary];~~

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the bail bond agency ~~[surety]~~'s net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond ~~[and]~~ upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the ~~[insurance]~~ commissioner of any change that has reduced the bail bond agency ~~[surety]~~'s net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain bonding referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit

the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the bail bond agency ~~[surety]~~'s fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the bail bond agency ~~[surety]~~;

(d) the incarcerated person's obligations to the bail bond agency ~~[surety]~~ and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue;

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by ~~a [the]~~ bail bond agency or surety insurer ~~[company]~~;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of ~~[his]~~ executing a bail bond that the bond purchaser ~~[principal]~~ agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bonds without countersignature by a licensed bail bond producer ~~[agent]~~ at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond agency ~~[surety company, bail bond]~~ surety insurer, or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under Title 31A, Chapter 35 ~~[this chapter]~~;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under ~~[Utah Code Annotated]~~ Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent;

(28) failing to comply with ~~[the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner, including]~~ outstanding judgments; and

(29) using deceptive or intimidating practices[~~in which to gain bail bond business~~].

R590-186-[8]7. Investigating Unprofessional Conduct.

The [Board or the] commissioner shall investigate ~~complaints~~[allegations] of unprofessional conduct ~~submitted in writing to the commissioner. Once the investigation is complete, the commissioner shall report findings and a recommended disposition to the board. That report shall be confidential and may not be disclosed beyond the Insurance Department and the board. After obtaining the board's comments and recommendations concerning the report, the commissioner will determine the appropriate disposition~~[on the part of any bail bond surety, bail bond surety agent, or bail bond producer. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

~~(1) Investigations shall be completed in the following manner:~~

~~(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.~~

~~(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to respondent.~~

~~(c) At the next meeting of the Board, the commissioner shall present the complaint and the action undertaken by the Department to receive comment from the Board.~~

~~(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, or request additional investigation.~~

~~(i) Disclosures made to the Board under Sections (c) and (d) shall be treated as confidential. Board members may not disclose or act upon any confidential information obtained pursuant to investigations conducted under this Section.~~

~~(ii) If the Board requests additional investigation, the commissioner shall reasonably conduct additional investigation in compliance with the policies and procedures of the Department.~~

~~(a) The commissioner shall present findings to the Board at the next scheduled board meeting, or at a meeting no sooner than 30 days after the Board's request, at the discretion of the Board.~~

~~(b) Upon hearing the results of any additional investigation by the commissioner, the Board shall provide to the commissioner its recommendation within 30 days].~~

R590-186-[9]8. Bonding Limits.

(1) A[n insurance bondsman] bail bond agency that maintains a qualified power of attorney from a surety insurer may not maintain outstanding bail bond obligations in excess of the amount allowed by the surety insurer[insurance company].

(2) A bail bond agency that pledges assets of a letter of credit[bondsman and/] or pledges personal or real property[a property bondsman] may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE

Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
\$250,000 line of credit or net worth/\$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least \$100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond ~~agency~~[company] who has qualified for the 10 to 1 ratio if that bail bond ~~agency~~[company]'s line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.[

~~R590-186-10. Publication of Licensed Bail Bond Surety Companies.~~

~~On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.~~

R590-186-[11]9. Definition.

[In reference to s]For the purpose of Subsection 31A-35-701(5), "members of their immediate families" [shall be defined as:] means spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, or[and] half-sister.

R590-186-[12]10. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-11[13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14]. Severability.

If any provision [or clause]of this rule or its application to any person or situation is held to be invalid, ~~that~~[such] invalidity shall[may] not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this [a]nd the provisions of this rule are declared to be severable.

KEY: insurance

Date of Enactment or Last Substantive Amendment: [February 7, 2019

Notice of Continuation: July 10, 2018

Authorizing, and Implemented or Interpreted Law: 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

Insurance, Administration **R590-238-4** Annual Reporting Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 43693
FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is being made to comply with a statutory amendment that was enacted during the 2019 General Session via H.B. 55, Insurance Amendments.

SUMMARY OF THE RULE OR CHANGE: Before the 2019 General Session, Subsection 31A-37-501(2)(a) required the signature of one executive officer on a captive insurance company's annual report. Under the 2019 amendment that was included in HB 55, at least two executive officers and a captive insurance company manager or his or her representative must sign. The proposed rule change eliminates the requirement that one executive officer sign and adds a requirement that two executive officers and a captive insurance company's manager or his or her representative must sign.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-37-106

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. These changes do not alter the Insurance Department's workload and will not result in any change to the budget.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. This rule governs the interactions between the Insurance Department (Department) and its licensees, and does not involve local governments in any way.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The only change is to the people who must sign a captive insurer's annual report.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. The only change is to the people who must sign a captive insurer's annual report.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. The only change is to the people who must sign a captive insurer's annual report.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that

this rule change will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

Total Benefits:	Fiscal	\$0	\$0	\$0
Net Fiscal Benefits:		\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule change is not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because the only change is to the people who must sign a captive insurer's annual report. It requires signatures by two executive officers and the captive manager (or representative) of the insurer.

The head of the Insurance Department, Commissioner Todd E. Kiser, has reviewed and approved this fiscal analysis.

**R590. Insurance, Administration.
R590-238. Captive Insurance Companies.
R590-238-4. Annual Reporting Requirements.**

(1) A captive insurance company authorized in this state shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501. The report shall be verified by oath of ~~[one of its]~~ at least two individuals who are executive officers of the company and by the captive manager or a duly appointed representative. The report ~~[and]~~ shall be prepared using generally accepted accounting principles ("GAAP") ~~[-The annual report]~~ and shall be filed electronically consistent with directions from the commissioner.

(2) A captive insurance company shall observe the requirements of Section 31A-4-113 when it files an annual report of its financial condition. In addition, an industrial insured group shall observe the requirements of Section 31A-4-113.5 when it files an annual report.

(3) All captive insurance companies are to use the "Captive Insurance Company Annual Statement Form" except Risk Retention Group (RRG) insurers and special purpose financial captives which shall use the NAIC's Annual and Quarterly Statements.

(4) The Captive Insurance Company Annual Statement shall include a statement of a qualified Actuary titled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

KEY: captive insurance

Date of Enactment or Last Substantive Amendment: [September 25, 2015]2019

Notice of Continuation: May 2, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-37-106

**Insurance, Administration
R590-268
Small Employer Stop-Loss Insurance**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 43692
FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is primarily being changed to standardize the method and content of the annual experience reporting to make the data easier to aggregate. The amendment also changes inconsistent language and eliminates unnecessary language.

SUMMARY OF THE RULE OR CHANGE: These changes incorporate a standardized annual experience reporting template by reference, changes the content that is required as part of the annual experience reporting, remove references to the Standard Application that is no longer required, update the instructions and publication date of the disclosure statement, and make grammatical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-43-304

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Removes Utah Small Employer Stop-Loss Disclosure, published by Utah Insurance Department, 01/15/2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. While these rule changes are intended to standardize the content in the annual experience reporting and make the data easier to aggregate, the decrease in time spent aggregating will be negligible.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. These rule changes govern the relationship between the Insurance Department (Department) and the insurers that it licenses and will not affect local governments.
- ◆ **SMALL BUSINESSES:** A negligible cost could result to small businesses if stop-loss insurers pass the cost of compliance on as part of the administrative expense portion of the stop-loss premium. The Department anticipates that this would be a negligible amount per employer, but cannot reasonably estimate the fiscal impact this may have per employer.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Insurers offering small employer stop-loss coverage may

have a small implementation cost to output the experience into the experience template format. The Department anticipates a conservative cost per insurer to be 40 hours for a single employee performing the implementation at \$75 per hour (or \$3,000 per insurer).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department anticipates a conservative cost per insurer to be 40 hours for a single employee performing the implementation at \$75 per hour (or \$3,000 per insurer).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: A stop-loss insurer may pass the cost of implementation on to small employers as part of the administration portion of their premium. The Department anticipates that this would be a negligible amount per employer, but cannot reasonably estimate the fiscal impact this may have per employer.
II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Based on the number of small employers engaged with stop-loss insurers in 2017, the Department estimates 185 small employers could be affected.
III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: Based on the number of small employers engaged with stop-loss insurers in 2017, the Department estimates 185 small employers could be affected.
IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The cost would be one-time. The Department estimates conservatively \$3,000 per insurer, with 7 entities currently offering in the small employer stop-loss market and spread among 185 small employers. Or, approximately \$114 per small employer with stop-loss coverage.
V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: This analysis represents the Department's best estimate of the fiscal impact that this rule may have on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$21,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
Total Fiscal Costs:	\$21,000	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	-\$21,000	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

There are seven non-small businesses in the small employer stop-loss market in Utah. The Insurance Department conservatively estimates

that this rule change will result in a one-time implementation cost of \$3,000 per insurer, for a total impact of \$21,000 across small employer stop-loss market.

The head of the Insurance Department, Commissioner Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance Administration.

R590-268. Small Employer Stop-Loss Insurance.

R590-268-1. Authority.

This rule is promulgated pursuant to Section 31A-43-304 wherein the commissioner may make rules to implement Title 31A, Chapter 43.

R590-268-2. Scope.

This rule applies to all small employer stop-loss contracts issued or renewed on or after July 1, 2013.

R590-268-3. Purpose.

The purpose of this rule is to provide the content of the stop-loss insurance disclosure, prohibit lasering, and establish the form and manner of form and rate filings and of the annual actuarial certification and report on stop-loss experience.

R590-268-4. Definitions.

For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301 and 31A-43-102.

R590-268-5. Stop-Loss Insurance Disclosure.

(1) Stop-loss insurers marketing to small employers shall use:

- ~~(a) the Utah [Small Employer] Stop-[L]oss Disclosure dated January 15, 2014, prior to the effective date of this rule; and~~
- ~~(b) the Utah Stop-Loss Disclosure dated July 1, 2019, after the effective date of this rule.~~

(2) The stop-loss insurer may display the insurer's name, identifying logo, and address on the disclosure.

(3) ~~The [Utah Small Employer Stop-loss Disclosure, published January 15, 2014, is hereby incorporated by reference and is] disclosures are available on the Department's website at <https://insurance.utah.gov/legal-resources/rules/current-rules.php>.~~

(4) The disclosure may be altered for reasons specifically approved by the commissioner.

R590-268-6. Lasering.

(1) Subsection 31A-43-301(2)(a) prohibits lasering. For the purpose of this rule lasering includes:

- (a) assigning a different attachment point for an individual[s] based on ~~[their-]the individual's~~ expected claims or a given diagnosis;
- (b) assigning a deductible to an individual that must be met before stop[-]loss coverage applies;
- (c) denying stop[-]loss coverage to an individual who is otherwise covered by the small employer's medical plan; and
- (d) applying an actively at work exclusion to stop[-]loss coverage.

R590-268-7. Form and Rate Filings.

(1) A contract filing consists of one contract form~~[-the application]~~, any related documents, disclosure, rate manual, and actuarial memorandum.

- (2) A new or revised rate manual shall:
 - (a) include a summary of how the rate is calculated;
 - (b) contain specific area factors applicable in Utah;
 - (c) be filed 30 days prior to use;
 - (d) be applied in the same manner for all small employer stop-loss contracts;
 - (e) describe how the overall rate is reviewed for compliance; and
 - (f) include an actuarial certification signed by a qualified actuary.
- (3) All filings shall be submitted using SERFF.

R590-268-8. Annual Actuarial Memorandum and Certification.

(1) The insurer shall submit annually on or before April 1 using SERFF:

- (a) stop-loss experience for the previous two years for Utah;
- (b) certification of compliance with requirements of section 31A-43-301; and
- (c) an actuarial memorandum describing the review done in preparation of the certification.

(2) The insurer's stop-loss experience shall be presented by small employer and experience year and shall include:

- (a) a group identifier that uniquely identifies the group and is consistent from year to year for the same employer group;
- ~~(b) the effective date of coverage for the policy year for the employer group;~~
- ~~(c) contract type (e.g. 12/24);~~
- ~~(d) employer size including both covered lives count and employee count as of the beginning of the contract;~~
- ~~([b]e) covered lives exposure years and employee exposure years for the experience time period;~~
- ~~([e]f) specific attachment point;~~
- ~~([d]g) expected claims in the absence of stop[-]loss insurance;~~
- ~~([e]h) expected claims under the specific attachment point;~~
- ~~([f]i) aggregate attachment point;~~
- ~~([g]j) earned premium; and~~
- ~~([h]k) claims paid by the stop[-]loss insurance broken out by specific losses and aggregate losses.~~

(3)(a)(i) The insurer's stop-loss experience shall be submitted in Excel format using the Utah Stop-Loss Experience Report dated July 1, 2019.

(ii) The Utah Stop-Loss Experience Report dated July 1, 2019, is available on the Department's website at <https://insurance.utah.gov>.

(b) Experience shall be aggregated over the entire contract incurral period, rather than aggregated by incurral month.

(c) The experience report shall only include those stop-loss contracts where the final claim incurral date is contained within the two calendar years previous to the submission date.

(d) Runout claims that are paid after the submission date shall be updated in the following year's experience submission.

R590-268-9. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-268-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: small employer stop-loss

Date of Enactment or Last Substantive Amendment: ~~December 9, 2015~~ 2019

Authorizing, and Implemented or Interpreted Law: 31A-43-304; Title 31A, Chapter 43

Insurance, Administration
R590-278
 Consent Requests Under 18 USC
 1033(e)(2)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43695

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule creates a procedure and standards for determining requests for consent to engage in the insurance business under 18 USC 1033(e)(2). The changes to the rule: 1) authorize a request for reconsideration of an administrative hearing decision, something the current rule prohibits; 2) identify who has the burden of production and burden of persuasion in and administrative hearing; and 3) add factors that may be considered in deciding the request.

SUMMARY OF THE RULE OR CHANGE: These rule changes set forth that a party may request reconsideration of an administrative hearing decision. The petitioner bears the burden of production of evidence and the burden of persuasion in an administrative hearing that addresses a request for consent. The decision-maker may consider the following factors: 1) if the petitioner intends to apply for an insurance license, the duties of a holder of that type of license; 2) the extent to which the petitioner, if granted a license, will work under the supervision of another licensee or another person; 3) the petitioner's trustworthiness in employment, community service or other endeavors since the most recent conviction; 4) whether the petitioner has had a license or certification revoked; and 5) whether another jurisdiction has denied the petitioner's request for consent.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-23a-111(5)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request, but none of these factors have any associated costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request, but there are no costs associated with any of them.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

These rule changes are not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because none of the changes affect non-small businesses. These rule changes set forth additional responsibilities and factors that must be taken into account by an individual making a consent request.

The head of the Insurance Department, Todd E. Kiser, has reviewed and approved this fiscal analysis.

**R590. Insurance Department, Administration.
R590-278. Consent Requests Under 18 USC 1033(e)(2).
R590-278-1. Authority.**

This rule is adopted pursuant to the following:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to make rules to implement the provisions of Title 31A; and

(2) Subsection 31A-23a-111(5)(b) that authorizes the commissioner to act in compliance with the federal Violent Crime Control and Law Enforcement Act of 1994, 18 USC 1033.

