

# 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 801-957-7110. 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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# EXECUTIVE DOCUMENTS

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Under authority granted by the Utah Constitution and various federal and state statutes, the Governor periodically issues **EXECUTIVE DOCUMENTS**, which can be categorized as either Executive Orders, Proclamations, and Declarations. Executive Orders set policy for the executive branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. Proclamations call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. Declarations designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Office of Administrative Rules for publication and distribution.

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## EXECUTIVE ORDER

### Temporarily Suspending Certain Provisions of the Utah Code Regarding Vehicle Registration

**WHEREAS**, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

**WHEREAS**, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

**WHEREAS**, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

**WHEREAS**, both travel-related cases and community contact transmission of COVID-19 have been documented in the state of Utah and are expected to continue;

**WHEREAS**, on March 27, 2020, I issued the "Stay Safe, Stay Home" Directive, further emphasizing the critical need to limit in-person contact to slow the spread of COVID-19;

**WHEREAS**, to slow the spread of COVID-19, the Utah Division of Motor Vehicles ("Division") and certain county offices have implemented precautionary measures to limit in-person contact, including the increased use of drive-through services;

**WHEREAS**, the Division has substantially increased the number of hours available for drive-through service at certain state offices in order to meet demand while maintaining precautionary measures to reduce the spread of COVID-19;

**WHEREAS**, despite increased hours and drive-through services provided by the Division, the public need for vehicle registration services remains high;

**WHEREAS**, the Division is in the process of implementing additional precautionary measures in order to provide full counter service to meet the public need for vehicle registration services while limiting the risk of spread of COVID-19;

**WHEREAS**, Utah Code Title 41, Chapter 1a, Motor Vehicle Act; Utah Code Title 41, Chapter 22, Off-Highway Vehicles; and Utah Code Title 73, Chapter 18, State Boating Act (collectively, the "Acts") govern the registration of certain vehicles;

**WHEREAS**, suspending the enforcement of provisions of the Acts, as specified below, is directly related to and necessary to address the COVID-19 pandemic;

**WHEREAS**, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

**WHEREAS**, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act.

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of the following statutes as applied to a covered vehicle, as defined below:

1. As used in this Order, "covered vehicle" means a vehicle whose registration is required by the Acts and:
  - a. whose registration expired or will expire during the period beginning on March 6, 2020 and ending on and including April 30, 2020; or
  - b. whose owner's duty to register the vehicle began or will begin during the period beginning on March 6, 2020 and ending on and including April 30, 2020;
2. Utah Code § 41-1a-201(1), requiring a motor vehicle, combination of vehicles, trailer, semitrailer, vintage vehicle, off-highway vehicle, vessel, or park model recreational vehicle in this state to be registered prior to operation by a person or automated driving system;
3. Utah Code § 41-1a-202(3), requiring a motor vehicle, combination of vehicles, trailer, semitrailer, or vintage vehicle to be registered within 60 days of the owner establishing residency in Utah;
4. Utah Code § 41-1a-218(1), requiring a person who, after making application for or obtaining a vehicle registration, moves from the address named in the application to notify the Division of the person's old and new address within 10 days of moving;
5. Utah Code § 41-1a-220(1), requiring the owner of a vehicle whose registration card is lost, mutilated, or becomes illegible, to immediately apply for a duplicate registration card;
6. Utah Code § 41-1a-703, requiring a transferee, before operating or permitting the operation of a transferred vehicle on a highway, to complete certain requirements, including obtaining a new registration for the transferred vehicle;
7. Utah Code §§ 41-1a-1101(1)(e) and (f), permitting the Division or a peace officer to seize and take possession of any vehicle or vessel operated without proper registration;
8. Utah Code § 41-1a-1303(1), prohibiting a person from driving or moving, and an owner from knowingly permitting to be driven or moving, upon any highway any vehicle of a type required to be registered in Utah that is not properly registered or for which a certificate of title has not been issued or applied for, or for which the required fee has not been paid;
9. Utah Code § 41-22-3(1)(a), prohibiting the operation or transportation of an unregistered off-highway vehicle on any public land, trail, street, or highway in Utah; and
10. Utah Code § 73-18-7(1)(b), prohibiting a person from placing, giving permission for the placement of, operation, or giving permission for the operation of an unregistered motorboat or sailboat on the waters of Utah.

This Order is declared and shall become effective on April 30, 2020 and shall remain in effect until and including May 15, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 29th day of April, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/018/EO

**EXECUTIVE ORDER**

Moving the State COVID-19 Public Health Risk Status From Red (High Risk) to Orange (Moderate Risk)

**WHEREAS**, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

**WHEREAS**, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

**WHEREAS**, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

**WHEREAS**, on April 17, 2020, I issued the revised Governor's "Stay Safe, Stay Home" Directive to help protect Utahns during the COVID-19 pandemic, and which terminates on May 1, 2020;

**WHEREAS**, local authorities have issued directives and orders to slow the spread of COVID-19;

**WHEREAS**, the State must establish statewide standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

**WHEREAS**, the Public Health and Economic Emergency Commission made recommendations regarding the State's response to the COVID-19 emergency on April 21, 2020, April 24, 2020, and April 28, 2020;

**WHEREAS**, on April 17, 2020, the Utah Economic Response Task Force released version 2 of Utah Leads Together (hereinafter, "ULT 2.0"), recommending actions for Utah businesses and citizens to mitigate the economic consequences of COVID-19;

**WHEREAS**, ULT 2.0 provides a color-coded health guidance system comprising four levels of activity designated as Red (High Risk), Orange (Moderate Risk), Yellow (Low Risk), and Green (Normal Risk) (hereinafter, "Utah COVID-19 Health Risk Status"), where Red is most restrictive and each level of guidance after Red becomes progressively less restrictive and more economically engaged while still protecting public health;

**WHEREAS**, on April 29, 2020, the Utah Department of Health released version 4 of the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation (hereinafter, "Phased Guidelines") as an addendum to ULT 2.0;

**WHEREAS**, the statewide COVID-19 intensive care unit (ICU) utilization rate has remained below 20% for the past two weeks, and non-ICU bed utilization is currently at 5%;

**WHEREAS**, 20 isolation and quarantine sites have been created statewide with 835 beds, expanding the State's emergency COVID-19 healthcare capacity;

**WHEREAS**, Utah has significantly expanded its COVID-19 testing capacity and is confident that testing capacity can be monitored to ensure that any hotspots are caught early and effectively managed;

**WHEREAS**, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

**WHEREAS**, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

**WHEREAS**, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. The Utah COVID-19 Public Health Risk Status is moved from Red (High Risk) to Orange (Moderate Risk).
2. Except as provided in Section 5, individuals and businesses in Utah shall comply with the Orange (Medium Risk) provisions of the Phased Guidelines.

EXECUTIVE DOCUMENTS

- 3. The recommendations from the Public Health and Economic Emergency Commission submitted to the Governor on April 21, 24, and 28, 2020, that have not been previously adopted are adopted and included in the Phased Guidelines.
- 4. A political subdivision desiring an exception to this Order or the Phased Guidelines shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
- 5. Any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
  - a. as an order with respect to:
    - i. each individual acting in the capacity as an employee of a business; and
    - ii. each individual in a healthcare setting; and
  - b. as a strong recommendation with respect to any individual not identified in Subsection (5)(a).
- 6. The Governor's "Stay Safe, Stay Home" Directive, issued on April 17, 2020, is rescinded.

This Order is declared effective beginning at 12:01 a.m. on May 1, 2020, and shall remain in effect until 11:59 p.m. on May 15, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 29th day of April, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/019/EO

**EXECUTIVE ORDER**

Updating the State COVID-19 Public Health Risk Status Phased Guidelines to Version 4.1

**WHEREAS**, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

**WHEREAS**, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

**WHEREAS**, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

**WHEREAS**, the State must establish minimum standards to address a statewide emergency and recognizes the need for local authorities to impose directives and orders to address the unique circumstances in different locations in Utah;

**WHEREAS**, on April 17, 2020, the Utah Economic Response Task Force released version 2 of Utah Leads Together (hereinafter, "ULT 2.0"), recommending actions for Utah businesses and citizens to mitigate the economic consequences of COVID-19;

**WHEREAS**, ULT 2.0 provides a color-coded health guidance system comprising four levels of activity designated as Red (High Risk), Orange (Moderate Risk), Yellow (Low Risk), and Green (Normal Risk) (hereinafter, "Utah COVID-19 Health Risk Status"), where Red is most restrictive and each level of guidance after Red becomes progressively less restrictive and more economically engaged while still protecting public health;

**WHEREAS**, on May 5, 2020, the Utah Department of Health released version 4.1 of the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation (hereinafter, "Phased Guidelines, version 4.1") as an addendum to ULT 2.0;

**WHEREAS**, on April 29, 2020, I ordered the Utah COVID-19 Public Health Risk Status moved from Red (High Risk) to Orange (Medium Risk);

**WHEREAS**, Utah Code § 53-2a-209(1) provides that orders issued by the governor under Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, have the "full force and effect of law";

**WHEREAS**, Utah Code § 53-2a-204(1)(a) authorizes the governor to utilize all available resources of state government as reasonably necessary to cope with a state of emergency; and

**WHEREAS**, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary for the purpose of securing compliance with orders made pursuant to the Disaster Response and Recovery Act:

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. The Utah COVID-19 Public Health Risk Status shall remain at Orange (Moderate Risk).
2. Except as provided in Section 4, individuals and businesses in Utah shall comply with the Orange (Medium Risk) provisions of the Phased Guidelines, version 4.1.
3. A political subdivision desiring an exception to this Order or the Phased Guidelines, version 4.1 shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
4. Any reference in the Phased Guidelines, version 4.1 to the use of a mask or face covering is adopted:
  - a. as an order with respect to:
    - i. each individual acting in the capacity as an employee of a business; and
    - ii. each individual in a healthcare setting; and
  - b. as a strong recommendation with respect to any individual not identified in Subsection (4)(a).

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on May 15, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 6th day of May, 2020.

(State Seal)

**Gary R. Herbert**  
**Governor**

ATTEST:

**Spencer J. Cox**  
**Lieutenant Governor**

2020/020/EO

**EXECUTIVE ORDER**

Suspending Enforcement of Utah Code § 32B-5-309 Regarding Ceasing Operation of Certain Retail Licensees

**WHEREAS**, on March 6, 2020, I issued Executive Order 2020-1, declaring a state of emergency to facilitate the State's response to novel coronavirus disease 2019 (COVID-19);

**WHEREAS**, on March 13, 2020, Donald J. Trump, President of the United States, issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak;

**WHEREAS**, COVID-19 is caused by a virus that spreads easily from person to person, may result in serious illness or death, and has been characterized by the World Health Organization as a worldwide pandemic;

**WHEREAS**, Executive Order 2020-1 recognizes the need for state and local authorities, and the private sector to cooperate to mitigate the spread of COVID-19.

**WHEREAS**, Utah Code § 32B-5-309 prohibits certain retail licensees that serve alcoholic beverages from closing or ceasing operation for a period longer than 240 hours without notifying and receiving approval from the Department of Alcoholic Beverage Control (DABC);

**WHEREAS**, to mitigate the spread of COVID-19, state and local health authorities have issued health orders restricting the operation of businesses and restaurants, including retail licensees governed by Utah Code § 32B-5-309;

**WHEREAS**, the economic impact of COVID-19 and related health orders has caused and is expected to cause some retail licensees governed by Utah Code § 32B-5-309 to close or cease operation for a period longer than 240 hours;

**WHEREAS**, enforcement of state and local health orders and Utah Code § 32B-5-309 places a significant burden on retail licensees and DABC;

**WHEREAS**, suspending the enforcement of provisions of Utah Code § 32B-5-309 is directly related to and necessary to address the COVID-19 pandemic;

**WHEREAS**, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

**WHEREAS**, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act:

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order the suspension of enforcement of Utah Code § 32B-5-309. The suspension of enforcement of Utah Code § 32B-5-309 applies retroactively to any retail licensee that closed or ceased operation on or after March 15, 2020.

This Order is declared effective immediately and shall remain in effect until the emergency declared in Executive Order 2020-1 is terminated or until otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 8th day of May, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/021/EO

## NOTICES OF PROPOSED RULES

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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, 2020, 12:00 a.m., and May 01, 2020, 11:59 p.m. are included in this, the May 15, 2020, 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 15, 2020. 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, 2020, 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** or 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.

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**The Proposed Rules Begin on the Following Page**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R21-3	Filing No. 52679	No.

**Agency Information**

<b>1. Department:</b>	Administrative Services		
<b>Agency:</b>	Debt Collection		
<b>Building:</b>	Taylorsville State Office Building		
<b>Street address:</b>	4315 South 2700 West Floor 3		
<b>City, state:</b>	Taylorsville, UT 84127-2128		
<b>Mailing address:</b>	Division of Finance, PO Box 141031		
<b>City, state, zip:</b>	Sal Lake City, UT 84114-1031		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
John Reidhead	801-957-7734	jreidhead@utah.gov	
Cory Weeks	801-957-7713	cweeks@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R21-3. Debt Collection Through Administrative Offset
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule allows the Office of State Debt Collection to suspend matching receivables in the event of a declared state of emergency. This was necessitated by COVID-19 economic relief measures approved by the Governor's Office.
<b>4. Summary of the new rule or change:</b>
The added language to the rule explains how the division may suspend matching receivables in the administrative offset program in the event of a declared state of emergency. (EDITOR'S NOTE: A corresponding 120-day emergency filing to Rule R21-3 that is effective as of 04/20/2020 is under ID No. 52674 in this issue, May 15, 2020, of the Bulletin.)