R590-278-2. ~~Consent~~ Request for Consent Made by Filing Request for Agency Action.

(1) A request under 18 USC 1033(e)(2) for the commissioner's written consent to engage or participate in the business of insurance shall be ~~initiated~~ made by filing a request for agency action. The form "Request for Agency Action Re: 18 USC 1033(e) (2)", available on the department's website, shall be used to make the request. The person making the request shall attach to the form all relevant documents that support the request. After completion, the form shall be filed as directed in Sections R590-160-5 or R590-160-~~5-5~~6.

(2) A request for agency action under this rule is a request for a formal adjudicative proceeding and is governed by the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4, and Section R590-160.

(3) The provisions of R590-160 apply to proceedings under this rule.

R590-278-3. Hearing on Request for Agency Action.

(1) A presiding officer shall conduct a hearing on the merits of a request for agency action under this rule.

(2) After the hearing, the presiding officer shall submit to the commissioner the record of the proceeding, recommended findings of fact and conclusions of law, and a recommended order.

(3) The commissioner shall consider the presiding officer's recommendations and then issue [final F] findings of [F] fact and [C] conclusions of [L] law and an [final O] order which constitute final agency action ~~[that is not subject to agency review]~~.

(4) A party may submit to the commissioner a written request for reconsideration of the final agency action. The request is governed by Section 63G-4-302 and must be submitted within 20 days of the date of the final agency action.

(5) A party may seek judicial review of the final agency action as provided in the Utah Administrative Procedures Act, Title 63G, Chapter 4.

R590-278-4. Determining ~~Consent~~ Request for Consent.

Written consent may be granted if, in the commissioner's sole discretion, a preponderance of the evidence shows that the petitioner is trustworthy to engage or participate in the business of insurance. The petitioner bears the burden of production of evidence and the burden of persuasion. The following are relevant to ~~that determination~~ determining whether written consent will be granted:

- (1) Any materially false or misleading statement or omission in the request for agency action;
- (2) The nature, severity, and number of the petitioner's crimes;
- (3) The petitioner's age at the time the crimes were committed;
- (4) ~~The [lengths of the sentences]~~ petitioner's punishment for the crimes;
- (5) The length of time since the petitioner's most recent conviction;
- (6) The petitioner's rehabilitation, including evidence of counseling, community service, completion of probation, and payment of restitution, fines, and interest if applicable;
- (7) ~~[Any]~~ Current reference letters;
- (8) The presence of any fact or circumstance in the petitioner's current life that may have motivated the petitioner to commit crime in the past;
- (9) Any unpaid judgment;~~[-or]~~
- (10) If the petitioner intends to apply for an insurance license, the duties of a holder of that type of license;
- (11) The extent to which the petitioner, if granted a license, will work under the supervision of another licensee or another person;
- (12) The petitioner's trustworthiness in employment, community service, or other endeavors since the most recent conviction;
- (13) Information received from the National Association of Insurance Commissioners and any insurance regulatory official;
- (14) Whether the petitioner has had any occupational or professional licenses, certifications, or designations revoked and, if so, the basis for the revocation; and
- (15) Whether the petitioner has previously requested written consent in any jurisdiction and, if so, the outcome of that request.

R590-278-5. Severability.

If any provision ~~[or clause]~~ of this rule or its application to any person or situation is held to be invalid, that invalidity ~~[may]~~ shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

Date of Enactment or Last Substantive Amendment: ~~[December 24, 2018]~~ **2019**

Authorizing, and Implemented or Interpreted Law: 31-A-23a-111(5)(b); 31A-2-201(3)

Insurance, Administration
R590-281
 License Applications Submitted by
 Individuals Who Have a Criminal
 Conviction

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 43696

FILED: 05/01/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule codifies a standard for issuing an insurance license to individuals who have been convicted of or pleaded no contest to any felony, or to a misdemeanor involving fraud, misrepresentation, theft, or dishonesty.

SUMMARY OF THE RULE OR CHANGE: To be eligible to apply for an insurance license, an individual who has been convicted of or pleaded no contest to any felony, or to a misdemeanor involving fraud, misrepresentation, theft, or dishonesty must have first: 1) paid all fines and restitution; and 2) waited a specified period of time based on the type of conviction. An individual who has been convicted of violating 18 U.S.C. Sec. 1033, or who has been convicted of a felony involving dishonesty or breach of trust, may not apply for a license without obtaining written consent to engage or participate in the business of insurance as provided in Section R590-278-1 et seq.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. This rule merely codifies an informal practice that the Insurance Department (Department) has used when considering approving a license for an individual who has a criminal conviction.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. This rule merely codifies an informal practice that the Department has used when considering approving a license for an individual who has a criminal conviction.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule merely codifies an informal practice that the Department has used when considering approving a license for an individual who has a criminal conviction.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to any other persons. This rule merely codifies an informal practice that the Department has used when considering approving a license for an individual who has a criminal conviction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for any affected persons. This rule does not represent a change in how the Department conducts its business; this rule is similar to informal practices that the Department has followed for many years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Steve Gooch, Information Specialist

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits	FY 2019	FY 2020	FY 2021
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This proposed new rule is not expected to have any fiscal impacts on non-small businesses revenues or expenditures, because it deals with how individuals who have criminal convictions interact with the Insurance Department. Non-small businesses will not be affected by this rule.

The head of the Insurance Department, Commissioner Todd E. Kiser, has reviewed and approved this fiscal analysis.

R590. Insurance, Administration.

R590-281. License Applications Submitted by Individuals Who Have a Criminal Conviction.

R590-281-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3) which authorizes the commissioner to adopt rules to implement the provisions of Title 31A.

R590-281-2. Purpose and Scope.

(1) This rule sets eligibility requirements for license applicants who have a criminal conviction.

(2) This rule applies to license applicants who have a criminal conviction.

R590-281-3. Definitions.

The following definitions shall apply for the purpose of this rule:

(1) "License" means an initial, a renewal, or a reinstated resident individual or resident agency insurance license issued by the commissioner; and

(2) "Proceeding" means a criminal proceeding, including one involving a plea in abeyance, or a regulatory enforcement proceeding.

R590-281-4. Eligibility to Apply for a License.

(1) Except as provided in Subsections (2) and (3), and except in the case of a juvenile adjudication, an individual who has been convicted of or pleaded no contest to a felony or a misdemeanor involving fraud, misrepresentation, theft, or dishonesty is eligible to apply for a license if:

(a) the individual has paid in full all fines and interest ordered by the court related to the conviction;

(b) the individual has paid in full all restitution ordered by the court related to the conviction; and

(c) the following time periods have elapsed from the date the individual was convicted or released from incarceration, parole, or probation, whichever occurred last:

(i) seven years in the case of a felony;

(ii) five years in the case of a class A misdemeanor;

(iii) four years in the case of a class B misdemeanor; or

(iv) three years in the case of any other misdemeanor.

(2) An individual may not apply for a license if a proceeding is pending against the individual.

(3)(a) An individual who has been convicted of violating the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, or who has been convicted of a felony involving dishonesty or breach of trust, may not apply for a license without first obtaining written consent from the commissioner to engage or participate in the business of insurance as provided in R590-278.

(b) An individual who obtains written consent under R590-278 may apply for a license. That individual remains subject to all other license application requirements.

(4) The department will deny a license application submitted by an individual who is not eligible under this Section.

R590-281-5. Enforcement Date.

The commissioner will begin enforcing this rule when it takes effect.

R590-281-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, licensing

Date of Enactment or Last Substantive Amendment: 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201(3)

Public Safety, Emergency Management **R704-1**

Search and Rescue Financial Assistance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43668

FILED: 04/26/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change to the Utah Search and Rescue Financial Assistance Program rule, is to reflect the updates to the defined family group within the Utah Search and Rescue Assistance (USARA) Card program, as well as update the fee schedule of the "organized group" USARA card option, specific to medium and large size groups. Both of these changes were proposed and confirmed by the Utah Search and Rescue Advisory Board which oversees all matters found within the Utah Search and Rescue Financial Assistance Program.

SUMMARY OF THE RULE OR CHANGE: Within the Search and Rescue Financial Assistance Program, there are two proposed changes. First, updating the definition for "family" pertaining to the Utah Search and Rescue Assistance Card program. This change was suggested by the Utah Search and Rescue Advisory Board which oversees the Search and Rescue Financial Assistance Program, as well as the Utah Search and Rescue Assistance Card. The updated family definition will include any members who may be living within the household to include relatives or those co-habiting, working to further include the various households represented

within the State of Utah. The second proposed rule amendment is increased fee schedule for "organized groups" pertaining to the Utah Search and Rescue Assistance Card program. The Search and Rescue Advisory Board proposed increasing the charged fee for medium (25-50 persons) and large (51 persons and more) organized groups. The increase is due to the number of persons that may be included in the purchase of an "organized group" Utah Search and Rescue Assistance Card.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-2a-1102

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** State government will receive an inestimable direct fiscal benefit in regards to the proposed update to the organized group fee schedule. Since these changes have not yet been officially enacted, there is no data to support this fiscal impact analysis. State government will receive a direct fiscal benefit specific to the changed family definition. Based on USARA family card purchases in 2018, this generated a revenue of \$12,250 to the Utah Search and Rescue Financial Assistance Program. With broadening the definition of the family card option, this may influence additional families to purchase the USARA card to assist them in their outdoor recreation activities.

◆ **LOCAL GOVERNMENTS:** Local governments will be inestimable indirect fiscal benefit in regards to both proposed amendments within the Utah Search and Rescue Financial Assistance Program. Local sheriffs' offices that participate in the Financial Assistance Program, may receive additional reimbursement funds, if increased USARA card purchases occur. Since county sheriff participation and the formula to which reimbursement funds are submitted varies year to year, this fiscal benefit cannot be quantified because the relevant data is unavailable and the cost of acquiring the relevant data is prohibitively expensive.

◆ **SMALL BUSINESSES:** Small businesses will receive an inestimable indirect fiscal benefit in regards to both proposed amendments within the Utah Search and Rescue Financial Assistance Program. The potential for increased tourism throughout Utah based on the purchase of the USARA card, small businesses throughout the state may receive additional sales. Since the information relies on variable data, this fiscal benefit cannot be quantified because the relevant data is unavailable and the cost of acquiring the relevant data is prohibitively expensive.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Citizens and organized groups will receive a direct fiscal costs and benefits in regards to both proposed amendments within the Utah Search and Rescue Financial Assistance Program. Families that purchase the Utah Search and Rescue Assistance Card, may now include co-habiting and other relatives up to 10 persons, on their family card totaling \$35 annually or \$140 for a 5-year option. These individuals will receive a direct fiscal benefit, as this option now allows families to include more individuals under the same price point. Medium (25-50 persons) and Large (50 and more

persons) Organized groups will receive a direct fiscal cost as the USARA card fee schedule has increased from \$70 to \$100 for Medium sized groups, and an increase from \$100 to \$200 for Large groups. Based on sales of the family USARA card in 2018, the revenue totals \$12,250 to the Utah Search and Rescue Financial Assistance Program. There have been no organized group USARA cards purchased at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In order for affected persons to remain in compliance with the proposed amendments to the Utah Search and Rescue Financial Assistance Program when purchasing cards after the rule becomes effective, the following costs will be incurred: Family's purchasing the USARA card annually, \$35 or \$140 for a purchase covering 5 years. Medium sized organized groups (25-50 person) \$100 annually. Large sized organized groups (50 or more persons) \$200 annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Due to a potential increased purchase of the family search and rescue assistance card, it is deemed that both small and non-small businesses could experience an indirect fiscal benefit in connection with a potential increase in tourism. This fiscal benefit cannot be quantified because the relevant data is unavailable and the cost of acquiring the relevant data is prohibitively expensive. The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 EMERGENCY MANAGEMENT
 ROOM 1110 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
 ♦ Tara Behunin by phone at 801-538-3426, by FAX at 801-538-3770, or by Internet E-mail at tarabehunin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Kris Hamlet, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:			
	\$0	\$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

Due to a potential increased purchase of the family search and rescue assistance card, it is deemed that non-small businesses could experience an indirect fiscal benefit in connection with a potential increase in tourism.

This fiscal benefit cannot be quantified because the relevant data is unavailable and the cost of acquiring the relevant data is prohibitively expensive.

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R704. Public Safety, Emergency Management.

R704-1. Search and Rescue Financial Assistance Program.

R704-1-1. Purpose.

The purpose of this rule is to set forth the procedures for obtaining reimbursement from the program for costs and expenses related to SAR activities in accordance with Title 53, Chapter 2, Part 11 and to provide for the administration of the assistance card program.

R704-1-2. Authority.

This rule is authorized by Section 53-2a-1102(7) which requires the division, with the approval of the board, to make rules for the administration of the program and the assistance card program.

R704-1-3. Definitions.

(1) Terms used in this rule include those found in Section 53-2a-1102.

(2) In addition:

(a) "board" means the Search and Rescue Advisory Board created in Section 53-2a-1103;

(b) "division" means the Utah Department of Public Safety, Division of Emergency Management created in Section 53-2a-103;

(c) "eligible expense" means the costs and expenses related to SAR activities that the board has determined are reimbursable expenses under Subsection 53-2a-1102(1) and meet the eligibility requirements in Section R704-1-5;

(d) "equipment" means items used by SAR personnel while conducting SAR activities;

(e) "family" means an individual, his or her spouse or partner, and his or her minor children, or up to ten related or cohabitating individuals;

(f) "individual" means a single person;

(g) "maintenance" means materials and services that keeps equipment functional and continue its service life;

(h) "organized group" means multiple individuals who are members of a chartered or sponsored unit, club, team, or similar entity;

(i) "program" means the Search and Rescue Financial Assistance Program;

(j) "SAR" means search and rescue;

(k) "SAR activity" means all activities related to search and rescue including SAR training, the purchase or upgrade of SAR equipment, and the deployment to a SAR incident;

(l) "SAR incident" means an incident, not associated with criminal or law enforcement activity, for which a search and rescue team are deployed to search for and rescue victims;

(m) "training" means instruction that teaches or enhances skills directly related to SAR; and

(n) "upgrade" means materials and services that enhance the function of equipment.

R704-1-4. Application Process for Reimbursement for SAR Activities.

(1) A county seeking reimbursement for SAR costs and expenses paid by it for search and rescue activities shall submit a separate application packet for each SAR activity to the division.

(2) The application packet shall be submitted within 45 days from the date of a SAR activity in order to be considered timely.

(a) If the SAR activity occurred within 45 days prior to July 1st and the county anticipates that it will submit the application packet after July 1st, then the county shall submit a Notice to Seek Reimbursement form as soon as possible after the SAR activity.

(3) The application packet shall include:

(a) a completed Utah Search and Rescue Financial Assistance Application Form provided by the division; and

(b) documentation showing the costs and expenses paid by the county, including copies of invoices, checks, and receipts.