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
\$330,000 lost FY2020 revenue to the Division of Finance estimated from fees that would have been collected on levies had the office not halted operations.

It is also estimated that the state government will have about \$4,600,000 in lost collection of receivables for FY2020.

If the actions in this rule are exercised again in the future, timing impacts make future years inestimable.

**B) Local governments:**

It is estimated that 21 local governments will have about \$500,000 in lost collection of receivables in FY2020.

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

There should be no impact for small businesses. This rule only applies to government entities. There is an inestimable indirect benefit here due to money that can cycle back into the economy from the other persons.

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

There should be no impact for non-small businesses. This rule only applies to government entities. There is an inestimable indirect benefit here due to money that can cycle back into the economy from the other persons.

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

Individuals that otherwise would have been garnished will receive a cumulative benefit of \$5,430,000, equal to the amount of estimated lost revenues and collections for state and local governments. This is a one-time benefit and a similar statement if enacted in the future it would be inestimable.

**F) Compliance costs for affected persons:**

None--The only cost of compliance is hours spent by Division of Finance staff.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$(4,930,000)	\$0	\$0
Local Governments	\$(500,000)	\$0	\$0
Small Businesses	\$0	\$0	\$0

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Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$(5,430,000)</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$5,430,000	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$5,430,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

I have reviewed this fiscal analysis, and agree with the described fiscal impacts associated with this rule.

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

I have reviewed this rule and agree that there should be no fiscal impact on businesses.

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

Tani Pack Downing, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 63A-3-310	Subsection 63A-3-504 (2)(f)	
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Reidhead, Director	<b>Date:</b>	04/21/2020
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**R21. Administrative Services, Debt Collection.**

**R21-3. Debt Collection Through Administrative Offset.**

**R21-3-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

**R21-3-2. Authority.**

This rule is established pursuant to ~~Subsection~~Section 63A-3-310, and Subsection 63A-3-504(2)(f), which authorize the Division of Finance to establish, by rule, an implementation of the debt collection technique of administrative offset.

**R21-3-3. Definitions.**

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

**R21-3-4. Eligible Accounts Receivable.**

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

**R21-3-5. Submission of Accounts Receivable to the Division.**

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

- (a) name of entity;

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(b) social security number or federal employer's identification number of the entity;

(c) amount of delinquent account receivable~~[-and]~~.

(2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

**R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.**

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the State's Accounting System (FINET).

**R21-3-7. Notification to Debtors.**

(1) ~~[All notifications required in]~~ Notifications pursuant to Section 63A-3-303 must be sent within two business days of the date listed on the notice.

(2) Notifications sent to joint filers must include instructions regarding defenses, such as injured spouse treatment pursuant to R21-3-9 and the right to administrative hearing pursuant to Section 63A-3-306.

**R21-3-8. Notification and Response.**

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

**R21-3-9. Treatment of Injured Spouse Forms.**

(1) Subject to Subsection R21-3-9(2), upon receipt of an injured spouse claim from the spouse of a debtor, a garnisher shall:

(a) ~~[Review]~~review the claim for validity;

(b) ~~[Determine]~~determine the frequency of claims made; and~~[-]~~

(c) ~~[Release]~~release the offset of matched funds proportionate to the income of the injured spouse using the following formula: (income of injured spouse/total household gross income) x levied amount.

(2) Recognizing that garnishers are not statutorily required to honor injured spouse claims:

(a) ~~[Agencies]~~agencies garnishing taxes under this section must honor at least a first-time injured spouse claim that is determined to be valid.

(b) ~~[Subsequent]~~subsequent claims may be denied at the discretion of the garnisher.

(3) Valid injured spouse claims should require at a minimum:

(a) ~~[Federal]~~federal tax returns;

(b) IRS Form 8379;

(c) ~~[Income]~~income documents, including all Form W-2s and Form 1099s; and~~[-]~~

(d) ~~[State]~~state tax returns.

**R21-3-10. Offsetting Matched Accounts.**

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

(a) an ~~["administrative fee"]~~ ~~["which"]~~ which shall be charged for performing debt-collection functions associated with the administrative offset; ~~[plus]~~and

(b) the amount identified in Subsection R21-3-8(3) to satisfy the delinquent account receivable.

**R21-3-11. Release of Matched Accounts by the Division.**

(1) In the event of a declared state of emergency, the division may suspend matching receivables in the administrative offset program subject to the following conditions.

(a) The suspended matching of receivables submitted under this rule may not infringe upon the rights of victims. Receivables collected on behalf of victims may include restitution orders, wage claims and past due child support.

(b) The division is not required to receive consent from agencies submitting receivables under this rule, but is required to notify parties listed by the agency in writing prior to suspension.

(2) If a matched account is not garnished within 21 days of the date matched, the division shall release the tax overpayment or other state payment to:

(a) first, the next agency with a matched receivable that is not suspended, if any; or

(b) second, the entity to which the tax overpayment is owed or the entity for which the payment is due.

**~~[R21-3-11]~~12. Release of Offset Funds by the Division.**

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

**~~[R21-3-12]~~13. Credit of Accounts Receivable.**

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

**~~[R21-3-13]~~14. Administrative Fee.**

Pursuant to ~~[Section]~~Subsection 63A-3-502(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

**KEY: accounts receivable, administrative offset**

**Date of Enactment or Last Substantive Amendment:** ~~[August 7, 2019]~~2020

**Notice of Continuation:** March 17, 2017

**Authorizing, and Implemented or Interpreted Law:** 63A-3-310; 63A-3-504(2)(f)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R37-4	Filing No.	52678

**Agency Information**

<b>1. Department:</b>	Administrative Services
<b>Agency:</b>	Risk Management
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W

NOTICES OF PROPOSED RULES

<b>City, state, zip:</b>	Salt Lake City UT 84184	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Darin Dennis	801-520-0670	darindennis@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

**2. Rule or section catchline:**

R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments

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

These amendments are mandated by Section 63G-7-605, which requires the state risk manager to conduct rulemaking in even-numbered years to address limitation on judgments calculations received from the legislative fiscal analyst.

**4. Summary of the new rule or change:**

These amendments will increase the limitations of judgments against governmental entities or employees as follows: a) the per person limit for personal injury will increase from \$745,200 to \$779,600; b) the aggregate per occurrence limit will increase from \$2,552,000 to \$3,138,300; and c) the per occurrence property damage limit will increase from \$295,000 to \$307,700.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

This amended rule will increase financial exposure to the State Risk Fund which insures all state agencies, public institutions of higher education, school districts, and many of the charter schools. That increased exposure will be reflected in the form of higher payments to plaintiffs for significant liability claims and will likely have the effect of increased liability premiums to be appropriated from the general fund; however, because the impact will be based upon the nature and severity of future claims, it is impossible to project the anticipated costs of these revisions to the state budget.

**B) Local governments:**

This amended rule will increase financial exposure to all political subdivisions of the state. That increased exposure will be reflected in the form of higher payments to plaintiffs for significant liability claims and will likely have the effect of increased liability premiums; however, because the impact will be based upon the nature and severity of future claims, it is impossible to project the anticipated costs of these revisions to local governments.

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

This amended rule will impact small business owners that experience personal injuries or property damage from government entities in that they may receive increased damage awards and settlements; however, this impact is impossible to project with any certainty because it is based upon the nature and severity of future claims.

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

This amended rule will impact non-small businesses that experience personal injuries or property damage from government entities in that they may receive increased damage awards and settlements; however, this impact is impossible to project with any certainty because it is based upon the nature and severity of future claims.

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

This amended rule will impact persons that experience personal injuries or property damage from government entities in that they may receive increased damage awards and settlements; however, this impact is impossible to project with any certainty because it is based upon the nature and severity of future claims. As indicated in the state budget and local government responses above, all governmental entities within the are subject to these judgment limit increases, irrespective of their size.

**F) Compliance costs for affected persons:**

Compliance costs will only be experienced by governmental entities in the if they or their employees cause injury or damage to third parties. It is impossible to project compliance costs for all affected governmental entities because those costs will be based upon the nature and severity of future claims.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director, Tani Downing, of the Department of Administrative Services has reviewed and approved the above fiscal impact analysis on businesses.

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

Fiscal impacts to business will come only in the form of awards based on future claims made against the state. The number and severity of those future claims are unknown.

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

Tani Downing, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 63G-7-604	Section 63G-7-605
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an

association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Darin Dennis, Assistant Director	<b>Date:</b>	04/23/2020
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**R37. Administrative Services, Risk Management.**

**R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.**

**R37-4-1. Authority and Calculation Process.**

Pursuant to UCA 63G-7-605(4) the Risk Manager hereby establishes new limitations of judgments, based upon the adjustments communicated by the Legislative Fiscal Analyst.

**R37-4-2. New Limitation of Judgment Amounts.**

The new limitation of judgment amounts currently required by UCA 63G-7-604(3) are increased as follows, pursuant to UCA 63G-7-605, and are effective July 1, ~~2018~~2020 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is ~~[\$745,200]~~\$779,600 for one person in any one occurrence, and ~~[\$2,552,000]~~\$3,138,300 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is ~~[\$295,000]~~\$307,700 in any one occurrence.

**R37-4-3. Limitations of Judgments by Calendar Date.**

The limitations on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence.

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more

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persons in an occurrence; and \$200,000 for property damage for any one occurrence.

3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence.

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence.

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence.

6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence.

7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property damage for any one occurrence.

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence.

9) Incident(s) occurring on or after July 1, 2012 - \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence.

10) Incident(s) occurring on or after July 1, 2014 - \$703,000 for one person in an occurrence, \$2,407,700 aggregate for two or more persons in an occurrence, and \$281,300 for property damage for any one occurrence.

11) Incident(s) occurring on or after July 1, 2016 - \$717,100 for one person in an occurrence, \$2,455,900 aggregate for two or more persons in an occurrence, and \$286,900 for property damage for any one occurrence.

12) Incident(s) occurring on or after July 1, 2018 - \$745,200 for one person in an occurrence, \$2,552,000 aggregate for two or more persons in an occurrence, and \$295,000 for property damage for any one occurrence as explained in R37-4-2(2).

13) Incident(s) occurring on or after July 1, 2020 - \$779,600 for one person in an occurrence, \$3,138,300 aggregate for two or more persons in an occurrence, and \$307,700 for property damage for any one occurrence as explained in R37-4-2(2).

**KEY: limitation on judgments, risk management, Governmental Immunity Act caps**

**Date of Enactment or Last Substantive Amendment:** ~~January 18, 2019~~ **2020**

**Notice of Continuation:** May 5, 2017

**Authorizing, and Implemented or Interpreted Law:** 63G-7-60(4)(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R58-26	Filing No.	52706

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Animal Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	Ambermbrown@utah.gov
Leann Hunting	801-982-2242	leannhunting@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R58-26. Custom Exempt Slaughter Verification of Ownership
<b>3. Purpose of the new rule or reason for the change:</b>
Pursuant to Subsection 4-24-304(2)(b), this rule provides guidelines for the Utah Department of Agriculture and Food (Department) to authorize farm custom slaughter licensees or custom exempt slaughter facilities to verify ownership of cattle, calves, horses, or mules. The verification can take the place of a brand inspection required pursuant to Subsection 4-24-304(1).
<b>4. Summary of the new rule or change:</b>
The new rule outlines the ownership verification program that will be administered by the Department. This rule provides for a permit to verify ownership, including permitting requirements, as well as provides auditing and retention of records requirements, and details violations and consequences for violations.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department estimates that the cost of processing permits, verifying ownership certificate books, pre-stamped envelopes, and annual training, will be approximately \$100 per permit per year. The proposed \$100 permit fee for this program should cover Department costs for a net \$0 fiscal impact overall. The Department currently has 35 licensees eligible for the

program and estimates that approximately 20 will participate, for a total cost of \$2,000.

**B) Local governments:**

There is no estimated cost or savings to local governments because they are not licensed as custom exempt slaughter facilities or farm custom slaughter licensees and do not administer this program.

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

The Department estimates that all eligible licensees are small businesses, and their cost is the proposed \$100 permit fee, for a total cost of \$2,000. Small businesses will benefit from participation in the program because the process to obtain a permit under the program is more convenient when compared to obtaining a brand inspection. However, because the fees are the same, there are no direct fiscal savings.

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

No eligible licensees are non-small businesses, so the Department does not anticipate a cost or savings to any non-small businesses.

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

The Department does not estimate that others would be affected by this rule because they are not eligible to participate and don't administer the ownership verification program.

**F) Compliance costs for affected persons:**

The compliance cost for affected persons would be the proposed \$100 permit fee.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$2,000	\$2,000	\$2,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$2,000	\$2,000	\$2,000
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$4,000</b>	<b>\$4,000</b>	<b>\$4,000</b>
<b>Fiscal Benefits</b>			
State Government	\$2,000	\$2,000	\$2,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$2,000</b>	<b>\$2,000</b>	<b>\$2,000</b>
<b>Net Fiscal Benefits</b>	<b>(\$2,000)</b>	<b>(\$2,000)</b>	<b>(\$2,000)</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Department of Agriculture and Food, R. Logan Wilde, has reviewed and approved this regulatory impact analysis.

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

This rule will allow for farm custom exempt slaughter facilities and farm custom slaughter licensees to verify ownership of livestock in lieu of or in addition to brand inspection currently required by statute. This flexibility will benefit businesses while this new rule will ensure that appropriate procedures to protect livestock.

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

R. Logan Wilde, Commissioner

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 4-24-304(2)(b)	Subsection 4-24-304(1)	Subsection 4-24-304(2)
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members.)

Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	04/28/2020
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**R58. Agriculture and Food, Animal Industry.**  
**R58-26. Custom Exempt Slaughter Verification of Ownership.**  
**R58-26-1. Authority and Purpose.**

This rule is required by Section 4-24-304(2)(b) that allows the department to authorize a custom exempt slaughter facility or farm custom slaughter licensee to verify ownership of cattle, calves, horses, or mules before slaughter for the owner's use. Verification of ownership under this rule may be in addition to or equivalent to the brand inspection required in Section 4-24-304(1).

**R58-26-2. Definitions.**

- 1) "Amenable species" means livestock, including cattle, sheep, goats, swine, or equine.
- 2) "Department" means the Utah Department of Agriculture and Food.
- 3) "Custom exempt slaughter" means:
  - a) slaughtering an amenable species or nonamenable species as a service for the person who owns the amenable species or nonamenable species and uses the slaughtered amenable species or slaughtered nonamenable species for the person's own consumption, including consumption by immediate family members and nonpaying guests; or
  - b) the slaughter of a nonamenable species intended for wholesale or retail sale.
  - c) "Custom exempt slaughter" includes farm custom slaughter.

**R58-26-3. Permit to Verify Ownership Created.**

- 1) Pursuant to Section 4-24-304(2), a custom exempt slaughter facility licensed under R58-13 or farm custom slaughter licensee licensed under R58-11-3 is eligible to receive a permit from the department to verify ownership of livestock.
- 2) A permit exempts a facility or licensee from requiring a certificate of brand inspection prior to slaughter, provided they follow the requirements of this rule.

**R58-26-4. Permit Requirements.**

- 1) To obtain a permit to verify ownership of livestock, an eligible farm custom slaughter licensee or custom exempt slaughter facility shall:
    - a) possess a valid license pursuant to R58-11-3 or R58-13 in good standing with the department;
    - b) attend annual training arranged by the department to be educated on the areas of compliance required under the permit;
    - c) sign an acknowledgement agreeing to abide by state law and this rule; and
    - d) pay a fee to the department, as set forth in the fee schedule approved by the legislature.
  - 2) A permittee subject to this rule shall:
    - a) comply with all state laws and rules pertaining to the operation of a farm custom slaughter permit;
    - b) verify ownership of an animal for farm custom slaughter purposes only;
      - c) collect the following fees:
        - i) a minimum cattle inspection certificate fee per owner or producer;
        - ii) a fee per head for beef promotion;
        - iii) a fee per head for predator control; and
        - iv) a fee per farm custom slaughter "Not for Sale" tag;
      - d) remit all fees collected to the department monthly by the tenth day of the month;
      - e) complete a farm custom slaughter report that includes the following information:
        - i) the owner's contact information, including name, address, and phone number;
        - ii) the number of cattle slaughtered;
        - iii) the number of inspection certificates and "Not for Sale" tag numbers issued; and
        - iv) each fee collected; and
      - f) submit the report, along with the original copy of each inspection certificate issued and "Not for Sale" tag receipt, to the department by the tenth day of each month.
    - 3) For the purpose of this rule, a document or fee is remitted or submitted to the department by the tenth day of the month if it is physically received in the office of the department by the tenth day of each month.
    - 4) A permittee that follows the requirements of Subsection 58-26-4(2) shall be designated by the department as an official agent to verify ownership of the animal for farm custom slaughter purposes only.
- R58-26-5. Audit and Retention of Records.**
- 1) A permittee subject to this rule shall agree to retain each record pertaining to their permit and verification of ownership of cattle for a period of three years.
  - 2) Retained records shall include the farm custom slaughter report and associated documentation.
  - 3) Each record shall be made available for review and audit by the department on a quarterly basis, or more frequently if needed.
- R58-26-6. Permit Term.**
- 1) The term for a permit under this rule shall be from January 1 through December 31.
  - 2) The permit shall expire unless it is renewed prior to December 31 of each year.
  - 3) Permit renewal shall require that the permittee:
    - a) remain eligible to receive an ownership verification permit and have a valid license pursuant to R58-11(1) or R58-13;

NOTICES OF PROPOSED RULES

- \_\_\_\_\_ b) is in good standing with the department;
- \_\_\_\_\_ c) attend annual training arranged by the department pursuant to R58-26-4(1)(b);
- \_\_\_\_\_ d) sign an acknowledgement agreeing to abide by program rules; and
- \_\_\_\_\_ e) pay a renewal fee, as outlined in the fee schedule approved by the legislature.

**R58-26-7. Verification of Ownership.**

- 1) A permittee shall verify the ownership of an animal prior to slaughter.
- 2) Prior to slaughter the permittee shall ensure:
  - a) the animal bears the registered brand or mark owned by the owner of the animal;
  - b) if no brand or mark appears on the animal, other evidence of ownership is shown; or
  - c) the permittee has a valid brand certificate issued by a department brand inspector.
- 3) Verification of ownership shall occur during daylight hours.
- 4) A permittee shall consult with the department if the permittee is unsure of or cannot verify ownership of the animal presented for custom exempt slaughter.
- 5) A permittee shall record the number, sex, and breed of animal, with the owner's name.

**R58-26-8. Violation.**

- 1) It is a violation of this rule if a permittee:
  - a) fails to submit a farm custom slaughter report, required documentation, and fees collected pursuant to R58-26-4(2)(c) by the tenth of each month;
  - b) does not perform verification of ownership to the standards established by the department in R58-26-7(2); including:
    - c) if the permittee fails to conduct the verification of ownership during daylight hours;
    - d) if the permittee does not record the number, sex, breed, and brand or mark on each animal inspected together with the owner's name;
    - e) if the permittee does not contact the department if they are unsure of or cannot verify ownership of an animal presented for custom exempt slaughter; or
    - f) if the permittee accepts breed papers alone as proof of ownership.
- 2) If a permittee is found in violation of this rule:
  - a) the department will verify ownership for farm custom slaughter purposes;
  - b) the permittee shall have their permit withdrawn;
  - c) the department may revoke or suspend the permittee's farm custom slaughter license or custom exempt slaughter facility license; and
  - d) the permittee may be subject to a penalty.

**R58-26-9. Penalties.**

- 1) The department shall use a penalty matrix to determine an appropriate penalty for violation of this rule.
- 2) The department shall calculate each penalty based on the level of violation and the adverse effect or potential adverse effect at the time of the incident giving rise to the violation.
- 3) The median penalty shall be assessed unless a proportionate adjustment is warranted or there is an aggravating or mitigating factor present.

- 4) The department may consider a circumstance enhancing or reducing the penalty based on the seriousness of the violation.
- 5) An aggravating and mitigating factor could include the following:
  - a) the number of separate alleged violations contained within a single notice of intent;
  - b) the magnitude of the harm, or potential harm, including quantity or degree caused by the violation;
  - c) the similarity of the current alleged violation to a violation committed by the permittee previously; or
  - d) the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.
- 6) The department will review past violation trends annually, and update the penalty matrix based on compliance history.
- 7) A copy of the penalty matrix will be made available from the department upon request.

**KEY: livestock, ownership verification, farm custom slaughter**  
**Date of Enactment or Last Substantive Amendment: 2020**  
**Authorizing, and Implemented or Interpreted Law: 4-24-304(2)(b)**

<b>NOTICE OF PROPOSED RULE</b>			
<b>TYPE OF RULE:</b> Repeal			
<b>Utah Admin. Code Ref (R no.):</b>	<b>R63-1</b>	<b>Filing No.</b>	<b>52729</b>

**Agency Information**

<b>1. Department:</b>	Agriculture and Food		
<b>Agency:</b>	Chemistry Laboratory		
<b>Street address:</b>	350 N Redwood Road		
<b>City, state:</b>	Salt Lake City, UT 84115		
<b>Mailing address:</b>	PO Box 146500		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Amber Brown	385-245-5222	ambermbrown@utah.gov	
Weston Judd	801-816-3833	Westonjudd@utah.gov	
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R63-1. Fee Schedule

<b>3. Purpose of the new rule or reason for the change:</b>
This rule is no longer needed because the fee schedule for the chemistry laboratory is established in the fee schedule adopted each year by the legislature.
<b>4. Summary of the new rule or change:</b>
This rule should be repealed because there is no need to establish a fee schedule for the chemistry laboratory in rule, as it is established each year by the legislature. This rule will be repealed in its entirety.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This change does not include any anticipated cost or savings to the state budget because the fees that are collected will still be collected, the rule repeal just removes a duplicative source for fees.
<b>B) Local governments:</b>
This change does not affect local governments because they do not pay or charge laboratory fees.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This change does not affect small businesses because the fees they will pay have not changed.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This change does not affect non-small businesses because the fees they will change have not changed.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This change will not affect other individuals because they do not pay or charge chemistry laboratory fees.
<b>F) Compliance costs for affected persons:</b>
Chemistry laboratory fees have not changed so there are no new compliance costs for affected persons.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)
<b>Regulatory Impact Table</b>

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, R. Logan Wilde, has reviewed and approves this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This rule changes removes an unnecessary fee schedule and will not have a fiscal impact on businesses in Utah.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
R. Logan Wilde, Commissioner			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 4-2-10	Subsection 4-2-	
	2(2)	

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	04/29/2020
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**R63. Agriculture and Food, Chemistry Laboratory.**

~~[R63-1. Fee Schedule.~~

~~R63-1-1. Authority.~~

~~———— Promulgated under authority of Section 4-2-10.~~

~~R63-1-2. Analytical Service Fees.~~

~~———— Analytical service fees shall be charged as determined by the department pursuant to 4-2-2(2). A current list of approved fees may be obtained, upon request from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, UT 84114 6500. Phone (801)538 7168. Website: ag.utah.gov, Chemistry Division.~~

~~KEY: chemical testing~~

~~Date of Enactment or Last Substantive Amendment: December 16, 2005~~

~~Notice of Continuation: August 24, 2015~~

~~Authorizing, and Implemented or Interpreted Law: 4-2-2]~~

NOTICE OF PROPOSED RULE			
<b>TYPE OF RULE:</b> Amendment			
<b>Utah Admin. Code Ref (R no.):</b>	<b>R156-15A-231</b>	<b>Filing No.</b>	<b>52708</b>

**Agency Information**

<b>1. Department:</b>	Commerce
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<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state:</b>	Salt Lake City UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Robyn Barkdull	801-530-6727	rbarkdull@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account

<b>3. Purpose of the new rule or reason for the change:</b>
The Uniform Building Code Commission (UBCC) Education Advisory Committee recommends this amendment to restore the \$15 per student hour reimbursement cap back to a \$10 cap for users of the code training funds. The cap was \$10 before the most recent rule change, and the UBCC Education Advisory Committee members unanimously agree that with the reduced amount of available funds, the per student hour cap should remain at \$10 as it has been for several years. This will not have any effect on the Land Use Fund which will retain the cap of \$15 per student hour.

<b>4. Summary of the new rule or change:</b>
This proposed amendment decreases the reimbursement rate from the current \$15 per student hour back to the previously established \$10 per student hour. This will enable code training to be available to a larger base of students who can utilize the funds.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Grants provided under this rule are paid for out of a statutory 1% surcharge on all building permits that are kept in a fund for that purpose. Nothing in this proposed rule will change the amount of fees collected or the cost of administering the program. Therefore, the state budget will not be affected, beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) of approximately \$75 to print and distribute this rule once the proposed amendments are made effective.

**B) Local governments:**

Local governments have not historically applied for grants under the funds and therefore, would not be affected by this rule change.

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

This proposed amendment will apply to any small business providers who will seek grant money from the Building Code Inspector Training Fund or the Building Code Construction-Related Training Fund as described in the amendment. This may include providers in this industry (North American Industry Classification System (NAICS) 813910) who will offer code training for licensed inspectors or construction-related licensees. The Division estimates that there are approximately 38 small businesses that may offer code trainings. The benefit or cost to these organizations is inestimable. The decrease of the per student hour cap from \$15 to \$10 could result in a loss to the approximately 38 small businesses that offer code training. However, the preexisting \$15 per student hour cap was subject to exception and this amendment is also expected to enable code training to be available to a larger base of students who can utilize the funds. It is unknown whether this amendment will result in organizations receiving less funds than they may have qualified for previously, as funding will depend on individual submission criteria. If there are decreased funding awards it may increase costs to providers for events, but the providers may choose to pass these costs along to attendees.

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

This proposed amendment is not expected to impact non-small business as there are no non-small businesses in the industry in question.