(i) If a county is unable to obtain a receipt or invoice within the 45 day application packet due date, then that period may be extended an additional 45 days. The county shall provide written notification in the application packet that it has been unable to obtain the receipt or invoice.

(4) The county sheriff shall sign the application with an original signature. A designee may sign the application in place of the sheriff in extenuating circumstances that shall be documented to the division.

R704-1-5. Review Process and Eligible ~~[Expnses]~~Expenses.

(1) The board shall meet as required in Section 53-2a-1104 to review the application packets which have been received by the division and determine whether the costs and expenses sought are eligible for reimbursement from the program.

(2) When making this determination, the board shall consider whether the costs and expenses sought are:

(a) reasonable in light of the type of services or equipment provided;

(b) reasonable in light of the market value for the services or equipment provided;

(c) excludable as salary or overtime pay;

(d) necessary or appropriate for conducting the type of SAR activity for which reimbursement is sought;

(e) reasonably related to or caused by the utilization of the subject equipment in SAR activities;

(f) an unjust or improper enrichment of the owner of the subject equipment; and

(g) incidental to SAR activities:

(i) food is an eligible expense if used exclusively for SAR activities. If food is used for a specific SAR activity, it shall be considered an expense related to the activity. If food is purchased to restock supplies, it shall be considered an equipment purchase;

(ii) clothing is an eligible expense if it marks and readily identifies the wearer as SAR personnel or is an outer garment that serves a specialized function;

(iii) fuel is an eligible expense if used exclusively for SAR activities;

(iv) mileage is an eligible expense in place of fuel reimbursement if the miles driven were exclusively for a SAR activity. The county shall provide documentation that justifies the mileage reimbursement requested;

(v) membership fees to SAR-related organizations is not an eligible expense;

(vi) equipment maintenance is not an eligible expense; and

(vii) medical expenses and transportation by ground or air ambulance are not eligible expenses;

(viii) expenses for the rescue of pets or other domestic animals is not an eligible expense.

R704-1-6. Distribution Process.

(1) After the conclusion of the fiscal year, the board shall meet to consider the following information for the prior fiscal year:

(a) the total amount of money available in the program;

(b) each county's eligible expenses;

(c) the total number of SAR incidents which occurred per each county population, described in the form of a ratio;

(d) the number of victims residing outside of each county, described in the form of a percentage;

(e) the number of volunteer hours spent in each county in emergency response and SAR activities per county population, described in the form of a ratio; and

(f) which applications were received in a timely manner.

(2) The following formula shall be applied to the eligible expenses to determine a fair and equitable distribution of money from the program:

(a) if the total amount of eligible expenses is less than the amount of money available in the program, all of the eligible expenses shall be reimbursed from the program; and

(b) if the total amount of eligible expenses is more than the amount of money available in the program, the eligible expenses shall be divided into the following categories and be reimbursed in the order in which they appear:

(i) costs and expenses related to SAR incidents;

(ii) SAR-related training; and

(iii) the purchase or upgrade of SAR equipment.

(3) If there is an insufficient amount of money available in the program to cover the eligible expenses in any one of the listed categories, the amount of money remaining in the program shall be divided by the total number of counties.

(4) A county may receive a percentage of the money that is allocated to each county as determined by calculating a percentage from the following point totals:

(a) each county shall receive up to 25 points for the timely submission of application packets, with one point to be deducted for each late application;

(b) each county may receive up to 25 points, based on the number of SAR incidents occurring per county population as determined by the following ratios:

(i) 5 points if the ratio is less than 1:750;

(ii) 10 points if the ratio is equal to or greater than 1:750 but less than 1:500;

(iii) 15 points if the ratio is equal to or greater than 1:500 but less than 1:250;

(iv) 20 points if the ratio is equal to or greater than 1:250 but less than 1:100; and

(v) 25 points if the ratio is equal to or greater than 1:100;

(c) each county may receive up to 25 points based on the percentage of victims residing outside of the subject county as determined by the following percentages:

(i) 5 points if the percentage is less than 20%;

(ii) 10 points if the percentage is 20% or greater but less than 40%;

(iii) 15 points if the percentage is 40% or greater but less than 60%;

(iv) 20 points if the percentage is 60% or greater but less than 80%; and

(v) 25 points if the percentage is 80% or greater; and

(d) each county may receive up to 25 points based on the number of volunteer hours spent in each county in emergency response and SAR activities per county population as determined by the following ratios:

(i) 5 points if the ratio is greater than 1:100 but less than 1:50;

(ii) 10 points if the ratio is equal to or greater than 1:50 but less than 1:25;

(iii) 15 points if the ratio is equal to or greater than 1:25 but less than 1:10;

(iv) 20 points if the ratio is equal to or greater than 1:10 but less than 1:5; and

(v) 25 points if the ratio is equal to or greater than 1:5.

(5) The formula in this rule shall be applied to each of the categories until the amount of money left in the program makes it impractical to continue.

(6) The remaining money in the program shall be used to:

(a) cover the board's costs and expenses; and

(b) reimburse eligible expenses in the next fiscal year.

R704-1-7. Procedure to Obtain or Renew a Card and Fee Schedule.

(1) An individual, family, or organized group seeking to obtain a card shall apply through the Utah Office of Outdoor Recreation's website and pay the applicable fee.

(2) The fee schedule is:

(a) \$25 for an individual annual card or \$100 for an individual five-year card;

(b) \$35 for a family annual card or \$140 for a family five-year card; ~~and~~

(c) \$50 for a small group annual card for up to ~~25~~24 individuals;

(d) ~~\$70~~\$100 for a medium group annual card for ~~up to~~25 to 50 individuals; ~~and~~

(e) ~~\$100~~\$200 for a large group annual card for ~~up to~~75]51 or more individuals; ~~and~~

~~]~~ ~~(f) \$125 for a group annual card for up to 100 individuals;~~

(3) The division shall discount the fee by 10% to an individual who has paid fees under Section 23-19-42, 41-22-34, or 73-18-24 in the same calendar year as his or her application for an individual or family card.

(4) Cards are valid from the date of issuance and remain valid for one year for annual cards and five years for five-year cards.

(5) An individual, family, or organized group may renew a card by applying online through the Utah Office of Outdoor Recreation's website and pay the applicable fee.

(6) The board shall review the fee schedule annually and recommend fee changes to the division.

KEY: search and rescue, financial reimbursement, expenses
Date of Enactment or Last Substantive Amendment: ~~December 1, 2015~~2019
Notice of Continuation: July 7, 2014
Authorizing, and Implemented or Interpreted Law: 53-2a-1102

**Public Safety, Criminal Investigations
 and Technical Services, Criminal
 Identification
 R722-900
 Access to Bureau Records**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43665

FILED: 04/24/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes made to the FBI Criminal Justice Information System (CJIS) policy require that a fingerprint background check be completed before access to CJIS information or unescorted access to secure or controlled locations where CJIS information is maintained is granted to an employee of an agency as defined in Section R722-900-3. The new requirement is being incorporated into the rule.

SUMMARY OF THE RULE OR CHANGE: Vendor entity has been added to the definition of "agency"; specifies that the background check is required prior to an individual being granted access to CJIS information rather than allowing the background check to be completed within 30 days after access has already been granted; adds requirement for a terminal agency coordinator (TAC) to notify the bureau if their agency intends to employ an individual with a criminal history prior to access to CJIS information being activated; and adds authorization to suspend or revoke access if an employee violates any provision contained within the applicable signed agreement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-10-102 and Section 53-10-108

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** BCI does not anticipate any costs or savings to the state budget as a result of this administrative rule change because a background check is already required in order to obtain access to CJIS information. This rule change only specifies that the background check is required prior to an individual being granted access to CJIS information rather than allowing the background check to be completed within 30 days after access has already been granted.

◆ **LOCAL GOVERNMENTS:** BCI does not anticipate any costs or savings to local governments as a result of this administrative rule change because a background check is already required in order to obtain access to CJIS information. This rule change only specifies that the background check is required prior to an individual being granted access to CJIS information rather than allowing the background check to be completed within 30 days after access has already been granted.

◆ **SMALL BUSINESSES:** BCI does not anticipate any costs or savings to small businesses as a result of this administrative rule change because a background check is already required in order to obtain access to CJIS information. This rule change only specifies that the background check is required prior to an individual being granted access to CJIS information rather than allowing the background check to be completed within 30 days after access has already been granted.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** BCI does not anticipate any costs or savings to persons other than small businesses, businesses or local government entities as a result of this administrative rule change because a background check is already required in order to obtain access to CJIS information. This rule change only specifies that the background check is required prior to an individual being granted access to CJIS information rather than allowing the background check to be completed within 30 days after access has already been granted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: BCI does not anticipate any compliance costs for affected persons as a result of this rule amendment because those who are required to obtain a background check are already required to pay a fee for this service. The rule only specifies that the background check is required prior to obtaining access to CJIS information, rather than within 30 days after access has been granted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no small or non-small businesses in Utah that will be impacted by this rule change because the only change being made in this rule is a change to the time frame in which a background check is conducted for an individual who is required to have a background check in order to access CJIS information. This rule change will not impact the fees already required to obtain a background check. The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL
SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Willmore by phone at 801-965-4533, or by Internet E-mail at gwillmor@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
◆ Nicole Borgeson by phone at 801-281-5072, or by Internet E-mail at nshepherd@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Greg Willmore, Division Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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

There are no non-small businesses in Utah that will be impacted by these rule changes because the only change being made in this rule is a change to the time frame in which a background check is conducted for an individual who is required to have a background check in order to access CJIS information. These rule changes will not impact the fees already required to obtain a background check.

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-900. Access to Bureau Records.

R722-900-1. Purpose.

The purpose of this rule is to establish procedures whereby criminal justice agencies, qualified entities, and individuals may obtain access to bureau records.

R722-900-2. Authority.

This rule is authorized by Subsections 53-10-108(9) and (10).

R722-900-3. Definitions.

(1) Terms used in this rule are found in Section 53-10-102.

(2) In addition:

(a) "agency" means a criminal justice agency as defined in Subsection 53-10-102(9) and 28 U.S.C. Subsection 534(e), a vendor entity, or a non-criminal entity authorized to access CJIS under state or federal law;

(b) "bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "CJIS" means the Criminal Justice Information System administered by the FBI;

(d) "entity" means an entity qualified to access criminal history information under state or federal law;

(e) "entity id" means an entity's unique identifier that is used to access criminal history information;

(f) "FBI" means the Federal Bureau of Investigation within the United States Department of Justice;

(g) "login id" means a unique identifier in UCJIS for a user or non-user;

(h) "misuse" means the access, use, disclosure, or dissemination of records for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity;

(i) "NCIC" means the National Crime Information Center;

(j) "non-user" means a person working for or with an agency, who does not have direct access to UCJIS but has indirect access to records, including individuals who may:

(i) access computer systems or programs used to access UCJIS files; or

(ii) have unrestricted access to a location containing UCJIS records or a computer with UCJIS access;

(k) "ORI" means originating agency identifier;

(l) "provider" means a law enforcement agency as defined in Subsection 53-1-102(1)(c), the Utah Attorney General's Office, a county attorney's office, a district attorney's office, or a city prosecutor's office;

(m) "records" means records created, maintained, or to which access is granted by the bureau, including criminal history information;

(n) "right of access program" means a program established under Subsection 53-10-108(9) in which a provider makes an individual's UCH and warrant of arrest information available to the subject of the record;

- (o) "TAC" means an agency's terminal agency coordinator;
- (p) "UCH" means Utah Criminal History;
- (q) "UCJIS" means Utah Criminal Justice Information System, which includes the Criminal Justice Information System; and
- (r) "user" means a person working for or with an agency who has direct access to UCJIS or who obtains UCJIS records from a person who has direct access.

R722-900-4. Direct Access to UCJIS for Agencies.

(1) An agency seeking direct access to UCJIS shall submit a completed Criminal Justice Agency Application Packet to the bureau.

(2)(a) The bureau shall submit the agency's information to the FBI, which shall determine whether the agency meets the requirements for access to CJIS records established by the FBI.

(b) If the FBI determines the agency is entitled to access any CJIS records, the FBI shall assign the agency an ORI and the bureau shall notify the agency in writing what records it may access on UCJIS using the assigned ORI.

(c)(i) If the FBI determines that the agency is not entitled to access records on CJIS, the bureau shall notify the agency of the FBI's decision and refer the agency to the agencies whose records are available on UCJIS to determine if the agency may have access to those records.

(ii) If the agency is granted access to any records on UCJIS, the bureau shall assign the agency an ORI and notify the agency in writing which records the agency may access using that ORI.

(iii) If the agency is not entitled to access any records on UCJIS, the bureau shall notify the agency in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Within 30 days after an agency is granted access to records on UCJIS, it shall submit the following documents to the bureau:

(i) a Criminal Justice Agency Agreement, signed by the agency administrator; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for the TAC, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

(b) The bureau shall conduct a fingerprint-based criminal history background check of the TAC.

(c) If the bureau determines that the TAC meets all the requirements for access to UCJIS, the TAC shall complete the new TAC orientation training provided by the bureau within six months.

(d) If the bureau determines that the TAC does not meet the requirements for access to UCJIS, the bureau shall notify the agency and the TAC in writing including notice of the right to appeal pursuant to R722-900-10.

(4)(a) The agency TAC ~~shall~~ may conduct a criminal history check using the name and date of birth of each user or non-user at the agency when making determination concerning employment by the agency.

(b) ~~If the criminal history check indicates that the user or non-user does not have any criminal history, t]~~ The TAC shall create an account on UCJIS and assign the user or non-user a login id.

(c) ~~Within 30 days of assigning a login id to a user or non-user, the TAC shall submit to the bureau:]~~ Before a user or non-user is allowed unescorted access to CJIS information or unescorted access to secure or controlled locations with CJIS information, the individual must be approved by the bureau to access CJIS information.

~~(d) In order to obtain approval to access CJIS information, the TAC must submit to the bureau:~~

(i) a UCJIS User Agreement for each user and non-user; and

(ii) a CJIS fingerprint submission form with a legible FD258 fingerprint card for all users and non-users employed at the agency, which shall be retained in the FBI Rap Back System in accordance with Subsection 53-10-108(14).

~~(e)~~ (e) The bureau shall conduct a fingerprint-based criminal history background check for all users and non-users employed at the agency.

~~(f)~~ (f) If the bureau determines that a user or non-user meets the requirements for access to CJIS, the bureau shall notify the TAC that the user or non-user has been approved.

~~(g) If the individual is approved by the bureau, but has a criminal record, the agency TAC shall notify the bureau that it intends to employ the individual before access to CJIS may be activated.~~

~~(h)~~ (g) If the bureau determines a user or non-user does not meet the requirements for access to CJIS, the bureau shall notify the user or non-user, the TAC, and the agency administrator in writing which includes the right to appeal pursuant to R722-900-10.

(5)(a) Within six months of assigning a login id to a user or non-user, the TAC shall train the user or non-user in accordance with the BCI Operations Manual.

(b) Upon completion of the training, the TAC shall administer a test to the users and submit to the bureau a signed testing agreement form from each user indicating that the user passed all of the required training and testing.

(6)(a) The TAC shall attend the annual TAC training meeting and provide updates to all users and non-user at the agency based on the training.

(b) The TAC shall be responsible for ensuring that all users or non-users at the agency complete all training required by the bureau.

(c) The TAC shall be responsible for ensuring that all users at the agency complete all re-testing required by the bureau.

(d) The bureau may suspend or revoke a TAC's, user's, non-user's access to records if the TAC, user, or non-user fails to complete the required training or testing.

R722-900-5. Access for Entities.

(1)(a) An entity seeking access to criminal background check information for employment background checks or other screening purposes shall submit a completed Qualified Entity Application Packet to the bureau, which includes the following:

(i) a Qualified Entity Application Form;

(ii) documentation that it is a business, organization, or governmental entity that is qualified to access criminal background check information;

(iii) a description of why the entity is seeking to conduct employment background checks or other screenings;

(iv) billing information; and

(v) contact information for:

(A) the entity's administrator; and

(B) a point of contact.

(2)(a) The bureau shall review the entity's application to determine whether the entity meets the requirements for access to criminal background check information found in state or federal law.

(b) The bureau may request additional documentation from the entity to verify whether the entity is qualified to access criminal history information.

(c) If the bureau determines that an entity is qualified to access criminal background check information, it shall notify the entity in writing and assign it an entity id.

(d) If the bureau determines the entity is not qualified to access criminal background check information, the bureau shall notify the entity of the bureau's decision in writing and provide notice of the right to appeal pursuant to R722-900-10.

(3)(a) Once an entity has been granted access to criminal background check information, it shall submit the following documents to the bureau:

(i) a Qualified Entity Agreement, signed by the entity administrator; and

(ii) a signed Qualified Entity Employee Agreement for each employee of the entity who will have access to criminal background check information.

(b) Any employee of the entity who has access to criminal background check information shall successfully complete all training and testing required by the bureau.

(c) The bureau may suspend or revoke access to criminal background check information if an employee of an entity fails to complete the required training and testing or violates any provision contained within the signed Qualified Entity Agreement or signed Qualified Entity Employee Agreement.

R722-900-6. Individual Right of Access.

(1) An individual may review his or her own criminal history record information contained in a UCH, by submitting a completed Criminal History Record Application to the bureau along with:

(a) a set of fingerprints which have been verified with photo identification at the time the fingerprints were taken;

(b) a copy of a government issued photo identification; and

(c) payment of the processing fee required by Subsection 53-10-108(9)(b).

(2)(a) An individual may challenge the completeness and accuracy of the information contained in the individual's UCH by submitting a completed Application to Challenge Criminal History Records to the bureau along with:

(i) the challenge fee; and

(ii) documentation to establish what information is missing or incorrect on the UCH.

(b) The challenge process shall be an informal adjudicative proceeding under Section 63G-4-203.

(c)(i) If the bureau determines that the individual's criminal history record information is incomplete or inaccurate, the bureau shall amend the UCH.

(ii) The bureau shall send the individual a letter notifying the individual of the changes made to the individual's UCH and a copy of the individual's corrected UCH.

(d)(i) If the bureau determines that the criminal history record information is correct, the bureau shall notify the individual in writing that the UCH shall not be amended.

(ii) An individual may appeal the bureau's decision not to amend a record to district court in accordance with Section 63G-4-402.

(e) If the bureau determines that the individual seeking to challenge the information in the UCH is not the subject of the record, the bureau shall notify the individual in writing.

R722-900-7. Right of Access Programs.

(1) A provider seeking to establish a right of access program shall submit a completed Right of Access Contract.

(2)(a) The bureau shall review the Right of Access Provider Contract to determine whether the provider may conduct a right of access program.

(b) The bureau may request additional information from the provider to determine whether the provider may conduct a right of access program.

(c) If the bureau determines that a provider is qualified to conduct a right of access program, it shall notify the provider in writing.

(d) If the bureau determines the provider is not qualified to conduct a right of access program, it shall notify the provider of the bureau's decision in writing.

R722-900-8. Audits.

(1)(a) All agencies and entities shall submit to audits conducted by the bureau.

(b) Upon request, an agency and entity shall complete the Pre-audit Request within 30 days from the date it is sent by the bureau.

(c) An agency and entity shall complete the Audit Survey within 30 days from the date it is sent out by the bureau.

(d) The bureau shall review the information submitted by the agency and entity to determine if the agency and entity is in compliance with applicable state and federal statutes, rules, and regulations.

(e) The bureau shall notify the agency and entity of the audit results in writing and give the agency, entity, or provider an opportunity to rectify any issues it found during the audit.

(f) The bureau may suspend or revoke an agency's access to UCJIS or an entity's access to criminal background check information if it fails to comply with the audit or rectify issues found during the audit.

R722-900-9. Misuse.

(1) Anyone who has reason to believe that records have been misused may submit a written complaint to the bureau.

(2)(a) The bureau shall conduct a review of its records to determine if there is any evidence to support the complaint.

(b) If the bureau finds evidence indicating records may have been accessed, used, disclosed, or disseminated, the bureau shall notify the agency TAC or entity point of contact and request that an internal review be conducted.

(3) The agency or entity shall be responsible for conducting an internal review to determine if there has been misuse of a record and submit its findings to the bureau within 30 days.

(4)(a) If the agency or entity determines there was misuse, the agency or entity shall submit a corrective action plan to the bureau.

(b) The bureau shall review the corrective action plan to determine if the action taken by the agency or entity was sufficient to address the misuse.

(5) If the bureau finds that an agency, entity, TAC, user, non-user, or employee of an agency or entity misused records, the bureau may:

(a) suspend or revoke the access of the agency, entity, TAC, user, non-user, or employee of an agency or entity; and

(b) refer the matter to the appropriate law enforcement agency for investigation and prosecution.

(6) The bureau may suspend or revoke access to records by an agency, entity, TAC, user, non-user, or employee of an agency or entity if the agency, entity, TAC, user, non-user, or employee of an agency or entity fails to comply with any terms of the signed agreement.

R722-900-10. Appeal.

(1)(a) An agency or entity denied access to records may appeal the bureau's decision by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(b) An agency or entity may appeal the bureau's decision to deny a TAC, user, or non-user access to records by sending a written request for review to the bureau within 30 days of the date of the denial of access.

(2) A request for review shall include:

(a) a description of the grounds for review; and

(b) supporting documentation.

(3)(a) The bureau director or the director's designee shall review the request for review and issue a written decision within 30 days from the date of the appeal.

(b) If the bureau's decision to deny an agency or entity is upheld, the bureau shall notify the agency or entity of the right to appeal to the district court by complying with the requirements in Section 63G-4-402.

(c) If the bureau's decision to deny a TAC, user, or non-user is upheld, there shall be no further right of appeal.

KEY: access to records, UCJIS, criminal justice agencies, qualified entities

Date of Enactment or Last Substantive Amendment: [December 22, 2015]2019

Notice of Continuation: December 20, 2017

Authorizing, and Implemented or Interpreted Law: 53-10-102; 53-10-108

Public Safety, Peace Officer Standards and Training R728-409

Suspension, Revocation, or Relinquishment of Certification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 43666

FILED: 04/25/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Update information and disciplinary guidelines recently approved by the Peace Office Standards and Training (Post) Council. Outline that a letter of support from a law enforcement administrator should include a description of the agency's form of discipline imposed upon the officer. This

will enable the POST Council to consider all disciplinary remedies as it considers imposing a sanction and an associated time frame. Additionally, explain that all Final Order information will be entered into the National Decertification Index Database.

SUMMARY OF THE RULE OR CHANGE: Provide guidance to POST staff and law enforcement administrators for letters submitted to the POST Council on behalf of an officer facing discipline for misconduct. Administrators should include their agency's disciplinary remedy so the Council can consider all forms of discipline the officer has experienced as it formulates a sanction. Additionally, notify the public that all POST Council disciplines will be entered in the National Peace Officer Decertification Index database once the Final Order is signed by the Council chair.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211 and Section 53-6-211.5 and Section 53-6-311 and Section 63-6-309

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** POST does not anticipate any costs or savings to the State budget as a result of this administrative rule change because this rule only requires a law enforcement administrator to articulate, in a letter of support for the officer in question, what form of discipline was meted out by the employing agency.

♦ **LOCAL GOVERNMENTS:** POST anticipates that there could be costs to local governments as a result of this administrative rule change because the rule change will require a law enforcement administrator to articulate, in a letter of support, for the officer in question, what form of discipline was meted out by the employing agency. This will impact officers that are investigated by POST for violations of Section 53-6-211, and could potentially result in a cost being incurred due to replacing an officer that was sanctioned by the POST Council (these hiring cost vary greatly from agency to agency, therefore, difficult to provide an aggregate number).

♦ **SMALL BUSINESSES:** POST does not anticipate any costs or savings to small business as a result of this administrative rule change because this rule only requires a law enforcement administrator to articulate, in a letter of support for the officer in question, what form of discipline was meted out by the employing agency. This proposed administrative rule change will have zero impact on Utah's small business community.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** POST anticipates that there could be a cost to persons other than small businesses, businesses and local government entities as a result of this rule change. There may be training costs for those officers who receive a four-year sanction because they would be required to go through the academy again to earn a peace officer certification if they desired to be rehired as a law enforcement officer. Therefore, they would encumber the associated training costs if they attend a satellite academy versus being hired and sponsored by a law

enforcement agency. Over the last four years the POST Council has sentenced seven officers with a four-year sanction. The related costs to earn a law enforcement certification range between \$3,200 up to \$6,000 per individual. (Total for seven people to earn a law enforcement certification ranges from \$22,400 to \$42,000).

COMPLIANCE COSTS FOR AFFECTED PERSONS: POST does anticipate compliance costs for the affected person(s) as a result of this administrative rule change. Over the last four years the POST Council has sentenced seven officers with a four year sanction. The related costs to earn a law enforcement certification range between \$3,200 up to \$6,000 per individual. (Total for seven people to earn a law enforcement certification ranges from \$22,400 to \$42,000).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no non-small businesses in Utah that will be impacted by this rule change. The rule change only specifies that a law enforcement administrator is required to articulate, in a letter of support for the officer in question, what form of discipline was meted out by the employing law enforcement agency. The head of the Department of Public Safety, Commissioner Jess Anderson, has reviewed and approved this fiscal analysis.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 PEACE OFFICER STANDARDS AND TRAINING
 410 W 9800 S
 SANDY, UT 84070
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
 ♦ Scott Stephenson by phone at 801-256-2322, by FAX at 801-256-0600, or by Internet E-mail at sstephen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

AUTHORIZED BY: Scott Stephenson, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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

There are no non-small businesses in Utah that will be impacted by this rule change. These rule changes only specify that a law enforcement administrator is required to articulate, in a letter of support for the officer in question, what form of discipline was meted out by the employing law enforcement agency.

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

R728. Public Safety, Peace Officer Standards and Training. R728-409. Suspension, Revocation, or Relinquishment of Certification.

R728-409-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension, revocation, or relinquishment of a respondent's certification.

R728-409-3. Definitions.

- (1) Terms used in this rule are defined in Section 53-6-102.
- (2) In addition:
- (a) "ALJ" means an administrative law judge who conducts administrative hearings as described in Subsections 53-6-211(3) and 53-6-309(3);
- (b) "On duty" means that a respondent is:
- (i) actively engaged in any of the duties of the respondent's employment as a peace officer or dispatcher;
 - (ii) receiving compensation for activities related to the respondent's employment as a peace officer or dispatcher;
 - (iii) on the property of a law enforcement facility, correctional facility or dispatch center;
 - (iv) in a law enforcement vehicle which is located in a public place; or
 - (v) in a public place and is wearing a badge or uniform, authorized by the respondent's employer, which readily identifies the wearer as a peace officer or dispatcher;
- (c) "Relinquish" means the permanent deprivation of the respondent's certification, to include any and all peace officer or dispatcher certifications, pursuant to Section 53-6-211.5 or 53-6-311, which precludes a respondent from:
- (i) admission into a training program conducted by, or under the approval of, the division; or
 - (ii) reinstatement or restoration of the respondent's certification by the division;
- (d) "Respondent" means a peace officer or dispatcher against whom the division has initiated an investigation or adjudicative proceeding under Sections 53-6-211 or 53-6-309;
- (e) "Revocation" means the permanent deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications, which precludes a respondent from:
- (i) admission into a training program conducted by, or under the approval of, the division; or
 - (ii) reinstatement or restoration of the respondent's certification by the division;
- (f) "Sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and
- (g) "Suspension" means the temporary deprivation of a respondent's certification, to include any and all peace officer or dispatcher certifications; and,
- (h) "Traffic offense" means all offenses in the following parts:
- (i) 41-6a, Part 3, Traffic-Control Devices;
 - (ii) 41-6a, Part 6, Speed Restrictions;
 - (iii) 41-6a, Part 7, Driving on Right Side of Highway and
- Passing;
- (iv) 41-6a, Part 8, Turning and Signaling for Turns;
 - (v) 41-6a, Part 9, Right-of-Way;
 - (vi) 41-6a, Part 10, Pedestrians' Rights and Duties;
 - (vii) 41-6a, Part 11, Bicycles, Regulations of Operation;
 - (viii) 41-6a, Part 12, Railroad Trains, Railroad Grade
- Crossings, and Safety Zones;
- (ix) 41-6a, Part 13, School Buses and School Bus Parking
- Zones;

- (x) 41-6a, Part 14, Stopping, Standing, and Parking;
- (xi) 41-6a, Part 15, Special Vehicles;
- (xii) 41-6a, Part 16, Vehicle Equipment;
- (xiii) 41-6a, Part 17, Miscellaneous Rules; and
- (xiv) 41-6a, Part 18, Motor Vehicle Safety Belt Usage Act.

R728-409-4. Investigative Procedure.

- (1) The division shall initiate an investigation when it receives information from any reliable source that a violation of Subsections 53-6-211(1) or 53-6-309(1) has occurred, including when:
- (a) A respondent is charged with or convicted of a crime;
 - (b) There is evidence a respondent has engaged in conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;
 - (c) A respondent's employer notifies the division that the respondent has been investigated, disciplined, terminated, retired or resigned as a result of conduct in violation of Subsections 53-6-211(1) or 53-6-309(1);
 - (d) A person makes a complaint regarding a violation of Subsections 53-6-211(1) or 53-6-309(1) and there is independent evidence to support the complaint;
 - (e) violation of Subsections 53-6-211(1) or 53-6-309(1) is reported in the media and there is independent evidence to confirm that the conduct occurred; or
 - (f) A background investigation indicates that a respondent has engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1).
- (2) The division may not investigate conduct which is limited to:
- (a) A violation of an employer's policy or procedure; or
 - (b) Sexual activity protected under the right of privacy recognized by the United States Supreme Court in *Lawrence v. Texas*, 539 U.S. 558 (2003).
- (3) A person seeking to file a complaint against a respondent may be asked to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.
- (4) An investigator from the division shall be assigned to investigate the complaint and ensure that the investigation is fully documented in the investigative case file.
- (5)(a) If a respondent under investigation is employed as peace officer or dispatcher, the division shall notify the respondent's employer concerning the complaint or investigation, unless the nature of the complaint would make such a course of action impractical.
- (b) The division shall keep a record of the date the employer and the respondent are notified.
- (6) The division shall refer any complaints of a criminal nature against a respondent to the appropriate law enforcement agency having jurisdiction over the crime for investigation and prosecution if such a referral has not already been made.
- (7) If the respondent's employer has an open and active investigation, the division may wait until the employer has completed its investigation before taking action unless the division determines it is not in the public's best interest to delay the investigation.
- (8) The division may use the information gathered by the respondent's employer in its investigation.