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

This proposed amendment will apply to any individual providers who will seek grant money from the Building Code Inspector Training Fund or the Building Code Construction-Related Training Fund as described in the amendment. As described above for small businesses, the benefit or cost to providers is inestimable because the decrease of the per student hour cap from \$15 to \$10 could result in a loss, but the preexisting \$15 per student hour cap was subject to exception and this amendment is also expected to enable code training to be available to a larger base of students who can utilize the funds. It is unknown whether this amendment will result in a provider receiving less funds than they may have qualified for previously, as funding will depend on individual submission criteria. If there are decreased funding awards, it may increase costs to providers for events, but

the providers may choose to pass these costs along to attendees. If the decrease in the per student hour cap will result in lower grant awards, this may in turn have an inestimable indirect effect on Utah's approximately 670 licensed building inspectors and Utah's approximately 53,000 construction-related licensees seeking code training, either through an increase in the amount of training events available, or an increase in the amount they may have to pay to attend code training events.

**F) Compliance costs for affected persons:**

This proposed amended rule provides specifics to the existing rule relating to fund administration that would not result in an increase in compliance costs beyond what is already in statute and the previous rule.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$75	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$75</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$(75)</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Interim Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

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

The Division of Occupational and Professional Licensing proposes an amendment to Section R156-15A-231 to decrease the reimbursement rate from the current \$15 per student hour back to the previously established \$10 per student hour. The purpose of the amendment is to allow building code training to be available to a larger base of students. Small Businesses (less than 50 employees): Utah has approximately 670 licensed building inspectors, approximately 53,000 construction-related licensees seeking code training, and there are approximately 38 small businesses that may offer code trainings for licensed inspectors or construction-related licensees for the industry (NAICS 813910). The decrease of the per student hour cap from \$15 to \$10 could result in a loss to small businesses that offer code training. However, it is expected to enable code training availability to a larger base of students. It is unknown whether this amendment will result in organizations receiving less funds, and if there are decreased funding awards, the providers may choose to pass these costs along. Accordingly, no fiscal impact is expected for small businesses over and above any fiscal impact described in the fiscal note for the legislation as these costs are either inestimable or there is no fiscal impact. Non-Small Businesses (50 or more employees): The proposed amendments are not expected to impact non-small businesses because there are no non-small businesses that offer code trainings for licensed inspectors or construction-related licensees (NAICS 813910) in Utah for the same reasons as described above for small business as to the costs being inestimable for the reasons stated, or there is no fiscal impact.

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

Chris Parker, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)	Subsection 15A-1-204(6)
Section 15A-1-205		

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the

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

<b>A) Comments will be accepted until:</b>		06/15/2020
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
05/19/2020	1:00 PM	Heber Wells Bldg, 160 E 300 S, Fourth Floor, Salt Lake City, UT - the hearing will be held via electronic meeting

**10. This rule change MAY become effective on:**

06/22/2020  
 NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	04/27/2020
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**R156. Commerce, Occupational and Professional Licensing. R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule. R156-15A-231. Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account.**

In accordance with Subsections 15A-1-209(5)(c) and 58-56-17.5(2)(c), and Section R156-15A-230, the following procedures, standards, and policies are established to apply to the administration of the Building Code Inspector Training Fund, the Building Code Construction-Related Training Fund, and the Factory Built Housing Fees Account:

(1) The Division shall not approve or deny education grant requests from any separate fund or account until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:  
 (a) for the Building Code Inspector Training Fund or the Factory Built Housing Fees Account, grants in the form of reimbursement funding to the following organizations that administer code-related training or factory built housing educational events, seminars, or classes:

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(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) construction trade associations;

(iii) professional associations or organizations; and

(iv) governmental agencies;

(b) for the Building Code Construction-Related Training Fund, grants in the form of reimbursement funding to the following organizations that administer code-related training events, seminars, or classes:

(i) construction trade associations; or

(ii) professional associations;

(c) costs or expenses incurred as a result of code events, seminars, or classes directly administered by the Division;

(d) expenses incurred for the salary, benefits, or other compensation and related expenses resulting from the employment of a Board Secretary;

(e) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including~~[-but not limited to]~~ computer equipment, telecommunication equipment and costs and general office supplies; and

(f) other related expenses as determined by the Division.

(g) Gift cards, door prizes, and the cost of food and food services provided to training participants are not appropriate funding expenditure categories, and may not be paid or reimbursed from any fund.

(3) The following procedure shall be used for submission, review, and payment of funding grants:

(a) A funding grant applicant shall submit a completed application on forms provided for that purpose by the Division, at least 15 days prior to the meeting at which the request is to be considered, and prior to the training event. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants shall be made as reimbursement after:

(i) the approved event, class, or seminar has been held; and

(ii) the required receipts, invoices, and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.

(c) Approved funding grants shall be reimbursed only for eligible expenditures which have been executed in good faith with the intent to ensure the best reasonable value.

(d)(i) A Request for Reimbursement of an approved funding grant shall be submitted to the Division within 60 days following the approved event, class, or seminar, unless an extenuating circumstance occurs. Written notice shall be given to the Division of such an extenuating circumstance.

(ii) Failure to submit a Request for Reimbursement within 60 days shall result in non-payment of approved funds, unless an extenuating circumstance has been reviewed and accepted by the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) whether the grant applicant agrees to charge a cost for the training event, class, or seminar ~~[which]~~that is uniform across ~~[a]~~categories of attendees;

(c) the prior record of the program sponsor in providing codes training, including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(d) costs of the facility, including:

(i) the location of a facility or venue, or the type of event, seminar, or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(e) the estimated cost for instructor fees, including:

(i) a reimbursement rate not to exceed \$150 per instruction hour without further review and approval by the Committee. This reimbursement rate represents the total amount reimbursable for instruction activities. Preparation time, event coordination, course development costs, staff time, and travel time are not separately reimbursable;

(ii) the experience or expertise of the instructor in the proposed training area;

(iii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iv) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar, or class;

(v) travel expenses; and

(vi) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar events, seminars, or classes;

(f) the estimated cost of advertising materials, brochures, registration, and agenda materials, including:

(i) printing costs that may include creative or design expenses;

(ii) whether printed materials comply with Subsection (4)(b); and

(iii) delivery or mailing costs;

(g) other reasonable and comparable cost alternatives for each proposed expense item;

(h) other information the Committee reasonably believes may assist in evaluating a proposed expenditure; and

(i) a total reimbursement rate of the lesser of \$~~[+5]~~10 per student hour or the cost of ~~[a]~~the approved actual expenditures.

(5) The Division, after consideration and recommendation of the Committee, based upon the criteria in Subsection (4), may reimburse the following items in addition to the lesser of \$~~[+5]~~10 per student hour or the cost of ~~[a]~~the approved actual expenditures:

(a) text books, code books, or code update books;

(b) cost of one Division licensee mailing list per provider per two-year renewal period;

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(c) cost incurred to upload continuing education hours into the Division's online registry for contractors, plumbers, electricians, or elevator mechanics; and

(d) reasonable cost of advertising materials, brochures, registration and agency materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) delivery or mailing costs.

(6) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code-related training or factory built housing education, and education or activities in other areas.

(b) Only the prorated portions of a joint function that apply to the purposes of a separate fund are eligible for a funding grant from that fund.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the purposes of the separate fund; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(7) Advertising materials, brochures, and agenda or training materials for a Building Code Training funded event, seminar, or class shall include a statement that acknowledges that partial funding of the program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on [all]-building permits.

(8) Advertising materials, brochures, and agenda or training materials for a Factory Built Housing Fees Account funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from surcharge fees on factory built housing sales.

(9) If an approved event or joint event is not held, no amount is reimbursable except for the costs described in Subsection (5)(d).

**KEY: contractors, building codes, building inspection, licensing**  
**Date of Enactment or Last Substantive Amendment: ~~October 22, 2019~~ 2020**

**Notice of Continuation: June 20, 2016**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R156-79	Filing No.	52675

**Agency Information**

<b>1. Department:</b>	Commerce
<b>Agency:</b>	Occupational and Professional Licensing
<b>Building:</b>	Heber M. Wells Building
<b>Street address:</b>	160 E 300 S

<b>City, state:</b>	Salt Lake City UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state, zip:</b>	Salt Lake City UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jana Johansen	801-530-6621	janajohansen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R156-79. Hunting Guides and Outfitters Licensing Act Rule
<b>3. Purpose of the new rule or reason for the change:</b>
The proposed amendments update the rule in accordance with statutory changes made by S.B. 23, S.B. 149, and H.B. 290 in the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
In Sections R156-79-102, R156-79-302e, R156-79-601, and R156-70-602, the proposed amendments remove references to the Hunting Guides and Outfitters Licensing Act Board, in accordance with S.B. 149 and H.B. 29 which repealed Section 58-79-201 and disbanded the Board.
In Section R156-79-302d, the proposed amendments remove the reference to "good moral character" in accordance with S.B. 23, and clarify that the potentially disqualifying actions are based on unprofessional conduct per Subsection 58-1-501(2) and Section R156-1-302.
In Section R156-79-303, the proposed amendments update citations to renewal procedures in Rule R156-1.
In Section R156-79-502, the proposed amendments clarify unprofessional conduct provisions.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No state agencies will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes. Accordingly, the amendments are not expected to impact the state beyond a minimal cost to the Division of Occupational and Professional Licensing (Division) approximately \$75 to print and distribute this rule once the proposed amendments are made effective.

<b>B) Local governments:</b>			
No local governments will be directly or indirectly affected by this filing because the proposed amendments merely update and clarify provisions and conform this rule to statutory changes.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There are approximately six small businesses in Utah owned by individuals in the hunting guide and outfitter industries (North American Industry Classification System (NAICS) 114210). No small businesses are expected to be impacted by this filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
The proposed amendments are not expected to impact non-small businesses because there are no non-small businesses in Utah in the industries in question.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i> ):			
In Utah, there are 490 licensed hunting guides and 152 licensed outfitters, but these persons are not expected to be impacted by filing because the proposed amendments merely update and clarify provisions and conform the rule to statutory changes.			
<b>F) Compliance costs for affected persons:</b>			
These amendments are not expected to impose any compliance costs on any affected persons.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$75	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Cost</b>	<b>\$75</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$(75)</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Interim Executive Director of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The Division proposes three amendments to remove reference to the Hunting Guides and Outfitters Licensing Board, in accordance with S.B. 149 and H.B. 29, which repealed Section 58-79-201 and disbanded the Board. First, Section R156-79-302d removes the reference to "good moral character" in accordance with S.B. 23, and clarify that the potentially disqualifying actions are based on unprofessional conduct per Subsection 58-1-501(2) and Section R156-1-302. Second, Section R156-79-303 updates citations to renewal procedures in Rule R156-1. Third, Section R156-79-502 clarifies the unprofessional conduct provisions. Small Businesses: In Utah there are approximately six small businesses in the hunting guide and outfitting industry (NAICS 114210). There are also 490 licensed hunting guides and 152 licensed outfitters. These businesses and licensees are not expected to be affected by the proposed amendments because these amendments are updates and clarifying provisions meant to conform the rule to statutory changes. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the fiscal note for the legislation as these costs are either inestimable or there is no fiscal impact. Non-small businesses: The proposed amendments are not expected to impact non-small businesses because there are no non-small businesses in the hunting guide and outfitting industries (NACIS 114210) in Utah or for the same reasons as described above for small business as the costs are either inestimable, for the reasons stated, or there is no fiscal impact.			

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Chris Parker, Interim Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 58-79-101	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020	
<b>B) A public hearing (optional) will be held:</b>		
<b>On:</b>	<b>At:</b>	<b>At:</b>
05/20/2020	9:00 AM	Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT – the hearing will be conducted electronically

<b>10. This rule change MAY become effective on:</b>	06/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Director	<b>Date:</b>	04/20/2020
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**R156. Commerce, Occupational and Professional Licensing. R156-79. Hunting Guides and Outfitters Licensing Act Rule. R156-79-102. Definitions.**

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

- (1) "Client" means the person who engages the professional services of a licensed outfitter.
- (2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:
  - (a) the American Red Cross;
  - (b) the American Heart Association; or
  - (c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division [~~in collaboration with the Board~~], to denote the individual whose name and signature appear on the certificate has successfully completed the applicable first aid and CPR course.
- (3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:
  - (a) a finding of guilt based on evidence presented to a judge or jury;
  - (b) a guilty plea;
  - (c) a plea of nolo contendere;
  - (d) a plea of guilty or nolo contendere [~~which~~]that is held in abeyance pending the successful completion of probation;
  - (e) a pending diversion agreement;
  - (f) a conviction [~~which~~]that has been reduced pursuant to Subsection 76-3-402(1); or
  - (g) an equivalent of [~~any of the above~~]this Subsection (3)(a) through (f) in another jurisdiction.
- (4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.
- (5) "Protecting" means the hunting guide and outfitter protects any clientele.
- (6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.
- (7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

**R156-79-302d. Qualifications for Licensure - Good Moral Character.**

- (1) Per Subsection 58-1-501(2) and Section R156-1-302, a[A]ny one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:
  - (a) a violation of a state or federal wildlife, hunting guide or outfitter statute or regulation that includes:
    - (i) an imprisonment for more than five days within the previous five years;
    - (ii) an unsuspended fine of more than \$2,000 imposed in the previous 12 months;
    - (iii) an unsuspended fine of more than \$3,000 imposed in the previous 36 months; or
    - (iv) an unsuspended fine of more than \$5,000 imposed in the previous 60 months;
  - (b) any felony conviction within the last five years;
  - (c) a conviction for a felony offense against a person under Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;
  - (d) a conviction for one or more misdemeanors involving wildlife violations;
  - (e) a conviction for a misdemeanor crime of moral turpitude;
  - (f) a suspension or disciplinary action involving an individual obtaining or exercising the privileges granted by a hunting guide or outfitter license in this state or another state of the

NOTICES OF PROPOSED RULES

United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and

(g) a loss of the privilege to hunt in this state or another state of the United States or province of Canada.