(9) The division shall take action based on the actual conduct of the respondent as determined by the division's own independent investigation, not on any findings or sanctions issued by the respondent's employer or the court.

(10) Witnesses and other evidence may be subpoenaed during an investigation pursuant to Sections 53-6-210 and 53-6-308.

(11) If ordinary investigative procedures cannot resolve the facts at issue, a respondent may be requested to submit to a polygraph examination.

(12) The director may immediately suspend a respondent's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

(13) Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

(14) If the division determines there is insufficient evidence to find that a respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the director shall issue a letter to the respondent indicating that the investigation has been concluded and that the division shall take no action.

R728-409-5. Purpose of Adjudicative Proceedings.

(1) The purpose of an adjudicative proceeding is to determine whether there is sufficient evidence to find that the respondent engaged in the conduct alleged in the Notice of Agency Action by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsections 53-6-211(1) or 53-6-309(1).

(2) All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-6. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

(1) Except as provided by 63G-4-502, all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a respondent's certification shall be commenced by the filing of a Notice of Agency Action.

(2) The Notice of Agency Action shall be signed by the director and comply with the requirements of Section 63G-4-201.

(3) The Notice of Agency Action shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-7. Responsive Pleadings.

(1) The respondent shall file a written response with the division, signed by the respondent or the respondent's attorney, within 30 days of the mailing date of the Notice of Agency Action.

(2) The written response shall comply with the requirements in Section 63G-4-204.

R728-409-8. Hearing Waivers.

(1) Once a Notice of Agency Action has been issued, the division shall send a hearing waiver form to the respondent.

(2) The respondent shall have 30 days from the mailing date of the Notice of Agency Action to sign a hearing waiver.

(3)(a) If the respondent does not waive the right to a hearing before the ALJ, the adjudicative proceeding will continue.

(b) The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the respondent does not sign a hearing waiver.

(4) If the respondent signs a hearing waiver and files it with the division, the matter shall be heard at the next regularly scheduled council meeting.

R728-409-9. Default.

(1) The ALJ may enter an order of default against a respondent if:

(a) The respondent fails to file the response required in rule R728-409-7; or

(b) The respondent fails to attend or participate in the hearing.

(2) The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) The order of default shall be filed with the division and a copy sent to the respondent by certified mail.

(4)(a) The respondent may seek to set aside the default order by filing a motion within 90 days from the date of the order of default as provided in Section 63G-4-209.

(b) The ALJ may set aside an order of default for good cause shown.

R728-409-10. Scheduling a Hearing before the ALJ.

(1)(a) If the division receives a responsive pleading from the respondent, a notice containing the location, date and time for the hearing shall be issued by the division.

(b) The notice of hearing shall be filed with the division and a copy sent to the respondent by certified mail.

(2) The hearing shall be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-11. Discovery and Subpoenas.

(1)(a) In formal POST adjudicative proceedings parties may conduct only limited discovery.

(b) A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

(2) Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

(3)(a) The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq.

(b) The division may charge a fee for discovery in accordance with Section 63G-2-203.

(4) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Sections 53-6-210 and 53-6-308, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-12. Hearing Procedures.

(1) All hearings shall be conducted by the ALJ in accordance with Section 63G-4-206.

(2)(a) At the hearing, the respondent has the right to be represented by an attorney.

(b) Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-13. ALJ Decision.

(1) Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which includes a statement of:

(a) The ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

- (b) The ALJ's conclusions of law; and
- (c) The reasons for the ALJ's decision.

(2) If the ALJ determines there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

(3) If the ALJ determines there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsections 53-6-211(1) or 53-6-309(1), the matter shall be dismissed.

(4) The ALJ's decision shall be filed with the division and a copy sent to the respondent by certified mail.

R728-409-14. Action by the Council.

(1) If the respondent waives the right to a hearing with an ALJ, there has been an order of default, or a findings of fact is issued by the ALJ, the division shall present the matter to the council at its next regularly scheduled meeting.

(2) The division shall notify the respondent of the date, time, and location of the council meeting.

(3)(a) Prior to the council meeting, the division shall provide the council with the pleadings contained in the administrative file.

(b) The division shall also provide the council with any written information or comments provided by the respondent's employer.

(c) Any written comments from the respondent's employer should include discipline administered by the respondent's employer as a result of any violation of Section 56-6-211.

(4) At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's certification should be suspended or revoked.

(5) The council shall review the matter and determine whether suspension or revocation of the respondent's certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010 and amended on ~~January 4, 2016~~ June 14, 2018.

R728-409-15. Final Order.

(1) After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

(2) The final order shall indicate the action taken by the council with regards to the respondent's certification and shall include information on the appeal process outlined in R728-409-16.

(3) The council's action shall be effective on the date that the final order is signed by the chairperson.

- (4)(a) The final order shall be filed with the division.

(b) A copy of the final order shall be sent to:

- (i) the respondent by certified mail; and
- (ii) the respondent's employer by regular mail, if the respondent is employed as peace officer or dispatcher.

(c) The action taken by the council shall be entered into the International Association of Directors of Law Enforcement Standards and Training National Peace Officer De-Certification database, if the respondent is a peace officer.

R728-409-16. Judicial Review.

(1) A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

(2) The petition must meet all requirements specified in Sections 63G-4-401 and 63G-4-403.

R728-409-17. Relinquishment Procedures.

(1) At any time after the division receives a complaint that a respondent has engaged in conduct described in Subsections 53-6-211(1) or 53-6-309(1), a respondent who is the subject of the complaint may voluntarily relinquish the respondent's certification by submitting a Relinquishment of Certification form to the division.

(2) The Relinquishment of Certification form must be signed by the respondent and notarized.

(3) As soon as the division receives a properly executed Relinquishment of Certification form, the respondent's certification shall be terminated and the respondent will no longer be a certified peace officer or dispatcher.

(4) Upon the termination of the respondent's certification, the division's investigation into the complaint and any adjudicative proceedings will cease.

(5) Notice of the termination of the respondent's certification shall be provided to:

- (a) The respondent;
- (b) The respondent's employer if the respondent is employed as a peace officer or dispatcher; and

~~[(6)]~~(c) The National Peace Officer De-Certification database administered by the International Association of Directors of Law Enforcement Standards and Training, if the respondent is a peace officer.

R728-409-18. Reporting Violations of 53-6-211(1) or 53-6-309(1).

(1) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who is made aware of an allegation against a certified peace officer or dispatcher employed by that agency as provided in Subsection 53-6-211(6) or 53-6-309(6) shall report the allegation to the division within 90 days if the allegation is found to be true.

(2) A chief, sheriff or administrative officer of an agency employing a certified peace officer or dispatcher who fails to report to the division within 90 days an allegation that is found to be true shall appear before the council at the next regularly scheduled council meeting to explain why the allegation was not reported.

KEY: certifications, investigations, revocations, relinquishments
Date of Enactment or Last Substantive Amendment: ~~November 12, 2015~~ 2019

Notice of Continuation: December 19, 2016

Authorizing, and Implemented or Interpreted Law: 53-6-211; 53-6-211.5; 53-6-309; 53-6-311

or at the Office of Administrative Rules.

Technology Services, Administration
R895-13
Access to the Identity Theft Reporting Information System Database

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Stephanie Weteling by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stephanie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2019

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2019

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 43681

FILED: 04/29/2019

AUTHORIZED BY: Michael Hussey, Executive Director and CIO

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Identity Theft Reporting Information System (IRIS) database no longer operates in the same manner as it did when the rule was originally enacted. The rule was reviewed and it was determined that it is no longer necessary.

SUMMARY OF THE RULE OR CHANGE: The IRIS database no longer operates in the same manner as it did when the rule was originally enacted. This rule is no longer necessary, so it is being repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-5-22(4)(iii)

ANTICIPATED COST OR SAVINGS TO:

- ♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget.
- ♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments.
- ♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses.
- ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to other entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as no one is affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule repeal has no fiscal impact on businesses, as the system no longer operates as previously described. Please see the attached Appendix for fiscal impact table.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TECHNOLOGY SERVICES
 ADMINISTRATION
 ROOM 6000 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2020	FY 2021	FY 2022
State Government	\$0	\$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:	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits:	\$0	\$0	\$0
Net Fiscal Benefits:	\$0	\$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 in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.

Appendix 2: Regulatory Impact to Non-Small Businesses

This rule repeal is not expected to have any fiscal impacts on non-small businesses' revenues or expenditures, because The IRIS database no longer operates in the same manner as it did when the rule was originally enacted. This rule is no longer necessary, so it is being repealed in its entirety.

The head of the Department of Technology Services, Michael Hussey, has reviewed and approved this fiscal analysis.

R895. Technology Services, Administration.

~~[R895-13. Access to the Identity Theft Reporting Information System Database.~~

~~**R895-13-1. Purpose.**~~

~~Pursuant to Utah Code Ann. Subsection 67-5-22(4)(iii) the Identity Theft Reporting Information System (IRIS) database may be accessed by vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office. Approved vendors and government agencies may receive data from IRIS/UCJIS pushed to them via state web services, and they may post data to IRIS/UCJIS via state web services.~~

~~**R895-13-2. Authority.**~~

~~The rule is issued by the Chief Information Officer, with the approval of the Office of the Attorney General under the authority of~~

~~Utah Code Ann. Subsection 67-5-22(3)(a) and Subsection 67-5-22 (4)(iii).~~

~~**R895-13-3. Definitions.**~~

~~(a) "Identity theft" is a crime used to refer to fraud that involves someone pretending to be someone else in order to steal money or get other benefits.~~

~~The terms used in this rule are defined in Section 63G-4-103. In addition, "division" means the Division of Enterprise Services, and "department" means the Department of Technology Services.~~

~~**KEY: IRIS, identify theft**~~

~~**Date of Enactment or Last Substantive Amendment: October 26, 2009**~~

~~**Notice of Continuation: May 5, 2014**~~

~~**Authorizing, and Implemented or Interpreted Law: 63G-4-202; 63F-1-206]**~~

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Agriculture and Food, Plant Industry **R68-27** Cannabis Cultivation

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 43686
FILED: 04/30/2019

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule sets forth the licensing and operational requirements for individuals seeking to cultivate medical cannabis in accordance with Title 4, Chapter 41a, Cannabis Production Establishments.

SUMMARY OF THE RULE OR CHANGE: This proposed rule sets forth the licensing requirements for those interested in competing for a cannabis cultivation facility license. This rule establishes the facility requirements, as well as the additional requirements for the operation plan. The proposed rule establishes minimum requirements for storage and handling of cannabis and the uses and storage of pesticides, fertilizers, and other agricultural chemicals that may be used in the facility. In addition, this proposed rule establishes violation categories with the range of fines that may be assessed for violations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-41a-103(5) and Subsection 4-41a-302(3)(b)(ii) and Subsection 4-41a-404(3) and Subsection 4-41a-405(2)(b)(iv) and Subsection 4-41a-701(2) and Subsection 4-41a-801(1)

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.

JUSTIFICATION: The Utah Department of Agriculture and Food (UDAF) believes emergency rulemaking procedure under Section 63G-3-304 is necessary for the following reasons: Risk of placing UDAF in violation of state law: UDAF is concerned that under the best of circumstances, it will not be able to meet its latest date to comply with the Utah Medical Cannabis Act (UMCA) -- "on or before" March 1, 2020 -- in making medical cannabis available to patients if it cannot employ emergency rulemaking procedure. After the Electronic Verification System has been properly vetted through the RFP and licenses have been issued to cultivators, cultivators must plan, prepare and set up security systems before it can start its four-month growing cycle for its first harvest. Once harvested, all cannabis flowers must be trimmed, dried, and cured prior to patient consumption, and all other cannabis biomass is sent for processing. Depending on the product, either option can require up to two months lead time. Allowing for safe and reasonable operations to

license, prepare, plant, grow, process, and transport a first harvest is estimated at eight months. Imminent public health and welfare concern for patients: Medical cannabis was legalized by referendum because the majority of voters in the state wanted medical cannabis available for suffering patients. The Governor has made it clear through public address in the media that his priority with medical cannabis is to make it available as fast as possible, and as cheaply as possible. In addition to a first harvest, cultivators need time to produce sufficient inventory to meet patient demand. While the UMCA drives a hardened March 1, 2020 date, it likewise contemplates making medical cannabis available prior to that date. Imminent peril to public safety and welfare due to economic harm to licensees: If cultivators are not given sufficient time to properly meet deadlines, they could suffer monetary losses. Imminent peril for public safety and welfare: One of the greatest concerns UDAF has in regulating medical cannabis is diversion. Cultivators need proper set up time for security systems prior to planting. UDAF wishes to avoid concerns of rushed security set up measures which are established by rule. Concerns for meeting operation deadlines rushes a safe and secure process. Emergency rulemaking will provided the needed time for cultivators.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** As this is a new program the state will have the significant start up cost of hiring personnel and buying equipment necessary to effectively run the medical cannabis program. UDAF will need to hire and train employees to inspect these facilities. In addition to inspectors UDAF needs to hire administrative staff to help issue the agent registration cards, to do background checks for all employees and those with 2% or greater financial or voting interest in the cannabis cultivation facility. The inspector will need to be out doing quarterly inspections of the facility and will need the equipment necessary to conduct the inspection. In total, the cost of the employees is estimated at \$360,449.57 for the first year. In addition to the cost of the employees there is \$35,000 cost for the equipment and training for these employees to effectively regulate this product. Transportation cost are anticipated at \$3,600. Additionally, UDAF will need to help with the purchase and upkeep of the electronic verification system as required by Title 4, Chapter 41a. UDAF anticipates contributing at least \$165,000 to maintaining the system as it is key to the program. Total cost in the first year are than anticipated to be \$563,549.57. In the second year, UDAF anticipates that cost will stay much the same with a slight increase in the amount of inspections that are necessary as more of the facilities reach their capacity. There will need to be increased time spent on reviewing records for pesticide or fertilizer use, as well as maintaining records in the inventory control systems and electronic verification system. Due to the increased review of records and inspections, the cost of employees will be \$364,816.52. The other cost will remain the same. The total cost of the second year is anticipated to be \$567,916.52. It may be necessary to hire more inspectors as the program grows in the third year, but UDAF anticipates that the cost for

the program will remain similar to the second year in the third year. UDAF anticipates an application fee of \$10,000 for each applicant. In addition, the successful cannabis cultivation facility will have a \$100,000 licensing fee. By statute, UDAF may not issue more than 10 cannabis cultivation licenses. While UDAF cannot anticipate the number of entities who will apply for a license it is anticipated that there will be at least 10 interested parties. Thus, the amount of revenue generated could be at least \$1,100,000 in application and licensing fees for the first year. The licensee will not have to pay the application fee after having successfully received a license. The revenue for years two and three will decreased to \$1,000,000.

◆ **LOCAL GOVERNMENTS:** Local governments may experience an increase in law enforcement cost do to the nature of the crop being grown. However, UDAF cannot adequately estimate the cost or benefits to local governments.

◆ **SMALL BUSINESSES:** This rule allows for the growth of a controlled substances in the state of Utah. This is a new and controlled industry in the state. As it has not been allowed before, this proposed rule does not place any additional cost to the business aside from the anticipated application fee of \$10,000 and the licensing fee of \$100,000.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This proposed rule allows for the growth of medical cannabis in the state. It will allow for qualified patients to have access to a quality-controlled product. However, due to the nature of the industry it is impossible for UDAF to estimate the costs or benefits to the consumer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a \$10,000 application fee for all those who chose to apply for a license. Those who are awarded the license will then have a \$100,000 licensing fee. Due to this being a controlled substance and still federally illegal, there has been no prior legal growing in the state. Therefore, the only cost to the affected persons is the application and licensing fees. All other costs are the costs of engaging in the growing of medical cannabis.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a newly created program which will allow the growth of a controlled substance for medical use. It is necessary for UDAF to ensure the safe growing, processing, and transportation of this product for the safety of the qualified patients. The application and licensing fees are necessary for UDAF to run the program effectively to ensure that qualified patients receive a quality product.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bracken Davis by phone at 801-538-7188, or by Internet E-mail at brackendavis@utah.gov
- ◆ Melissa Ure by phone at 801-538-4976, or by Internet E-mail at mure@utah.gov
- ◆ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

EFFECTIVE: 05/03/2019

AUTHORIZED BY: Kerry Gibson, Commissioner

R68. Agriculture and Food, Plant Industry and Conservation.

R68-27. Cannabis Cultivation.

R68-27-1. Authority and Purpose.

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(2), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis cultivation license.

R68-27-2. Definitions.

As used in the rule:

1) "Applicant" means any person or business entity who applies for a cannabis cultivation facility license.

2)a) "Cannabis" means any part of a marijuana plant;

b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.

3) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

5) "Department" means the Utah Department of Agriculture and Food

6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.

7) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaver, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

R68-27-3. Cannabis Cultivation Facility License.

1) A cannabis cultivation license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.

2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.

3) An applicant shall be a resident of the State of Utah, as defined by Utah State Tax Commission rules.

4) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

5) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.

6) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

7) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses that will be issued.

8) The license shall expire on December 31st.

9) A license may not be sold or transferred.

R68-27-4. Cannabis Cultivation Facility Requirements.

1) A cannabis cultivation facility operating plan shall contain a blue print of the facility containing the following information:

a) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be propagated;

b) for indoor cannabis cultivation, the square footage of the areas where cannabis is to be grown;

c) the square footage of the areas where cannabis is to be harvested;

d) the areas where cannabis is to be dried, trimmed and cured;

e) the square footage of the areas where cannabis is to be packaged for wholesale;

f) the total square footage of the cultivation facility;

g) the square footage and location of areas to be used as storerooms;

h) the location of the toilet facilities and hand washing facilities;

i) the location of a break room and location of personal belonging lockers; and

j) the location of the areas to be used for loading and unloading of cannabis products for transportation.

2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:

a) the area where cannabis to be propagated; and

b) the area where cannabis is to be grown.

3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.

4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.

5) A cannabis cultivation facility shall have written emergency procedures to be followed in case of:

- a) fire;
- b) chemical spill; or
- c) other emergency at the facility

6) A cannabis cultivation facility operating plan shall include:

- a) a pest management plan;
- b) when and how fertilizers are to be applied during the production process;

- c) water usage and waste water disposal; and
- d) a waste disposal plan.

7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.

8) A cannabis cultivation facility shall use a standardized scale which is registered with the department when cannabis is:

- a) packaged for sale by weight;
- b) bought and sold by weight;
- c) weighed for entry into the inventory control system.

9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises including proper and timely removal of all litter and waste.

10) The cannabis cultivation facility shall compartmentalize all areas in the facility based on function.

11) A cannabis cultivation facility shall limit access to the compartments to appropriate agents.

R68-27-5. Security Requirements.

1) At a minimum, each cannabis cultivation facility shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed cannabis cultivation facility shall have complete video surveillance system:

- a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and
- b) that retains footage for at least 45 days.

3) All cameras shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

4) All entrances and exits, or ingress and egress vantage points shall be recorded.

- 5) All cameras shall record continuously.

6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Controlled areas included an area within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, trimmed, or stored or where cannabis waste is being moved, processed, stored, or destroyed.

9) Any gate or entry point must be lighted in low-light conditions.

10) All visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

11) All visitors shall be escorted by a facility agent at all times while in the facility.

12) A log shall be kept showing:

- a) the full name of each visitor entering the facility;
- b) the badge number issued;
- c) the time of arrival;
- d) the time of departure, and
- e) the purpose of the visit.

13) The visitor log shall be maintained for a minimum of one year.

14) The visitor log shall be made available to the department upon request.

R68-27-6. Inventory Control.

1) Every cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through all phases of production.

2) Every cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.

3) Unique identification numbers cannot be reused.

4) Each cannabis plant, lots of usable cannabis trim, leaves, and other plant matter cannabis products, test lots, harvest lots, and process lot that has been issued a unique identification number shall have a physical tag with the unique identification number.

5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

- a) movement of seedling or clone to the vegetation production area;
- b) when plants are partially or fully harvested or destroyed;
- c) when cannabis is being transported to other facilities;
- d) all samples used for testing and the testing results;
- e) a complete inventory of all cannabis, cannabis seeds, plant tissue, seedlings, clones, plants, trim or other plant material;
- f) weight of all harvested cannabis plants immediately after harvest;
- g) weight and disposal of post-harvest waste materials;
- h) the identity of who disposed of the waste and the location of waste receptacle; and
- i) theft or loss, or suspected theft or loss, of cannabis.

7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.

8) For plants under eight inches, the cultivation facility shall keep record of:

- a) the number of cannabis seeds or cuttings planted;
- b) the date on which they were planted;

- _____ c) the date the plants were moved into the vegetation area and tagged;
- _____ d) the strain of the seeds or cuttings;
- _____ e) the number of plants grown to maturity;
- _____ f) the number of plants disposed of; and
- _____ g) the date of disposal.

R68-27-7. Cannabis Cultivation Facility Agents.

- _____ 1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent on a form provided by the department.
- _____ 2) An application is not considered complete until the background check has been completed and the facility has paid the fee.
- _____ 3) The cannabis production establishment agent registration card shall contain:
 - _____ a) the agent's full name;
 - _____ b) the name of the cannabis cultivation establishment;
 - _____ c) the type of cannabis production establishment;
 - _____ d) the job title or position of the agent; and
 - _____ e) a photograph of the agent.
- _____ 4) A cannabis cultivation facility is responsible to ensure that all agents have received the department approved training as specified in Utah Code 4-41a-301.
- _____ 5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.
- _____ 6) All cannabis facility agents shall have their state issued identification in their possession to certify the information on their badge is correct.
- _____ 7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis cultivation facility.

R68-27-8. Pesticide and Fertilizer Use

- _____ 1) A cannabis cultivation facility shall maintain:
 - _____ a) the material safety data sheet for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis which shall be accessible to all agents;
 - _____ b) the original label or a copy thereof for all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis; and
 - _____ c) a log of all pesticides, fertilizers, or other agricultural chemicals used in the production of cannabis.
- _____ 2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.
- _____ 3) Pesticides, fertilizers, and other agricultural chemicals are to be stored in a separate location apart from cannabis.
- _____ 4) Pesticides shall be used consistent with the label requirements.
- _____ 5) Commercial fertilizers registered with the department under the Utah Fertilizer Act may be used in the production and handling of cannabis
- _____ 6) Cannabis exposed to unauthorized pesticides, soil amendments, or fertilizers is subject to destruction at the cost of the cannabis cultivation facility.

R68-27-9. Transportation.

- _____ 1) A printed transport manifest shall accompany every transport of cannabis.
- _____ 2) The manifest shall contain the following information:
 - _____ a) the cannabis production establishment address and license number of the departure location;
 - _____ b) physical address and license number of the receiving location;
 - _____ c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
 - _____ d) date and time of departure;
 - _____ e) estimated date and time of arrival; and
 - _____ f) name and signature of each agent accompanying the cannabis.
- _____ 3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.
- _____ 4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.
- _____ 5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.
- _____ 6) The receiving cannabis establishment shall document at time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- _____ 7) Cannabis shall be:
 - _____ a) shielded from the public view during transportation;
 - _____ b) secured during transportation; and
 - _____ c) temperature controlled if perishable during transportation.
- _____ 8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- _____ 9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

R68-27-10. Recall Protocol.

- _____ 1) The department may initiate a recall of cannabis or cannabis products if:
 - _____ a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;
 - _____ b) evidence exists that residual solvents are present on or in cannabis or cannabis products;
 - _____ c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or
 - _____ d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.
- _____ 2) A cannabis cultivation facility's recall plan shall include, at a minimum:
 - _____ a) designation of at least one member of the staff who serves as the recall coordinator;
 - _____ b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
 - _____ c) procedures to retrieve and destroy product; and
 - _____ d) a communications plan to notify those affected by the recall.

3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-27-11. Minimum Requirements for the Storage and Handling of Cannabis.

1) All storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.

2) All stored cannabis shall be at least six inches off the ground.

3) All cannabis shall be stored away from all other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.

4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

R68-27-12. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) All cannabis waste shall be rendered unusable prior to leaving the cannabis cultivation facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the department before implementation.

6) Materials used to grind with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-27-13. Change in Operation Plans.

1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, prior to making any changes to:

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or

e) change in square footage or acreage of cannabis intended to be cultivated.

2) A cultivation facility may not implement changes to the approved operation plan without department approval.

3) The department shall respond to the request for changes within 15 business days.

4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify reason for the denial of approval for a change to the operation plan.

R68-27-14. Renewals.

1) A cannabis cultivation facility shall submit a notice of intent to renew and the licensing fee to the department by December 1st.

2) If the licensing fee and intent to renew are not submitted by December 31st the licensee may not continue to operate.

3) The department may take into consideration violations issued in determining license renewals.

R68-27-15. Violations Categories.

1) Public Safety Violations: \$3,000 - \$5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:

a) use of unapproved pesticides or unapproved agricultural soil amendments;

b) cannabis sold to an unlicensed source;

c) cannabis purchased from an unlicensed source;

d) refusal to allow inspection;

e) failure to comply with testing requirements;

f) a test result for high pesticide residue in the cannabis produced or cannabis product ;

g) unauthorized personnel on the premises;

h) permitting criminal conduct on the premises; or

i) engaging in or permitting a violation of the Utah Code 4-41a.

2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:

- a) failure to maintain alarm and security systems;
 - b) failure to keep and maintain records;
 - c) failure to maintain traceability;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements;
 - f) engaging in or permitting a violation of Utah Code 4-41a or this rule; or
 - g) failure to maintain standardized scales.
- 3) Licensing Violations: \$500 - \$5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:
- a) an unauthorized change to the operating plan;
 - b) failure to notify the department of changes to the operating plan;
 - c) failure to notify the department of changes to financial or voting interests of greater than 2%;
 - d) failure to follow the operating plan as approved by the department;

- e) engaging in or permitting a violation of this rule or Utah Code 4-41a; or
 - f) failure to respond to violations.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.
- 5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

KEY: marijuana, Cannabis cultivation facility
Date of Enactment or Last Substantive Amendment: May 3, 2019
Authorizing, and Implemented or Interpreted Law: 4-41a-404(3); 4-41a-103(5); 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Conservation Commission

R64-3

Utah Environmental Stewardship Certification Program (UESCP), a.k.a Agriculture Certification of Environmental Stewardship (ACES)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43685
FILED: 04/30/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 4-18-107 to establish an environmental stewardship program for agricultural producers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Agriculture and Food (Department) has not received comments on this rule during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department is currently evaluating acceptance of the program by agricultural producers. Additionally, the Department is assessing the effectiveness in

meeting the desired outcomes. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD
CONSERVATION COMMISSION
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jay Olsen by phone at 801-538-7174, by FAX at 801-538-9436, or by Internet E-mail at jayolsen@utah.gov
- ◆ Melissa Ure by phone at 801-538-4976, or by Internet E-mail at mure@utah.gov
- ◆ RJ Spencer by phone at 801-538-7171, or by Internet E-mail at rjspencer@utah.gov

AUTHORIZED BY: Kerry Gibson, Commissioner

EFFECTIVE: 04/30/2019

Capitol Preservation Board (State), Administration

R131-13

Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 43662
FILED: 04/17/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to comply with the provisions required in Section 63C-9-403.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Section 63C-9-403. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CAPITOL PRESERVATION BOARD (STATE) ADMINISTRATION
 ROOM E110 EAST BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114-2110
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
 ♦ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 04/17/2019

Health, Family Health and Preparedness, Child Care Licensing
R430-8
 Exemptions From Child Care Licensing

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43661
 FILED: 04/17/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-39-403 allows the

Department of Health to determine exclusions and exemptions from Child Care Licensing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments submitted to the Division of Family Health and Preparedness, Child Care Licensing regarding this rule other than specific comments submitted to the amendments to this rule in December 2018. Those comments were addressed in the adoption of the amended rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The continuation of this rule is necessary for the Department of Health to comply with its statutory duty to make and enforce a rule in accordance with Section 26-39-403 to regulate or exempt child care programs for the health and safety of children.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 CHILD CARE LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/17/2019

Human Services, Recovery Services
R527-394
 Posting Bond or Security

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 43682
 FILED: 04/29/2019

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-1-111 and 62A-11-107 give the Office of Recovery Services/Child Support Services (ORS/CSS) the authority to adopt, amend, and

enforce rules necessary to carry out its responsibilities under state law. Section 62A-11-321 requires ORS/CSS to establish rules for determining when it is appropriate to seek a court order requiring a non-custodial parent to post a bond or provide other security for the payment of a support debt. Federal regulation, 45 CFR 303.104(c), requires each state to develop guidelines available to the public for determining when it is not appropriate to require a non-custodial parent to post security, bond, or some other guarantee of payment of overdue support. The criteria listed in this rule meet those requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary pursuant to state law and Federal regulation. Also, it helps ensure that ORS only takes legal action against a non-custodial parent to post a bond or other security when the appropriate

circumstances warrant it. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Allyson Dopp by phone at 801-741-7521, by FAX at 801-536-8509, or by Internet E-mail at aldopp@utah.gov
- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov
- ◆ Jonah Shaw by phone at 801-538-4219, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 04/29/2019