**R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.**

(1)(a) An applicant for licensure as a hunting guide shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic hunting guide training program pursuant to Section R156-79-601; or

(B) 100 days of on-the job training that is substantially equivalent to the basic hunting guide training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2)(a) An applicant for licensure as an outfitter shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic outfitter training program pursuant to Section R156-79-602; or

(B) 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) An applicant shall document on-the-job training through:

(a) an affidavit by a licensed hunting guide or outfitter, as applicable to the license sought, attesting to the on-the-job training claimed by the applicant;

(b) for an outfitter who has been licensed in another state, self-authenticating guarantees of reliability, such as:

- (i) federal land agency records;
- (ii) approved training program records; or
- (iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division ~~[in collaboration with the Board]~~ for every day of training completed by an applicant who has attended a hunting guide or outfitter school that, as of the date of attendance, has been approved by the Division ~~[in collaboration with the Board]~~.

**R156-79-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 79 is established by rule in Section R156-1-308a.

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

**R156-79-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising ~~[or]~~ when soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing, ~~[or]~~ hindering, or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to ~~[promptly]~~ report to the Division within 20 days any ~~[, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a]~~ violation of a state or federal wildlife, big game, or guiding statute ~~[that the licensee believes was committed]~~ by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food~~[,]~~ or drink, or otherwise ~~[and]~~ subjecting any animal used in the conduct of business to ~~[needless]~~ abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at ~~[all times]~~ any time to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in ~~[all]~~ any other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect ~~[all]~~ food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality ~~[to the]~~ of a client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state ~~[and]~~ or federal wildlife laws and rules;

(14) failing to adequately maintain general liability insurance coverage as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, ~~[at all times]~~ when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

**R156-79-601. Content of the Hunting Guide Basic Training Program.**

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division ~~[in collaboration with the Board]~~ and may include the following components or their equivalent:

- (1) hunter ethics and attitude;
- (2) horsemanship;
- (3) packing skills;
- (4) transporting livestock;
- (5) shoeing skills;
- (6) use of a crosscut saw and ax;
- (7) use of a chain saw;
- (8) general weapon knowledge;
- (9) guiding skills;
- (10) game care;
- (11) setting up camps;
- (12) hunting guide regulations;

NOTICES OF PROPOSED RULES

- (13) first aid and CPR training provided by:
  - (a) the American Red Cross;
  - (b) the American Heart Association; or
  - (c) another organization that offers substantially equivalent training as approved by the Division [~~in collaboration with the Board~~];
- (14) orienteering and map reading;
- (15) a basic off highway vehicle safety course;
- (16) basic survival skills;
- (17) trophy judging skills;
- (18) other topics pertinent to the hunting guide industry as approved by the Division [~~in collaboration with the Board~~].

**R156-79-602. Content of the Outfitter Basic Training Program.**

The basic training program for outfitters as required in Subsection 58-79-302(2)(c) shall be approved by the Division [~~in collaboration with the Board~~] and may include the following components or their equivalent:

- (1) hunter ethics and attitude;
- (2) horsemanship;
- (3) packing skills;
- (4) transporting livestock;
- (5) shoeing skills;
- (6) use of a crosscut saw and ax;
- (7) use of a chain saw;
- (8) general weapon knowledge;
- (9) guiding skills;
- (10) game care;
- (11) setting up camps;
- (12) outfitter regulations;
- (13) first aid and CPR training provided by:
  - (a) the American Red Cross;
  - (b) the American Heart Association; or
  - (c) another organization that offers substantially equivalent training as approved by the Division [~~in collaboration with the Board~~];
- (14) a basic off highway vehicle safety course;
- (15) supervising clientele;
- (16) hiring and supervising personnel;
- (17) outfitter advertising;
- (18) booking clientele;
- (19) going into business for oneself;
- (20) wilderness and back country manners;
- (21) applying federal and state land use policies;
- (22) obtaining [~~all~~]any necessary licenses and permits and permissions for the client;
- (23) providing staff and facilities for hunting;
- (24) providing a hunting guide;
- (25) orienteering and map reading;
- (26) basic survival skills;
- (27) trophy judging skills;
- (28) other topics pertinent to the outfitter industry as approved by the Division [~~in collaboration with the Board~~].

**KEY: licensing, hunting guides, outfitters**

**Date of Enactment or Last Substantive Amendment:** ~~July 9, 2015~~ **2020**

**Notice of Continuation:** July 8, 2019

**Authorizing, and Implemented or Interpreted Law:** 58-79-101; 58-1-106(1)(a); 58-1-202(1)(a)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R162-2c	Filing No. 52654	

**Agency Information**

<b>1. Department:</b>	Commerce		
<b>Agency:</b>	Real Estate		
<b>Room no.:</b>	2nd Floor		
<b>Building:</b>	Heber M Wells		
<b>Street address:</b>	160 E 300 S		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 146711		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6711		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Justin Barney	801-530-6603	justinbarney@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R162-2c. Utah Residential Mortgage Practices and Licensing Rules
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of the proposed rule amendment is to update this rule relating to continuing education so that it is consistent with current law and practices and to eliminate the requirement that a lending manager review each complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member.
<b>4. Summary of the new rule or change:</b>
In Section R162-2c-102, the proposed amendment would delete outdated language from the definitions of subsections (3) "Certification" and (10) "Instructor applicant."
In Section R162-2c-203, the proposed amendment would eliminate the requirement that instructors of division-approved continuing education ("CE") courses be certified by the Division of Real Estate (Division). In 2017, the Division discontinued approving CE courses. Since 2017, all CE courses are approved through the National Mortgage Licensing System. This proposed rule amendment will clarify this rule by eliminating the outdated requirement of certification of instructors for non-existent CE courses.
In Section R162-2c-301a, the proposed amendment would eliminate the requirement that a lending manager review each complaint relating to conduct by a sponsored

mortgage loan originator or unlicensed staff member.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The proposed amendment eliminates an outdated rule requirement for the certification of instructors for CE courses that no longer exist. The proposed amendment would also eliminate the requirement that a lending manager review each complaint against mortgage loan originators and unlicensed staff. These functions do not and, in recent years have not, required any resources of the Division. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact affect those resources or result in any additional cost or savings to the state budget.

**B) Local governments:**

Local governments are not required to comply with or enforce the Utah Residential Mortgage Practices and Licensing Rules. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to local governments.

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

The proposed amendment does not create new obligations for small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to small businesses.

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

The proposed amendment does not create new obligations for non-small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to non-small businesses.

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

The proposed amendment does not create new obligations for persons other than small businesses, non-small businesses, state, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

**F) Compliance costs for affected persons:**

The proposed amendment does not create new obligations for affected persons subject to the administrative rule nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to affected persons.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Chris Parker, the Interim Executive Director of the Commerce Department, has reviewed and approved this fiscal analysis.

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

There will be no fiscal impact on small businesses

because the proposed amendments do not create new obligations for businesses nor do they increase the cost associated with any existing obligation.

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

Chris Parker, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 61-2c-103	Subsection 61-2c-402(4)(a)	Section 61-2c-203
Section 61-2c-201.4		

**Public Notice Information**

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

**A) Comments will be accepted until:** 07/01/2020

**10. This rule change MAY become effective on:** 07/08/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jonathan Stewart, Director	<b>Date:</b>	04/20/2020
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**R162. Commerce, Real Estate.**

**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.**

**R162-2c-102. Definitions.**

- (1) The acronym "ALM" stands for associate lending manager.
- (2) The acronym "BLM" stands for branch lending manager.

- (3) "Certification" means authorization from the division to:
  - (a) establish and operate a school that provides courses for Utah-specific prelicensing education~~[-or continuing education]~~; or
  - (b) function as an instructor for courses approved for Utah-specific prelicensing education~~[-or continuing education]~~.
- (4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.
- (5) "Control person" is defined in ~~Subsection~~**[Section]** 61-2c-102(1)(p).
- (6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.
- (7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.
- (8) "Incentive program" means a program through which a licensed entity may, pursuant to ~~Section~~**[Subsection]** R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.
- (9) "Instruction method" means the forum through which the instructor and student interact and may be:
  - (a) classroom: traditional instruction where instructors and students are located in the same physical location;
  - (b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or
  - (c) online: instructor and student interact through an online classroom.
- (10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing courses~~[-or continuing education courses]~~.
- (11)(a) "Lending manager" is defined in ~~Subsection~~**[Section]** 61-2c-102(1)(aa).
  - (b) "Lending manager license" includes:
    - (i) a principal lending manager license;
    - (ii) an associate lending manager license; and
    - (iii) a branch lending manager license.
- (12) The acronym "LM" stands for lending manger and includes the following licensing designations:
  - (a) principal lending manager;
  - (b) associate lending manager; and
  - (c) branch lending manager.
- (13) "Mortgage entity" means any entity that:
  - (a) engages in the business of residential mortgage lending;
  - (b) is required to be licensed under Section 61-2c-201; and
  - (c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.
- (14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.
- (15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.
- (16) "Other trade name" means any assumed business name under which an entity does business.
- (17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:
  - (a) Social Security number;
  - (b) financial account number, or credit or debit card number; or
  - (c) driver license number or state identification card number.

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(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the LM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstate" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Section~~[Subsection]~~ R162-2c-201, "relevant information" includes:

- (a) court dockets;
- (b) charging documents;
- (c) orders;
- (d) consent agreements; and
- (e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

- (b) any community college;
- (c) any vocational-technical school;
- (d) any state or federal agency or commission;
- (e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

**R162-2c-203. Utah-Specific Education Certification.**

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, email address, and address of the physical facility;

(B) name, phone number, email address, and address of any school director;

(C) name, phone number, email address, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that each ~~[a]~~ school director~~[s]~~ and owner~~[s]~~ meets the moral character requirements outlined in Subsection R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school;

(B) description of the school's physical facilities; and

(C) type of instruction method;

(iv) list of the instructors~~[(s)]~~, including any guest lecturers~~[(s)]~~, who will be teaching each course;

(v) proof that each instructor:

(A) has been certified by the division; or

(B) is exempt from certification under Subsection ~~(6)(f)~~~~[203(5)(f)]~~;

(vi) statement of attendance requirements as provided to students;

(vii) refund policy as provided to students;

(viii) disclaimer as provided to students; and

(ix) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

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(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

- (i) instruction method;
- (ii) outline of the course, including:
  - (A) a list of subjects covered in the course;
  - (B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

- (D) number of course hours allocated for each subject;
- (E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

- (G) name and credentials of any guest lecturer; and
- (H) list of topics[~~(s)~~] and sessions[~~(s)~~] taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer key; and

(vi) the grading system, including methods of testing and standards of grading.

- (d) Minimum standards.
  - (i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

- (A) an accompanying workbook as approved by the division for the student to complete during the instruction; and
- (B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

- (4) Course expiration and renewal.
  - (a) A precertification course expires at the same time the school certification expires.

(b) A precertification course certification is renewed automatically when the school certification is renewed.

- (5) Education committee.
  - (a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator precertification courses, an individual shall provide evidence of:

- (i) a high school diploma or its equivalent;
- (ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or
- (B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM precertification courses, an individual shall:

- (i) meet the general requirements of this Subsection 6(c); and
- (ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

- (I) current active membership in the Utah Bar Association; or
- (II) degree from an American Bar Association accredited law school.

- (C) Advanced Appraisal:
  - (I) at least two years practical experience in appraising; and
  - (II) current state-certified appraiser license.

- (D) Advanced Finance:
  - (I) at least two years practical experience in real estate finance; and
  - (II) association with a lending institution as a loan originator.

(e) To act as an instructor of NMLS-approved continuing education courses, an individual shall certify through the nationwide database.