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

No. 43554 (AMD): R523-18. Mobile Crisis Outreach Teams Certification Standards

Published: 03/15/2019

Effective: 04/22/2019

Commerce

Occupational and Professional Licensing

No. 43542 (AMD): R156-55e. Elevator Mechanics Licensing Rule

Published: 03/15/2019

Effective: 04/22/2019

Insurance

Administration

No. 43428 (AMD): R590-126-2. Purpose and Scope

Published: 01/01/2019

Effective: 05/01/2019

No. 43561 (NEW): R590-280. Counting Short-Term Funds

Published: 03/15/2019

Effective: 04/23/2019

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 43536 (AMD): R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia

Published: 03/15/2019

Effective: 04/22/2019

Public Service Commission

Administration

No. 43550 (AMD): R746-8-301. Calculation and Application of UUSF Surcharge

Published: 03/15/2019

Effective: 04/30/2019

Center for Health Data, Health Care Statistics

No. 43544 (AMD): R428-1. Health Data Plan and

Incorporated Documents

Published: 03/15/2019

Effective: 05/01/2019

Workforce Services

Employment Development

No. 43556 (AMD): R986-700. Child Care Assistance

Published: 03/15/2019

Effective: 06/01/2019

Human Services

Substance Abuse and Mental Health

No. 43505 (AMD): R523-2-9. Distribution of Fee-On-Fine (DUI) Funds

Published: 03/01/2019

Effective: 04/17/2019

Unemployment Insurance

No. 43558 (AMD): R994-305-801. Wage List Requirement

Published: 03/15/2019

Effective: 07/01/2019

No. 43555 (AMD): R523-17. Behavioral Health Crisis

Response Systems Standards

Published: 03/15/2019

Effective: 04/22/2019

No. 43557 (AMD): R994-403. Claim for Benefits

Published: 03/15/2019

Effective: 05/01/2019

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2019 through May 01, 2019. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43524	NSC	03/01/2019	Not Printed
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	43569	5YR	03/06/2019	2019-7/59
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43642	5YR	04/11/2019	2019-9/79
R23-29	Delegation of Project Management	43525	NSC	03/01/2019	Not Printed
R23-29	Delegation of Project Management	43567	5YR	03/06/2019	2019-7/60
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	43568	5YR	03/06/2019	2019-7/60
<u>Finance</u>					
R25-10	State Entities' Posting of Financial Information to the Utah Public Finance Website	43404	AMD	01/23/2019	2018-24/6
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	43471	5YR	01/07/2019	2019-3/43
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	43235	AMD	01/18/2019	2018-21/2
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	43469	5YR	01/07/2019	2019-3/43
<u>Conservation Commission</u>					
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a Agriculture Certification of Environmental Stewardship (ACES)	43685	5YR	04/30/2019	Not Printed
<u>Marketing and Development</u>					
R65-1	Utah Apple Marketing Order	43546	NSC	03/13/2019	Not Printed
R65-5	Utah Red Tart and Sour Cherry Marketing Order	43547	NSC	03/13/2019	Not Printed
R65-8	Management of the Junior Livestock Show Appropriation	43545	NSC	03/13/2019	Not Printed

R65-11	Utah Sheep Marketing Order	43548	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43549	NSC	03/13/2019	Not Printed
R65-12	Utah Small Grains and Oilseeds Marketing Order	43641	5YR	04/11/2019	2019-9/79
<u>Plant Industry</u>					
R68-25	Industrial Hemp Research Pilot Program for Processors	43571	NSC	03/21/2019	Not Printed
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-13	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	43662	5YR	04/17/2019	Not Printed
COMMERCE					
<u>Consumer Protection</u>					
R152-34a	Utah Postsecondary School State Authorization Act Rule	43612	5YR	04/01/2019	2019-8/101
<u>Occupational and Professional Licensing</u>					
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	43522	AMD	04/08/2019	2019-5/8
R156-20a (Changed to R156-20b)	Environmental Health Scientist Act Rule	43466	NSC	01/11/2019	Not Printed
R156-28	Veterinary Practice Act Rule	43189	AMD	03/25/2019	2018-19/7
R156-28	Veterinary Practice Act Rule	43189	CPR	03/25/2019	2019-4/40
R156-55e	Elevator Mechanics Licensing Rule	43542	AMD	04/22/2019	2019-6/4
R156-60	Mental Health Professional Practice Act Rule	43543	5YR	02/26/2019	2019-6/41
R156-80a	Medical Language Interpreter Act Rule	43465	5YR	01/02/2019	2019-2/19
<u>Real Estate</u>					
R162-2f	Real Estate Licensing and Practices Rules	43407	AMD	01/23/2019	2018-24/8
CORRECTIONS					
<u>Administration</u>					
R251-105	Applicant Qualifications for Employment with Department of Corrections	43218	AMD	02/11/2019	2018-20/12
R251-111	Government Records Access and Management	43596	5YR	03/19/2019	2019-8/102
EDUCATION					
<u>Administration</u>					
R277-100	Definitions for Utah State Board of Education (Board) Rules	43479	AMD	03/13/2019	2019-3/2
R277-117	Utah State Board of Education Protected Documents	43511	REP	04/08/2019	2019-5/19
R277-122	Board of Education Procurement	43441	AMD	02/07/2019	2019-1/17
R277-308	New Educator Induction and Mentoring	43442	NEW	02/07/2019	2019-1/22
R277-400	School Facility Emergency and Safety	43507	5YR	02/08/2019	2019-5/95
R277-400	School Facility Emergency and Safety	43512	AMD	04/08/2019	2019-5/21
R277-404	Requirements for Assessments of Student Achievement	43450	AMD	02/22/2019	2019-2/6
R277-407	School Fees	43532	AMD	04/08/2019	2019-5/25
R277-419	Pupil Accounting	43475	NSC	01/15/2019	Not Printed
R277-437	Student Enrollment Options	43397	AMD	01/09/2019	2018-23/6
R277-463	Class Size Average and Pupil-Teacher Ratio Reporting	43636	5YR	04/08/2019	2019-9/80
R277-470	Charter Schools - General Provisions	43374	REP	01/09/2019	2018-23/9
R277-472	Charter School Student Enrollment and Transfers and School District Capacity Information	43637	5YR	04/08/2019	2019-9/81

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R277-481	Charter School Oversight, Monitoring and Appeals	43399	REP	01/09/2019	2018-23/12
R277-482	Charter School Timelines and Approval Processes	43392	REP	01/09/2019	2018-23/15
R277-483	LEA Reporting and Accounting Requirements	43515	NEW	04/08/2019	2019-5/36
R277-486	Professional Staff Cost Program	43508	5YR	02/08/2019	2019-5/95
R277-486	Professional Staff Cost Program	43516	AMD	04/08/2019	2019-5/39
R277-487	Public School Data Confidentiality and Disclosure	43476	AMD	03/13/2019	2019-3/4
R277-493	Kindergarten Supplemental Enrichment Program	43638	5YR	04/08/2019	2019-9/81
R277-494-4	Charter or Online School Student Participation in Co-Curricular Activities	43506	NSC	02/20/2019	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	43531	AMD	04/08/2019	2019-5/42
R277-502-4	License Levels, Procedures, and Periods of Validity	43600	NSC	04/01/2019	Not Printed
R277-509	Licensure of Student Teachers and Interns	43373	AMD	01/09/2019	2018-23/19
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	43583	5YR	03/14/2019	2019-7/61
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	43509	5YR	02/08/2019	2019-5/96
R277-550	Charter Schools – Definitions	43400	NEW	01/09/2019	2018-23/21
R277-551	Charter Schools - General Provisions	43393	NEW	01/09/2019	2018-23/24
R277-551	Charter Schools - General Provisions	43478	AMD	03/13/2019	2019-3/10
R277-552	Charter School Timelines and Approval Processes	43394	NEW	01/09/2019	2018-23/26
R277-553	Charter School Oversight, Monitoring and Appeals	43401	NEW	01/09/2019	2018-23/31
R277-554	State Charter School Board Grants and Mentoring Program	43395	NEW	01/09/2019	2018-23/34
R277-555	Corrective Action Against Charter School Authorizers	43396	NEW	01/09/2019	2018-23/38
R277-600	Student Transportation Standards and Procedures	43375	AMD	01/09/2019	2018-23/38
R277-601	Standards for Utah School Buses and Operations	43611	5YR	03/29/2019	2019-8/102
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	43519	AMD	04/08/2019	2019-5/46
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	43579	5YR	03/13/2019	2019-7/61
R277-910	Underage Drinking Prevention Program	43448	NEW	02/07/2019	2019-1/24
R277-912	Law Enforcement Related Incident Reporting	43439	NEW	02/07/2019	2019-1/26
R277-922	Digital Teaching and Learning Grant Program	43398	AMD	01/09/2019	2018-23/45

ENVIRONMENTAL QUALITY

Air Quality

R307-101-2	Definitions	43372	AMD	02/07/2019	2018-23/49
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	AMD	03/05/2019	2018-19/31
R307-110-10	Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter	43212	CPR	03/05/2019	2019-3/40
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	AMD	01/03/2019	2018-13/35
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits	42976	CPR	01/03/2019	2018-21/134
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	NEW	03/05/2019	2018-19/32
R307-511	Oil and Gas Industry: Associated Gas Flaring	43211	CPR	03/05/2019	2019-3/41

Drinking Water

R309-100-9	Variances	43378	AMD	01/15/2019	2018-23/57
R309-105-4	General	43379	AMD	01/15/2019	2018-23/58
R309-110-4	Definitions	43380	AMD	01/15/2019	2018-23/60

R309-200	Monitoring and Water Quality: Drinking Water Standards	43381	AMD	01/15/2019	2018-23/73
R309-210-8	Disinfection Byproducts - Stage 1 Requirements	43382	AMD	01/15/2019	2018-23/80
R309-211	Monitoring and Water Quality: Distribution System -- Total Coliform Requirements	43383	AMD	01/15/2019	2018-23/85
R309-215-10	Residual Disinfectant	43384	AMD	01/15/2019	2018-23/91
R309-215-16	Groundwater Rule	43385	AMD	01/15/2019	2018-23/93
R309-220-4	General Public Notification Requirements	43386	AMD	01/15/2019	2018-23/99
R309-225-4	General Requirements	43387	AMD	01/15/2019	2018-23/101
<u>Waste Management and Radiation Control, Radiation</u>					
R313-28-31	General and Administrative Requirements	43253	AMD	01/14/2019	2018-21/52
R313-28-31	General and Administrative Requirements	43530	AMD	04/15/2019	2019-5/50
<u>Waste Management and Radiation Control, Waste Management</u>					
R315-15-14	DIYer Reimbursement	43529	AMD	04/15/2019	2019-5/54
R315-260	Hazardous Waste Management System	43526	AMD	04/15/2019	2019-5/56
R315-261	General Requirements -- Identification and Listing of Hazardous Waste	43527	AMD	04/15/2019	2019-5/67
R315-262	Hazardous Waste Generator Requirements	43528	AMD	04/15/2019	2019-5/83
R315-273	Standards for Universal Waste Management	43252	AMD	01/14/2019	2018-21/55
<u>Water Quality</u>					
R317-401	Graywater Systems	43633	5YR	04/08/2019	2019-9/82
GOVERNOR					
<u>Economic Development</u>					
R357-7	Utah Capital Investment Board	43488	EXT	01/24/2019	2019-4/47
<u>Energy Development (Office of)</u>					
R362-4	High Cost Infrastructure Development Tax Credit Act	43223	AMD	02/05/2019	2018-20/18
R362-5	Commercial Property Assessed Clean Energy (C-PACE) Administrative Rules	43419	NEW	01/23/2019	2018-24/15
HEALTH					
<u>Administration</u>					
R380-70	Standards for Electronic Exchange of Clinical Health Information	43487	5YR	01/24/2019	2019-4/43
<u>Center for Health Data, Health Care Statistics</u>					
R428-1	Health Data Plan and Incorporated Documents	43544	AMD	05/01/2019	2019-6/12
<u>Disease Control and Prevention, Environmental Services</u>					
R392-303	Public Geothermal Pools and Bathing Places	43502	5YR	02/05/2019	2019-5/96
<u>Disease Control and Prevention, Health Promotion</u>					
R384-100	Cancer Reporting Rule	43540	5YR	02/25/2019	2019-6/41
R384-200	Cancer Control Program	43539	5YR	02/25/2019	2019-6/42
R384-203	Prescription Drug Database Access	43537	5YR	02/25/2019	2019-6/42
<u>Disease Control and Prevention, Medical Examiner</u>					
R448-10	Unattended Death and Reporting Requirements	43631	5YR	04/05/2019	2019-9/83
R448-20	Access to Medical Examiner Reports	43632	5YR	04/05/2019	2019-9/84
<u>Family Health and Preparedness, Child Care Licensing</u>					
R430-8	Exemptions From Child Care Licensing	43661	5YR	04/17/2019	Not Printed
<u>Family Health and Preparedness, Children with Special Health Care Needs</u>					
R398-5	Birth Defects Reporting	43472	AMD	03/11/2019	2019-3/18
R398-10	Autism Spectrum Disorders and Intellectual Disability Reporting	43538	5YR	02/25/2019	2019-6/43

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Family Health and Preparedness, Emergency Medical Services

R426-1	General Definitions	43177	AMD	01/11/2019	2018-18/15
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	43178	AMD	01/11/2019	2018-18/19
R426-2-400	Emergency Medical Service Dispatch Center Minimum Designation Requirements	43260	NSC	01/11/2019	Not Printed
R426-9	Trauma and EMS System Facility Designations	43321	AMD	01/18/2019	2018-22/114

Family Health and Preparedness, Licensing

R432-7	Specialty Hospital - Psychiatric Hospital Construction	43553	5YR	02/27/2019	2019-6/43
R432-8	Specialty Hospital – Chemical Dependency/Substance Abuse Construction	43559	5YR	02/28/2019	2019-6/44
R432-9	Specialty Hospital – Rehabilitation Construction Rule	43560	5YR	02/28/2019	2019-6/44
R432-10	Specialty Hospital – Long-Term Acute Care Construction Rule	43563	5YR	03/04/2019	2019-7/62
R432-11	Orthopedic Hospital Construction	43564	5YR	03/04/2019	2019-7/62
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	43565	5YR	03/04/2019	2019-7/63
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	43598	5YR	03/21/2019	2019-8/103
R432-14	Birthing Center Construction Rule	43599	5YR	03/21/2019	2019-8/103
R432-30	Adjudicative Procedure	43597	5YR	03/21/2019	2019-8/104
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	43614	5YR	04/01/2019	2019-8/104
R432-45	Nurse Aide Training and Competency Evaluation Program	43630	5YR	04/05/2019	2019-9/83
R432-270	Assisted Living Facilities	43533	5YR	02/20/2019	2019-6/45

Family Health and Preparedness, Maternal and Child Health

R433-200	Family Planning Access Act	43402	NEW	03/06/2019	2018-24/18
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Health Care Financing, Coverage and Reimbursement Policy