~~[(f)(i) To act as an instructor of Division approved continuing education courses, an individual shall complete the Division certification process at least 30 days prior to engaging in instruction.~~

~~(ii) To certify with the Division as an instructor, an applicant shall provide the following:~~

- ~~(A) applicant's name and contact information;~~
- ~~(B) evidence that the applicant meets the competency requirements of Subsection R162-2e-202;~~

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~~(C) evidence that the applicant has graduated from high school or successfully completed equivalent education;~~

~~(D) evidence that the applicant understands the subject matter to be taught, as demonstrated through:~~

~~(I) a minimum of two years full-time experience as a mortgage licensee;~~

~~(II) college-level education related to the course subject; or~~

~~(III) demonstrated expertise in the subject proposed to be taught;~~

~~(E) evidence that the applicant has the ability to teach, as demonstrated through:~~

~~(F) a minimum of 12 months of full-time teaching experience; or~~

~~(I) part-time teaching experience equivalent to 12 months full-time teaching experience;~~

~~(II) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;~~

~~(G) a signed statement agreeing not to market personal sales products;~~

~~(H) a signed statement certifying legal presence to work in the state;~~

~~(I) any other information the Division requires or requests; and~~

~~(J) a nonrefundable application fee.~~

~~(f)(g)~~ The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

~~(g)(h)~~ Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

~~(h)(i)~~ Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in Subsections R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

**R162-2c-301a. Unprofessional Conduct.**

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through ~~61-2c-405~~. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fees~~(s)~~ that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through ~~61-2c-405~~. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

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(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) if acting as a PLM or BLM, exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff working from the licensee's office by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices and Licensing Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) ~~personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that~~

~~might constitute a violation of federal law, state law, or division administrative rules;~~

~~(vii)~~ establish and maintain a quality control plan that:

(A) complies with HUD and FHA ~~[HUD/FHA]~~ requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process;

~~(vii)~~~~(viii)~~(A) establish, maintain, and enforce written policies and procedures to ensure the independent judgment of any underwriter employed by the sponsoring entity, whether sponsored from the principal entity location or a branch office; and

(B) take corrective action for problems identified through the underwriting process; and

~~(viii)~~~~(ix)~~ review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

~~(ix)~~(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. A mortgage entity shall:

(i) remit to any third party service provider the fees~~[(s)]~~ that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees, which shall be remitted no later than 30 days following the date on which the fees are received by the mortgage entity;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

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(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Subsection ~~[Section]~~ 61-2c-102(1)(e);

(v) ensure that:

(I) each sponsored mortgage loan originator fulfills the affirmative duties set forth in this Subsection (1); and

(II) each sponsored LM fulfills the affirmative duties set forth in this Subsection (2); and

(vi) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in Subsection R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under Subsection R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructors~~[(s)]~~ for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

(A) Utah statutes;

(B) Utah administrative rules;

(C) federal laws; and

(D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in Subsections R162-2c-203(1)(b)(vi) through R162-2c-203(1)(b)(ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, ~~[Section 61-2e]~~ for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, ~~[Section 61-2e]~~ for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 61-2c-405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

**KEY: residential mortgage, loan origination, licensing, enforcement**

**Date of Enactment or Last Substantive Amendment: ~~November 6, 2019~~ 2020**

**Notice of Continuation: March 31, 2015**

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R162-2g	Filing No. 52645	

**Agency Information**

<b>1. Department:</b>	Commerce		
<b>Agency:</b>	Real Estate		
<b>Room no.:</b>	2nd Floor		
<b>Building:</b>	Heber M. Wells		
<b>Street address:</b>	160 E 300 S		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 146711		
<b>City, state, zip:</b>	Salt Lake City, Utah 84114-6711		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Justin Barney	801-530-6603	justinbarney@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules
<b>3. Purpose of the new rule or reason for the change:</b>
The proposed amendments were prepared after several requests from appraisers and numerous discussions between appraisers, industry members, Division of Real Estate (Division) staff, and the Appraiser Board. Various reasons motivated these changes. The purpose of the proposed amendments is to clarify and update this rule and bring it into conformity with general appraisal practice and available appraisal reporting software.
<b>4. Summary of the new rule or change:</b>
In Section R162-2g-311, the changes clarify that a licensed or certified residential appraiser is not to appraise commercial property.
In Subsection R162-2g-502a(1)(i), the changes update this rule to eliminate the requirement that an appraiser state both the appraiser's name and credential number on an appraisal report and instead allow either the appraiser's name or the credential number.
In Subsection R162-2g-502(2)(c), an appraiser who performs an evaluation is exempt from complying with Standard 4 of the USPAP.

In Subsection R162-2g-502(4), the changes allows an appraiser trainee to sign an appraisal report if the trainee performs significant appraisal assistance and the trainee's supervisory appraiser also signs the report.

In Subsection R162-2g-502(8), the changes clarify that only a registered appraiser trainee or a licensed or certified appraiser may include in a property inspection report appraisal assignment results including appraiser analyses, opinions, or conclusions, and may also report on the physical characteristics of the property. An unlicensed person may only report on the physical characteristics of the property in a property inspection report.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Division has the staff and budget in place to administer this proposed amendment. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact affecting those resources or result in any additional cost or savings to the state budget.
<b>B) Local governments:</b>
Local governments are not required to comply with or enforce the Real Estate Appraiser Licensing and Certification Administrative Rules. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed amendment does not create new obligations for small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to small businesses.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed amendment does not create new obligations for non-small businesses, nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
The proposed amendment does not create new

obligations for persons other than small businesses, non-small businesses, or state or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to persons other than small businesses, non-small businesses, or state or local government entities.

**F) Compliance costs for affected persons:**

The proposed rule amendment does not create new obligations for affected persons subject to the administrative rules nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed amendment will not result in a fiscal impact to affected persons.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Chris Parker, Interim Executive Director of the Commerce Department, has reviewed and approved this fiscal analysis.

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

The proposed amendments do not create new obligations for small businesses, nor do they increase the cost associated with any existing obligations. These proposed changes amend will not result in a fiscal impact to small businesses.

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

Chris Parker, Interim Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Subsection 61-2g-201(2)(h)	Subsection 61-2g-205(5)(c)	Subsection 61-2g-401(5)
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jonathan Stewart, Director	<b>Date:</b>	04/20/2020
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**R162. Commerce, Real Estate.**

**R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.**

**R162-2g-311. Scope of Authority.**

(1) Trainees.  
(a) An individual who has properly qualified as a trainee pursuant to Section ~~[Subsection]~~ R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

- (i) participating in property inspections;
- (ii) measuring or assisting in the measurement of properties;
- (iii) performing appraisal-related calculations;
- (iv) participating in the selection of comparable properties for an appraisal assignment;
- (v) making adjustments to comparable properties; and
- (vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:

(i) As to a minimum of the trainee's first 35 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.

(iii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) ~~sign an appraisal report or~~ discuss an appraisal assignment with anyone other than:

(A) the supervisory appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) a duly authorized professional peer review committee.

(e) The following are not subject to the scope of authority limitations of this Subsection (1):

(i) full-time elected county assessors; and

(ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.

(2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than \$1,000,000;

(b) complex one- to four- residential units having a transaction value of less than \$250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis/appraisal is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment;~~and~~

(b) vacant land if the highest and best use of the land is for five or more one- to four-family units~~[-]~~;

(c) commercial real property; or

(d) vacant land if the highest and best use of the vacant land is commercial use.

**R162-2g-502a. Standards of Conduct and Practice.**

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Section ~~[Subsection]~~ R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b) except as provided in Subsection (2):

(i) comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agents~~[-]~~, property owner, or other verifiable sources~~[-]~~;

NOTICES OF PROPOSED RULES

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual; and[-]

(i) immediately following the signature on the report in an appraisal report prepared and signed by a state-licensed or certified appraiser, state either:

(A) the credential type of State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser; or

(B) the license or certification number assigned to the appraiser by the division.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(c) When performing an evaluation as defined in the Real Estate Appraiser and Certification Act, an appraiser trainee or a licensed or certified appraiser is exempt from complying with Standards 1 through 4[3] of USPAP.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4) Unless there is a client assignment condition prohibiting an appraiser trainee from signing an appraisal report, when an appraiser trainee performs significant appraisal assistance on an appraisal, the trainee may sign the appraisal report if the appraisal

report is also signed by the trainee's supervisory appraiser. The appraiser trainee shall state, immediately following the trainee's signature in the report, "Trainee" and include the registration number assigned to the appraiser trainee by the division

~~(5)(a)(4)(a)~~ A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 35 residential inspections as provided in Subsection R162-2g-311(1)(c)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

~~(6)(5)~~ A school or continuing education provider shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) upload course completion information as to each student who provides the school or continuing education provider the student's name according to division records and the student's license number:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

NOTICES OF PROPOSED RULES

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to all state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor(s) for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within 10 business days of the date of the request; and

(l) verify that the material is current in any course taught on:

(i) Utah statutes;

(ii) Utah administrative rules;

(iii) Federal laws; and

(iv) Federal regulations.

~~(7)~~ An instructor shall adhere to the approved outline for any course taught.

(8) When performing an inspection of property for an appraisal assignment, only an individual who is registered as a trainee, or is licensed or certified as an appraiser, may include in the inspection report appraisal assignment results, including appraiser analyses, opinions, or conclusions, and may also report on the physical characteristics of the property. An individual who is not registered, licensed, or certified may not report appraisal assignment results but is limited to reporting on the physical characteristics of the property.

**KEY:** real estate appraisals, school certification, instructor certification, education options

**Date of Enactment or Last Substantive Amendment:** ~~November 5, 2019~~ 2020

**Notice of Continuation:** August 18, 2016

**Authorizing, and Implemented or Interpreted Law:** 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-304	Filing No.	52741

**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state:</b>	Salt Lake City, UT 84111

<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-304. Teacher Preparation Programs
<b>3. Purpose of the new rule or reason for the change:</b>
Rule R277-304 was passed during the initial phase of rule changes to implement the new licensing structure. Staff is now in the process of reviewing those rules and recommending changes learned in implementing the new system, including recommendations from stakeholders.
<b>4. Summary of the new rule or change:</b>
Rule R277-304 was amended to incorporate by reference the Educator Preparation Program Competencies for Elementary Literature, as well as to incorporate changes to the requirements for specialized preparation programs recommended through implementation of recent licensure changes.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have material fiscal impacts on state government revenues or expenditures. The changes provide increased clarity and specificity in the rules related to certain specialized programs. They are not expected to drive changes in costs or activities at the state or local levels.
<b>B) Local governments:</b>
This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. The changes provide increased clarity and specificity in the rules related to certain specialized programs. They are not expected to drive changes in costs or activities at the state or local levels.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have material fiscal impacts on small businesses' revenues or expenditures. The changes provide increased clarity and specificity in the rules related to certain specialized programs. They

NOTICES OF PROPOSED RULES

are not expected to drive changes in costs or activities at the state or local levels.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have material fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes provide increased clarity and specificity in the rules related to certain specialized programs. They are not expected to drive changes in costs or activities at the state or local levels.

**F) Compliance costs for affected persons:**

There were no compliance costs for affected persons. The changes provide increased clarity and specificity in the rules related to certain specialized programs. They are not expected to drive changes in costs or activities at the state or local levels.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

The Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-6-201(3)(a)
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**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	Educator Preparation Program Competencies for Elementary Literacy
<b>Publisher</b>	Utah State Board of Education
<b>Date Issued</b>	April 16, 2020
<b>Issue, or version</b>	Version 1

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	05/01/2020
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**R277. Education, Administration.  
R277-304. Teacher Preparation Programs.  
R277-304-1. 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; and
  - (c) Subsection 53E-6-201(3)(a), which allows the Board to make rules to establish the criteria for obtaining an educator license.
- (2)(a) The purpose of this rule is to specify the standards which the Board expects of teacher preparation institution prior to program approval in specified areas.

(b) The standards in this rule apply to the specific educational area and grade level for which the preparation program is designed.

**R277-304-2. Definitions.**

(1)(a) "Career and technical education" or "CTE" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree.

(b) CTE programs provide all students a continuous education system, driven by a student's college and career readiness plan, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment.

(2) "Clinical experience" means a structured opportunity in which a program candidate is mentored by a licensed educator and evaluated by a teacher leader, school administrator, or university preparation program faculty member, in order to develop and demonstrate competency in the skills and knowledge necessary to be an effective teacher, in a physical classroom, which may include experiences in a virtual classroom.

(3) "Competency" means evidence through demonstration in a higher education or prek-12 classroom setting of successful application of knowledge and skills. ~~[(3) "Council for the Accreditation of Educator Preparation" or "CAEP" means a national organization that advances equity and excellence in educator preparation through evidence-based accreditation that assures quality and supports continuous improvement to strengthen P-12 student learning.]~~

(4)(a) "Council for Exceptional Children" or "CEC" means an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents.

(b) CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

(5) "Essential Elements" means the alternate academic achievement standards for students with significant cognitive disabilities, established by the Board in the Special Education Rules Manual, dated October 2016, incorporated by reference in Section R277-750-2.

(6) "Diverse student populations" means unique student groups as identified by:

- (a) gender;
- (b) race;
- (c) ethnicity;
- (d) disability;
- (e) sexual orientation;
- (f) academic learning needs; or
- (g) linguistic needs.

(6)(a) "Multi-tiered system of supports" or "MTSS" means a framework for integrating assessment and intervention to maximize student achievement, reduce behavior problems, and increase long-term success.

(b) The combination of systematic implementation of increasingly intensive intervention, sometime referred to as tiers, and carefully monitoring students' progress, distinguishes MTSS from typical prevention measures.

NOTICES OF PROPOSED RULES

(c) Emphasis, in MTSS, is placed on ensuring interventions are implemented effectively.

(7) "Personalize" means to engage all students with high expectations for their learning goals and to empower each learner to take ownership of their strengths, needs, and interests, while tailoring flexible supports to maximize student growth and competence.

(8) "Utah Core Standards" means the [course]core standards established by the Board in Rule R277-700 for grades K-12 and the Utah Early Childhood Core Standards, February 2013 edition.

**R277-304-3. Incorporation by Reference of Educator Preparation Program Competencies for Elementary Literacy.**

(1) This rule incorporates by reference the Educator Preparation Program Competencies for Elementary Literacy.

(2) A copy of this document is located at:

(a)

<https://schools.utah.gov/administrativerules/documentsincorporated;> and

(b) the offices of the Utah State Board of Education.

**R277-304-4. General Teacher Preparation.**

Prior to approval by the Board, a teacher preparation program shall:

(1) prepare candidates to meet the Utah Effective Teaching Standards in Rule R277-530;

(2) prepare candidates to teach:

(a) the Utah Core Standards; and

(b) the Essential Elements, as appropriate to a candidate's prospective area of licensure as established by the Board;

(3) include school-based clinical experiences for a candidate to observe, practice skills, and reflect on teaching that:

(a) are significant in number, depth, breadth, and duration;

(b) are progressively more complex; and

(c) [occur in multiple schools and classrooms;

(d) ]include working with all types of students;[- and

(e) ]include creating and consistently implementing beginning of semester or school year classroom procedures and practices;]

(4) require[-the demonstration of] competency in:

(a) content and content-specific pedagogy appropriate for the area of licensure;

(b) knowledge of the [Utah-]Educator [Professional ]Standards contained in Rule R277-[515]217;

(c) ]creating effective learning environments by establishing and implementing routines and procedures with consistent expectations;

(d) ]skills in providing tier one and tier two instruction and intervention on the Utah Core Standards and positive behavior supports to each student within a multi-tiered system of supports;

(e) ]integrating technology to support and meaningfully supplement the learning of students, including the effective use of software for personalized learning;

(f) ]designing, administering, and reviewing educational assessments in a meaningful and ethical manner;

(g) ]analyzing formative and summative assessments results to inform and modify instruction;

(h) ]assessing students for competency for the purpose of personalized learning;

(i) ]skills in implementing personalized learning practices that consider the whole child including;

(i) ]trauma-informed instructional practices; and

(ii) ]restorative instructional practices;](c) ]designing, administering, and reviewing formative and summative assessments in a meaningful and ethical manner;

(d) ]improving student outcomes by:

(i) ]using student assessment data, both formative and summative;

(ii) ]analyzing instructional practices; and

(iii) ]making necessary adjustments to personalize learning;

(e) ]using strategies to promote active student engagement;

(f) ]systematically designing instruction toward a specific learning goal by:

(i) ]providing tier one and tier two instruction and intervention on the Utah core standards including the use of competency-based learning;

(ii) ]using a variety of evidence-based instructional strategies, including explicit instruction and scaffolded supports;

(iii) ]integrating technology to support and meaningfully supplement the learning of students;

(iv) ]designing developmentally appropriate and authentic learning experiences; (v) ]developing higher order thinking and metacognitive skills; and

(vi) ]integrating cross-disciplinary skills, such as literacy and numeracy, into instruction;

(g) ]providing positive and constructive feedback to guide students' learning and behavior;

(h) ]establishing a consistent, organized, and respectful learning environment, including:

(i) ]positive behavior interventions and supports within a multi-tiered system of support;

(ii) ]classroom procedures and routines;

(iii) ]trauma-informed practices; and

(iv) ]restorative practices;

(j) ]i) knowledge and skills[-designed] to assist in the identification of and instruction for[students with disabilities to meet the needs of] students with disabilities in the general classroom, including:

(i) ]knowledge of the IDEA and Section 504 of the Rehabilitation Act;

(ii) ]knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) ]knowledge and skills in implementing least restrictive behavior interventions;

(iv) ]skills in implementing and assessing the results of interventions; and

(v) ]skills in the implementation of an educational program with accommodations, modifications, services, and supports established by an IEP or a 504 plan for students with disabilities in the general education classroom;

(k) ]i) knowledge and skills designed to meet the needs of diverse student populations in the general education classroom, including:

(i) ]allowing students [multiple]alternative ways to demonstrate learning that are sensitive to student diversity;

(ii) ]creating an environment [using a teaching model-]that is sensitive to multiple experiences and diversity;

(iii) ]designing, adapting, and delivering instruction to address each student's diverse learning strengths and needs; and

(iv) incorporating ~~[tools of]~~ language development into planning, instruction, and intervention for students learning English, ~~[and] using their first language as an asset while supporting development of English proficiency;~~ and  
~~[(1) knowledge and skills in collaborating with parents and guardians.]~~

(k) effectively communicating and collaborating with parents, colleagues, and administration.

(5) for a program applicant accepted on or after January 1, 2020, require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in one or more clinical experiences in [each of] collaboration with a licensed teacher over an extended period of time in each of the following competencies:

(a) implementing the planning and design, delivery, facilitation, assessment, evaluation, and reflection of a unit of instruction~~]; [including:~~

~~\_\_\_\_\_ (i) systematic and explicit instructional design and implementation;~~

~~\_\_\_\_\_ (ii) varied evidence based instructional strategies;~~

~~\_\_\_\_\_ (iii) developmentally appropriate and authentic learning experiences;~~

~~\_\_\_\_\_ (iv) scaffolded instruction;~~

~~\_\_\_\_\_ (v) differentiated instruction;~~

~~\_\_\_\_\_ (vi) instruction targeting higher order thinking and metacognitive skills;~~

~~\_\_\_\_\_ (vii) project based or competency based learning opportunities;~~

~~\_\_\_\_\_ (viii) designing and selecting pre-assessments, formative, and summative assessments that align to student learning objectives; and]~~

~~[(ix)b] revising instructional plans for future implementation or reteaching concepts as appropriate;~~

~~[(b) integrating cross disciplinary skills, such as literacy or numeracy, into instruction;~~

~~\_\_\_\_\_ (c) engaging students in the learning process;~~

~~\_\_\_\_\_ (d) utilizing technology to enhance and personalize instruction;]~~

~~[(e)c] implementing the accommodations, modifications, services, and supports as outlined in a student's IEP or 504 plan;~~

~~[(f)d] evaluating student artifacts and assessments; [for the purposes of:~~

~~\_\_\_\_\_ (i) measuring student understanding;~~

~~\_\_\_\_\_ (ii) modifying instruction;~~

~~\_\_\_\_\_ (iii) targeting tier two instruction and intervention in a multi-tiered system of support;~~

~~\_\_\_\_\_ (iv) providing feedback to students; and~~

~~\_\_\_\_\_ (v) documenting student progress, i.e., assigning an academic grade;]~~

~~[(g)e] establishing and maintaining classroom procedures and routines that include positive behavior interventions and supports;~~

~~[(h)f] establishing and maintaining a positive learning climate;~~

~~[(i)g] reflecting on the teaching process and justifying instructional decisions;~~

~~[(j) collaborating with grade level, subject, or cross-curricular teams to:~~

~~\_\_\_\_\_ (i) analyze student data; and~~

~~\_\_\_\_\_ (ii) inform, plan, and modify instruction;]~~

~~[(k)h] participating in at least one IEP meeting or parental consultation regarding a student that the program applicant has instructed; and~~

~~[(1) effectively communicating with parents, colleagues, and administration; and]~~

~~[(m)i] consulting with [a school counselor] qualified personnel, such as a mental health or behavior professional, regarding the emotional well-being of students and [referring the students to a school counselor when necessary];~~ responding appropriately;

(6) include consideration of a candidate's dispositions and suitability for teaching; and

(7) include plans for candidate remediation and exit counseling, if applicable.

**R277-304-~~4]5. Early Childhood and Elementary Preparation Programs.~~**

(1) Prior to approval by the Board, a preparation program for early childhood education or elementary education shall require competency in:

~~\_\_\_\_\_ (a) align, as appropriate, with:~~

~~\_\_\_\_\_ (i) the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs; or~~

~~\_\_\_\_\_ (ii) the CAEP 2018 K-6 Elementary Teacher Preparation Standards; and~~

~~\_\_\_\_\_ (b) require the demonstration of competency in:]~~

~~[(i)a] the areas outlined in Section R277-304-3;~~

~~\_\_\_\_\_ (b) early childhood development and learning;~~

~~[(ii)c] the appropriate content knowledge needed to teach:~~

~~[(A) literacy, including listening, speaking, writing, and reading;~~

~~\_\_\_\_\_ (B) mathematics;]~~

~~\_\_\_\_\_ (i) the science of literacy instruction including:~~

~~\_\_\_\_\_ (A) phonemic awareness;~~

~~\_\_\_\_\_ (B) phonics;~~

~~\_\_\_\_\_ (C) fluency;~~

~~\_\_\_\_\_ (D) vocabulary;~~

~~\_\_\_\_\_ (E) comprehension; and~~

~~\_\_\_\_\_ (vi) the Educator Preparation Program Competencies for Elementary Literacy;~~

~~\_\_\_\_\_ (ii) the science of mathematics instruction, including:~~

~~\_\_\_\_\_ (A) quantitative reasoning;~~

~~\_\_\_\_\_ (B) problem solving;~~

~~\_\_\_\_\_ (C) representation;~~

~~\_\_\_\_\_ (D) numeracy; and~~

~~\_\_\_\_\_ (E) a balance of procedural and conceptual understanding;~~

~~[(E)iii] physical and life science;~~

~~[(D)iv] health and physical education;~~

~~[(E)v] social studies; and~~

~~[(F)vi] fine arts;~~

~~[(iii) the science of reading instruction including:~~

~~\_\_\_\_\_ (A) phonemic awareness;~~

~~\_\_\_\_\_ (B) phonics;~~

~~\_\_\_\_\_ (C) fluency;~~

~~\_\_\_\_\_ (D) vocabulary; and~~

~~\_\_\_\_\_ (E) comprehension;~~

~~\_\_\_\_\_ (iv) the science of mathematics instruction, including:~~

~~\_\_\_\_\_ (A) quantitative reasoning;~~

~~\_\_\_\_\_ (B) problem solving;~~

~~\_\_\_\_\_ (C) representation;~~

~~(D) numeracy; and  
(E) a balance of procedural and conceptual understanding; and  
(v) early childhood development and learning.]~~

(2) For a program applicant accepted after January 1, 2020, a preparation program for early childhood or elementary education shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

- (a) all requirements outlined in Subsections ~~R277-304-3~~~~(6)~~~~(4)~~ through (7);
- (b) demonstrating content specific pedagogy in each of the areas outlined in Subsection ~~R277-304-4(1)(b)(ii)~~~~(1)~~;
- (c) diagnosing students struggling with reading and planning and implementing remediation for those students; and
- (d) diagnosing students struggling with mathematics and planning and implementing remediation for those students.

(3) An educator preparation program shall apply the standards in this Section R277-304-4 to the specific age group or grade level for which the program of preparation is designed.

(a) An early childhood education program shall focus primarily on early childhood development and learning in kindergarten through grade 3.

(b) An elementary program shall include both early childhood development and learning and elementary content and pedagogy in kindergarten through grade 6.

**R277-304-~~5~~~~6~~. Secondary Preparation Programs.**

(1) Prior to approval by the Board, a secondary preparation program shall require competency in:

- (a) all content competencies established by the Superintendent for a professional educator license in at least one endorsement;
- (b) all areas outlined in ~~Section R277-304-3~~Subsections R277-304-3(4) through (7);
- (c) including literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards; and
- (d) planning instruction and assessment in content-specific teams and in cross-curricular teams.

(2) For a program applicant accepted after January 1, 2020, a secondary preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

- (a) all requirements outlined in Subsections ~~R277-304-3~~~~(6)~~~~(4)~~ through (7); and
- (b) ensuring student safety and learning in educational labs or shops and extra-curricular settings~~;~~ and
- ~~(c) collaborating with a school counselor, as necessary, to ensure student progress on the student's four-year plan for college and career readiness as described in Rule R277-462].~~

**R277-304-~~6~~~~7~~. Special Education and Preschool Special Education Programs.**

(1) Prior to approval by the Board, a special education or preschool special education preparation program shall:

- (a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;
- (b) aligned with the 2012 Council for Exceptional Children Initial Preparation Standards as informed by the Council

for Exceptional Children Specialty Sets for Initial Preparation Programs in one or more of the following special education areas:

- (i) Mild/Moderate Disabilities;
  - (ii) Severe Disabilities;
  - (iii) Deaf and Hard of Hearing;
  - (iv) Blind and Visually Impaired;
  - (v) Deafblind; or
  - (vi) Preschool Special Education (Birth-Age 5);
- (c) require the passage of a special education content knowledge assessment approved by the Superintendent;
- (d) require the passage of a Braille assessment approved by the Superintendent for a program in the Blind and Visually Impaired area;
- (e) require ~~the demonstration of~~ competency in:
- (i) all areas detailed in ~~Section~~Subsections R277-304-3(4) through (7);
  - (ii) legal and ethical issues surrounding special education, including:

- (A) the IDEA;
- (B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and
- (C) all other applicable statutes and Board rules;
- ~~(iii) the IDEA and Board Special Education rules;~~

~~(iv) working with other school personnel to implement and evaluate academic, behavioral, and developmental and positive behavior supports and interventions for students with disabilities within a multi-tiered system of supports as appropriate for the area of licensure;~~

(iv) training in and supervising the services and supports provided to students with disabilities by general education teachers, related service providers, and paraprofessionals; and

(v) providing specially designed instruction, including content specific pedagogy, as per IEPs, to students with disabilities, including:

- (A) the Utah Core Standards; and
- (B) the Essential Elements as appropriate to a candidate's prospective area of licensure as established by the Board;
- (C) skills in assessing and addressing the educational, developmental, and functional needs and progress of students with disabilities;

(D) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(E) skills in implementing an educational program with accommodations, modifications, services, and supports established by an IEP for students with disabilities.