R414-7A	Medicaid Certification of New Nursing Facilities	43635	NSC	04/24/2019	Not Printed
R414-14A	Hospice Care	43634	5YR	04/08/2019	2019-9/82
R414-49	Dental, Oral and Maxillofacial Surgeons and Orthodontia	43536	AMD	04/22/2019	2019-6/7
R414-61-2	Incorporation by Reference	43425	AMD	02/15/2019	2019-1/28
R414-515	Long Term Acute Care	43473	AMD	03/21/2019	2019-3/21
R414-516	Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program	43483	AMD	03/21/2019	2019-3/23
R414-520	Admission Criteria for Medically Complex Children's Waiver	43332	NEW	01/04/2019	2018-22/111
R414-521	Accountable Care Organization Hospital Report	43352	NEW	01/04/2019	2018-22/113

HUMAN RESOURCE MANAGEMENT

Administration

R477-101	Administrative Law Judge Conduct Committee	43470	5YR	01/07/2019	2019-3/44
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HUMAN SERVICES

Administration

R495-882	Termination of Parental Rights	43496	5YR	02/01/2019	2019-4/43
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Administration, Administrative Services, Licensing

R501-1	General Provisions for Licensing	43330	AMD	01/17/2019	2018-22/119
R501-7	Child Placing Adoption Agencies	43356	AMD	02/12/2019	2018-23/105
R501-8	Outdoor Youth Programs	43234	AMD	01/17/2019	2018-21/89
R501-21	Outpatient Treatment Programs	43237	AMD	02/12/2019	2018-21/91

Child and Family Services

R512-43	Adoption Assistance	43518	AMD	04/08/2019	2019-5/85
R512-305	Out-of-Home Services, Transition to Adult Living Services	43358	AMD	01/09/2019	2018-23/115

Recovery Services

R527-394	Posting Bond or Security	43682	5YR	04/29/2019	Not Printed
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Substance Abuse and Mental Health

R523-2-9	Distribution of Fee-On-Fine (DUI) Funds	43505	AMD	04/17/2019	2019-5/92
R523-5	Peer Support Specialist Training and Certification	43141	AMD	01/29/2019	2018-17/60
R523-5	Peer Support Specialist Training and Certification	43141	CPR	01/29/2019	2018-24/38
R523-17	Behavioral Health Crisis Response Systems Standards	43555	AMD	04/22/2019	2019-6/14
R523-18	Mobile Crisis Outreach Teams Certification Standards	43554	AMD	04/22/2019	2019-6/21
R523-19	Community Mental Health Crisis and Suicide Prevention Training Grant Standards	43355	NEW	01/29/2019	2018-23/118

INSURANCE

Administration

R590-93	Replacement of Life Insurance and Annuities	43627	5YR	04/03/2019	2019-9/84
R590-98	Unfair Practice in Payment of Life Insurance and Annuity Policy Values	43628	5YR	04/03/2019	2019-9/85
R590-102	Insurance Department Fee Payment Rule	43604	NSC	04/01/2019	Not Printed
R590-102-21	Dedicated Fees	43485	AMD	03/26/2019	2019-4/4
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R590-166	Home Protection Service Contract Rule	43626	5YR	04/03/2019	2019-9/85
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R590-191	Unfair Life Insurance Claims Settlement Practices Rule	43629	5YR	04/03/2019	2019-9/86
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R590-225	Submission of Property and Casualty Rate and Form Filings	43521	5YR	02/13/2019	2019-5/98
R590-226	Submission of Life Insurance Filings	43580	5YR	03/14/2019	2019-7/63
R590-227	Submission of Annuity Filings	43581	5YR	03/14/2019	2019-7/64
R590-228	Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings	43582	5YR	03/14/2019	2019-7/64
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R590-268	Small Employer Stop-Loss Insurance	43570	5YR	03/07/2019	2019-7/65
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R597-3	Judicial Performance Evaluations	43500	5YR	02/05/2019	2019-5/100
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R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	43645	5YR	04/12/2019	2019-9/87
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R628-20	Foreign Deposits for Higher Education Institutions	43646	5YR	04/12/2019	2019-9/88
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R651-214	Temporary Registration	43464	AMD	02/21/2019	2019-2/12
R651-301	State Recreation Fiscal Assistance Programs	43416	AMD	01/24/2019	2018-24/20
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R657-9	Taking Waterfowl, Wilson's Snipe and Coot	43430	AMD	02/07/2019	2019-1/41
R657-11	Taking Furbearers and Trapping	43414	AMD	01/24/2019	2018-24/25
R657-13	Taking Fish and Crayfish	43420	AMD	01/24/2019	2018-24/27
R657-22	Commercial Hunting Areas	43491	AMD	03/25/2019	2019-4/22
R657-33	Taking Bear	43492	AMD	03/25/2019	2019-4/27
R657-38	Dedicated Hunter Program	43432	AMD	02/07/2019	2019-1/44
R657-62	Drawing Application Procedures	43639	5YR	04/09/2019	2019-9/89
R657-67	Utah Hunter Mentoring Program	43498	5YR	02/04/2019	2019-5/101

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R698-5	State Hazardous Chemical Emergency Response Commission Advisory Committee	43418	AMD	02/20/2019	2018-24/29

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R708-22	Commercial Driver License Administrative Proceedings	43606	5YR	03/28/2019	2019-8/106
R708-24	Renewal of a Commercial Driver License (CDL)	43607	5YR	03/28/2019	2019-8/106
R708-26	Learner Permit Rule	43591	5YR	03/15/2019	2019-7/66
R708-31	Ignition Interlock Systems	43592	5YR	03/15/2019	2019-7/66

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R710-15	Seizure and Disposal of Fireworks, Class A Explosives, and Class B Explosives	43354	NEW	01/14/2019	2018-22/155

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R805-6 University of Utah Shooting Range Access and Use Requirements 43499 5YR 02/04/2019 2019-5/102

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R884-24P-19 Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702 43640 NSC 04/24/2019 Not Printed

R884-24P-27 Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5 43371 AMD 01/10/2019 2018-23/119

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>acceptable use</u> Technology Services, Administration	43467	R895-7	5YR	01/03/2019	2019-3/45
<u>accounting</u> Education, Administration	43515	R277-483	NEW	04/08/2019	2019-5/36
<u>activities</u> Education, Administration	43506	R277-494-4	NSC	02/20/2019	Not Printed
<u>administrative law judges</u> Human Resource Management, Administration	43470	R477-101	5YR	01/07/2019	2019-3/44
<u>administrative procedures</u> Environmental Quality, Drinking Water	43378	R309-100-9	AMD	01/15/2019	2018-23/57
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<u>adopt-a-highway</u> Transportation, Operations, Maintenance	43489	R918-4	AMD	03/26/2019	2019-4/36
<u>adoption</u> Human Services, Child and Family Services	43518	R512-43	AMD	04/08/2019	2019-5/85
<u>air pollution</u> Environmental Quality, Air Quality	43372	R307-101-2	AMD	02/07/2019	2018-23/49
	43212	R307-110-10	AMD	03/05/2019	2018-19/31
	43212	R307-110-10	CPR	03/05/2019	2019-3/40
	42976	R307-110-17	AMD	01/03/2019	2018-13/35
	42976	R307-110-17	CPR	01/03/2019	2018-21/134
<u>air quality</u> Environmental Quality, Air Quality	43211	R307-511	NEW	03/05/2019	2018-19/32
	43211	R307-511	CPR	03/05/2019	2019-3/41
<u>alcohol</u> Education, Administration	43448	R277-910	NEW	02/07/2019	2019-1/24

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	43401	R277-553	NEW	01/09/2019	2018-23/31
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	43640	R884-24P-19	NSC	04/24/2019	Not Printed
	43371	R884-24P-27	AMD	01/10/2019	2018-23/119
	43438	R884-24P-74	AMD	03/28/2019	2019-1/54
<u>archaeological</u>					
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<u>assessments</u>					
Education, Administration	43450	R277-404	AMD	02/22/2019	2019-2/6
<u>assistance</u>					
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<u>birth defects</u> Health, Family Health and Preparedness, Children with Special Health Care Needs	43472	R398-5	AMD	03/11/2019	2019-3/18
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<u>breast and cervical cancer screening</u> Health, Disease Control and Prevention, Health Promotion	43539	R384-200	5YR	02/25/2019	2019-6/42
<u>building board</u> Administrative Services, Facilities Construction and Management	43568	R23-33	5YR	03/06/2019	2019-7/60
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<u>campfire</u> Regents (Board of), University of Utah, Administration	43541	R805-3	5YR	02/25/2019	2019-6/46
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<u>cannabidiol</u> Agriculture and Food, Plant Industry	43571	R68-25	NSC	03/21/2019	Not Printed
<u>capital improvements</u> Administrative Services, Facilities Construction and Management	43568	R23-33	5YR	03/06/2019	2019-7/60
<u>capital investments</u> Governor, Economic Development	43488	R357-7	EXT	01/24/2019	2019-4/47

<u>carbon monoxide detectors</u>					
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	43512	R277-400	AMD	04/08/2019	2019-5/21
<u>CCHD screening</u>					
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	43141	R523-5	CPR	01/29/2019	2018-24/38
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	43637	R277-472	5YR	04/08/2019	2019-9/81
	43399	R277-481	REP	01/09/2019	2018-23/12
	43400	R277-550	NEW	01/09/2019	2018-23/21
	43393	R277-551	NEW	01/09/2019	2018-23/24
	43478	R277-551	AMD	03/13/2019	2019-3/10
	43401	R277-553	NEW	01/09/2019	2018-23/31
	43395	R277-554	NEW	01/09/2019	2018-23/34
	43396	R277-555	NEW	01/09/2019	2018-23/38
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<u>child placing</u>					
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	43358	R512-305	AMD	01/09/2019	2018-23/115
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<u>clinical health information exchange</u>					
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	43384	R309-215-10	AMD	01/15/2019	2018-23/91	
	43385	R309-215-16	AMD	01/15/2019	2018-23/93	
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<u>delegation</u>						
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	43567	R23-29	5YR	03/06/2019	2019-7/60	
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	43530	R313-28-31	AMD	04/15/2019	2019-5/50	
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	43512	R277-400	AMD	04/08/2019	2019-5/21	
<u>disinfection monitoring</u>						
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	43385	R309-215-16	AMD	01/15/2019	2018-23/93	
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	43383	R309-211	AMD	01/15/2019	2018-23/85	

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	43380	R309-110-4	AMD	01/15/2019	2018-23/60
	43381	R309-200	AMD	01/15/2019	2018-23/73
	43382	R309-210-8	AMD	01/15/2019	2018-23/80
	43383	R309-211	AMD	01/15/2019	2018-23/85
	43384	R309-215-10	AMD	01/15/2019	2018-23/91
	43385	R309-215-16	AMD	01/15/2019	2018-23/93
	43386	R309-220-4	AMD	01/15/2019	2018-23/99
	43387	R309-225-4	AMD	01/15/2019	2018-23/101

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Environmental Quality, Water Quality	43633	R317-401	5YR	04/08/2019	2019-9/82
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Governor, Economic Development	43488	R357-7	EXT	01/24/2019	2019-4/47
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economics

Education, Administration	43519	R277-704	AMD	04/08/2019	2019-5/46
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	43374	R277-470	REP	01/09/2019	2018-23/9
	43400	R277-550	NEW	01/09/2019	2018-23/21
	43393	R277-551	NEW	01/09/2019	2018-23/24
	43478	R277-551	AMD	03/13/2019	2019-3/10

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	43495	R623-3	5YR	01/28/2019	2019-4/45

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elk

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	43178	R426-2	AMD	01/11/2019	2018-18/19
	43260	R426-2-400	NSC	01/11/2019	Not Printed
	43321	R426-9	AMD	01/18/2019	2018-22/114

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	43512	R277-400	AMD	04/08/2019	2019-5/21
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Agriculture and Food, Conservation Commission	43685	R64-3	5YR	04/30/2019	Not Printed
<u>environmental health scientist</u>					
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
<u>environmental health scientist-in-training</u>					
Commerce, Occupational and Professional Licensing	43466	R156-20a	NSC	01/11/2019	Not Printed
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	43394	R277-552	NEW	01/09/2019	2018-23/26
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Public Safety, Fire Marshal	43455	R710-12	NEW	04/09/2019	2019-2/14	
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	43527	R315-261	AMD	04/15/2019	2019-5/67	
	43528	R315-262	AMD	04/15/2019	2019-5/83	
	43252	R315-273	AMD	01/14/2019	2018-21/55	
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	43559	R432-8	5YR	02/28/2019	2019-6/44	
	43560	R432-9	5YR	02/28/2019	2019-6/44	
	43563	R432-10	5YR	03/04/2019	2019-7/62	
	43564	R432-11	5YR	03/04/2019	2019-7/62	
	43565	R432-12	5YR	03/04/2019	2019-7/63	
	43598	R432-13	5YR	03/21/2019	2019-8/103	
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	43597	R432-30	5YR	03/21/2019	2019-8/104	
	43614	R432-32	5YR	04/01/2019	2019-8/104	
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	43533	R432-270	5YR	02/20/2019	2019-6/45	
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	43429	R590-186-5	AMD	02/07/2019	2019-1/31	

	43561	R590-280	NEW	04/23/2019	2019-6/25
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	43485	R590-102-21	AMD	03/26/2019	2019-4/4
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	43234	R501-8	AMD	01/17/2019	2018-21/89
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Environmental Quality, Air Quality	43211	R307-511	NEW	03/05/2019	2018-19/32
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	43401	R277-553	NEW	01/09/2019	2018-23/31	
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Environmental Quality, Air Quality	43212	R307-110-10	AMD	03/05/2019	2018-19/31	
	43212	R307-110-10	CPR	03/05/2019	2019-3/40	
	42976	R307-110-17	AMD	01/03/2019	2018-13/35	
	42976	R307-110-17	CPR	01/03/2019	2018-21/134	
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	43640	R884-24P-19	NSC	04/24/2019	Not Printed	
	43371	R884-24P-27	AMD	01/10/2019	2018-23/119	
	43438	R884-24P-74	AMD	03/28/2019	2019-1/54	
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	43569	R23-3	5YR	03/06/2019	2019-7/59	
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Environmental Quality, Air Quality	43212	R307-110-10	AMD	03/05/2019	2018-19/31	
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	43212	R307-110-10	CPR	03/05/2019	2019-3/40	

	42976	R307-110-17	AMD	01/03/2019	2018-13/35
	42976	R307-110-17	CPR	01/03/2019	2018-21/134
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	43569	R23-3	5YR	03/06/2019	2019-7/59
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	43516	R277-486	AMD	04/08/2019	2019-5/39
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	43547	R65-5	NSC	03/13/2019	Not Printed
	43548	R65-11	NSC	03/13/2019	Not Printed
	43549	R65-12	NSC	03/13/2019	Not Printed
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	43438	R884-24P-74	AMD	03/28/2019	2019-1/54
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	43476	R277-487	AMD	03/13/2019	2019-3/4
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