(2) For a program applicant accepted after January 1, 2020, a special education or preschool special education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

- (a) all requirements outlined in Subsections ~~R277-304-3~~~~(6)~~~~(4)~~ through (7);
- (b) creating learning goals and objectives for a student with disabilities that are specific, measurable, time-bound, and aligned to identified student needs and the Utah Core Standards;
- (c) designing or adapting learning environments for diverse student populations that encourage active participation in individual and group activities;
- (d) monitoring school compliance with the provisions of multiple student's IEP and Section 504 plans;

NOTICES OF PROPOSED RULES

(e) conducting a student IEP meeting under the supervision of a licensed special education teacher;

(f) using knowledge of measurement principles and practices to interpret assessment information in making instructional, eligibility, program, and placement decisions for students with disabilities, including those from culturally or linguistically diverse backgrounds;

(g) ~~[developing and implementing a secondary transition plan as it relates to post-secondary education and training, competitive employment and independent living; and~~

~~(h) ]communicating with parents of students with disabilities to ensure they are informed regarding the progress of their student and their right to due process[-]; and~~

(h) if the program is designed to prepare an individual for a special education license area, developing and implementing a secondary transition plan as it related to post-secondary education and training, competitive employment, and independent living.

**R277-304-[7]8. Deaf Education Preparation Programs.**

(1) Prior to approval by the Board, a deaf education preparation program shall:

(a) be operated by or partnered with a Utah institution of higher education or the Utah State Board of Education;

(b) be aligned with the National Association of State Directors of Special Education, Inc., Optimizing Outcomes for Students who are Deaf or Hard of Hearing, Educational Service Guidelines, Third Edition;

(c) be focused on one or more of the following areas:

(i) teaching students who are deaf or hard of hearing from birth to age five using both listening and spoken language strategies and American Sign Language;

(ii) teaching students who are deaf or hard of hearing with listening and spoken language strategies; or

(iii) teaching students who are deaf or hard of hearing with strategies that promote the development of American Sign Language and English literacy across the curriculum;

(d) require the passage of a deaf education content knowledge assessment approved by the Superintendent;

(e) require ~~[demonstration of]~~ competency in:

(i) the areas detailed in ~~[Section]~~Subsections R277-304-3(4) through (7).

(ii) legal and ethical issues surrounding special education, including:

(A) the IDEA;

(B) the Special Education Rules Manual incorporated by reference in Section R277-750-2; and

(C) all other applicable statutes and Board rules;

(iii) addressing specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(iv) skills for incorporating language into all aspects of the curriculum;

(v) pedagogical skills unique to teaching reading, writing, mathematics, and other content areas to deaf and hard of hearing students;

(vi) basic fluency in the use of American Sign Language;

(vii) knowledge of the audiological and physiological components of audition;

(viii) skills for teaching speech to deaf and hard of hearing students;

(ix) the socio-cultural and psychological implications of hearing loss; and

(x) assessing and addressing the educational needs and educational progress of deaf and hard of hearing students.

(2) For a program applicant accepted after January 1, 2020, a deaf or hard of hearing education preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in each of the following:

(a) all requirements outlined in Subsections R277-304-3~~(6)~~(4) through (7);

(b) for a program focused on Subsection R277-304-7(1)(c)(i):

(i) assessing early childhood language development and assessment in American Sign Language and spoken English;

(ii) working with families with students who are deaf or hard of hearing while respecting a variety of communication modalities;

(iii) integrating language, speech, and listening everyday activities;

(iv) sharing knowledge with families with students who are deaf or hard of hearing about the complexities of deaf culture, including norms and behaviors of the deaf community;

(v) developing auditory perception in children and educating parents about developmental milestones for listening skills; and

(vi) proficiency in American Sign Language as demonstrate by passing an assessment approved by the Superintendent;

(c) for a program focused on Subsection R277-304-7(1)(c)(ii):

(i) developing auditory perception in children and strategies for developing listening and spoken language in deaf and hard of hearing students;

(ii) demonstrating understanding and expertise regarding early childhood spoken language development;

(iii) involving family members with students who are deaf or hard of hearing in learning and therapeutic activities;

(iv) integrating speech, listening, and spoken language in preschool and early elementary content areas; and

(v) integrating current listening technology, including troubleshooting such technology; and

(d) for a program focused on Subsection R277-304-7(1)(c)(iii):

(i) integrating American Sign Language into instruction of core academic content for all school-age students;

(ii) enhancing bilingual literacy of students who are deaf or hard of hearing in both American Sign Language and English;

(iii) integrating respect and understanding of deaf culture into instruction;

(iv) demonstrating understanding and expertise regarding American Sign Language language development; and

(v) proficiency in American Sign Language as demonstrated by passing an assessment approved by the Superintendent.

**R277-304-[8]9. Career and Technical Education Preparation Programs.**

(1) Prior to approval by the Board, a CTE teacher preparation program designed for individuals that do not hold a bachelor's degree or higher shall:

(a) focus on one or more of the following areas:

(i) family and consumer sciences;

NOTICES OF PROPOSED RULES

- (ii) health sciences;
  - (iii) information technology;
  - (iv) skilled and technical sciences; or
  - (v) work-based learning;
- (b) require that candidates have six years of documented, related occupational experiences within the 10 years prior to the program application in an approved CTE license area;
- (c) require ~~[demonstration of]~~ competency in all areas detailed in Section ~~[s R277-304-3 and]~~ R277-304-5;
- (d) For a program applicant accepted after January 1, 2020, a CTE preparation program shall require multiple opportunities for a program applicant to successfully demonstrate application of knowledge and skills gained through the program in a school-based setting in all requirements outlined in Section R277-304-5; and
- (e) require candidates to hold the applicable license or certificate issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing in any area where such licensure or certification exists.
- (2) A program may count an associate's degree in a related area for up to two years of occupational experience to satisfy the requirement in Subsection R277-304-8(1)(b).
- (3)(a) An approved program may request a waiver from the Superintendent of the occupational experience required for a candidate if the candidate has passed an approved competency examination in the respective field at or above the passing score established by the Superintendent.
- (b) The Superintendent may grant a waiver under Subsection (2)(a) for up to five years from the date the candidate passed the examination.

**KEY:** teacher preparation, programs, educators  
**Date of Enactment or Last Substantive Amendment:** ~~[May 23, 2019]~~ **2020**  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; ~~[53A-1-401]~~ **53E-3-401; 53E-6-201**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-415	Filing No.	52742

**Agency Information**

<b>1. Department:</b>	Education		
<b>Agency:</b>	Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R277-415. School Nurses Matching Funds
<b>3. Purpose of the new rule or reason for the change:</b>
The changes are being made to ease the current administrative burden on staff and allow for a longer time frame for grant funds awarded to be expended and makes technical changes.
<b>4. Summary of the new rule or change:</b>
The changes switch the grant to a three-year cycle instead of an annual cycle and updates corresponding language to match the new funding cycle for the grant.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have material fiscal impact on state government revenues or expenditures. The changes update reporting timeframes and may reduce some administrative burdens for local education agencies and the Utah State Board of Education (USBE).
<b>B) Local governments:</b>
This rule change is not expected to have material fiscal impact on local governments' revenues or expenditures. The changes update reporting timeframes and may reduce some administrative burdens for local education agencies and USBE.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. The changes update reporting timeframes and may reduce some administrative burdens for local education agencies and USBE.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because

NOTICES OF PROPOSED RULES

there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have material fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The changes update reporting timeframes and may reduce some administrative burdens for local education agencies and USBE.

**F) Compliance costs for affected persons:**

There were no compliance costs for affected persons. The changes update reporting timeframes and may reduce some administrative burdens for local education agencies and USBE.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**H) Department head approval of regulatory impact analysis:**

The Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Article X, Section 3	Section 53F-2-519	Section 53E-3-401
Section 53F-2-519		

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	05/01/2020
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**R277. Education, Administration.  
R277-415. School Nurses Matching Funds.  
R277-415-1. 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) Section ~~[53A-1-401]~~53E-3-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Section ~~[53A-17a-154]~~53F-2-519, which requires the Board to distribute grant money to LEAs for school nurses.
- (2) The purpose of this rule is to provide rules for awarding of matching funds under Section ~~[53A-17a-154]~~53F-2-519.

**R277-415-2. Definitions.**

- (1) "Advanced Practice Registered Nurse" or "APRN" is a nurse practitioner who may practice as a school nurse, or in a supervisory role.
- (2) "Health aid or clerk" means an unlicensed assistive person who must work under the supervision of an RN.
- (3) "Licensed Practical Nurse" or "LPN" means a nurse who may only assist or work under the supervision of a registered nurse or a medical doctor.
- (4) "Physician" means a licensed doctor with a doctorate in medicine or osteopathic medicine from an accredited college or university.
- (5) "Registered nurse" or "RN" is a licensed practicing nurse with a degree in nursing from an accredited college or university.
- (6) "Typical school nurse" means a licensed RN specializing in school nursing that serves as a health care expert in a school.

**R277-415-3. Appropriation for School Nurses.**

- (1) The Superintendent shall award an appropriation for school nurses to LEAs subject to the requirements of this Rule R277-415 and Section ~~[53A-17a-154]~~53F-2-519.
- (2) An LEA that seeks an appropriation for school nurses under this Rule shall submit an application for school nurse funds ~~[annually]~~every three years.
- (3) The Superintendent shall determine the amount of an LEA's three year allocation taking into account:
  - (a) an LEA's student enrollment;
  - (b) an LEA's ability to match funds as provided in this Section R277-415-3;
  - (c) the percentage of change to an LEA's school nursing staff since the previous [state]-fiscal three year period from the last application[2007]; and

(d) the annual allocation of funds towards the school nursing program by the Legislature.

(4) An LEA shall provide a dollar for dollar match for an appropriation for school nurses awarded in accordance with this rule.

(5) An LEA shall provide a physician or APRN consultant to provide oversight to the LEA's school nursing program.

(6) ~~[Beginning with the 2018-19 school year, a]~~An LEA may use matching funds for paid personnel costs of:

- (a) a typical school nurse;
- (b) a registered professional nurse; or
- (c) a licensed medical physician.

(7) ~~[Beginning with the 2018-19 school year, a]~~An LEA may not use matching funds for:

- (a) an LPN;
- (b) a special education school nurse;
- (c) a pre-school school nurse;
- (d) a health aid or clerk;
- (e) a certified nurse assistant;
- (f) office space; or
- (g) medical supplies.

(8) An LEA may not count a school nurse as a full FTE at one school and a partial FTE at another school.

(9) An LEA shall provide documentation to the Superintendent to ensure that an appropriation for school nurses received does not supplant previous school nursing costs, including the LEA's:

- (a) funding amounts and sources of funding for school nurses ~~[employed prior to state fiscal year 2008]~~employed in the previous three years;
- (b) funding amounts and sources of funding for current school nurses;
- (c) current personnel cost information; and
- (d) names and license numbers of employed school nurses.

(10) An LEA shall provide names and license numbers of the LEA's school nurses, including new hires, and overseeing consultants to the Superintendent by November 30 annually.

(11)(a) An LEA may provide an in-kind service match to qualify for state funds under this rule.

- (b) An in-kind match under Subsection (11)(a) may include:
  - (i) a collaborative agreement with a local health department supported by an executed memorandum of understanding or contract, which shall include an hourly rate attributable to the services provided;
  - (ii) volunteer hours by a registered professional nurse valued at an[~~y~~] hourly market rate approved by the Superintendent;
  - (iii) volunteer hours by a licensed medical physician valued at an hourly market rate approved by the Superintendent;
  - (iv) funds paid by a local health department towards school nurse personnel costs; and
  - (v) funds paid by any other outside source towards school nurse personnel costs.

(12) The Superintendent ~~[may]~~shall require an LEA receiving an appropriation for school nurses to:

- (a) submit reports to the Superintendent and Utah Department of Health regarding the LEA's school nursing activities; and
  - (b) participate in standardized data collection as established by the Utah Department of Health, including the annual school health workload census.
- (13) An LEA that fails to meet its matching obligations shall reimburse any state funds awarded in accordance with this rule.

NOTICES OF PROPOSED RULES

(14) Nothing in this rule gives any medical provider authorization to prescribe medications to a student without the written consent of the student's parent or guardian.

**KEY: school nurses, awarding, funds**

**Date of Enactment or Last Substantive Amendment:** ~~March 14, 2018~~ **2020**

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; ~~53A-1-401~~ **53E-3-401; 53F-2-519**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R277-712	Filing No.	52743

**Agency Information**

<b>1. Department:</b>	Education		
<b>Agency:</b>	Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule or section catchline:</b>
R277-712. Competency-based Grant Programs
<b>3. Purpose of the new rule or reason for the change:</b>
Rule R277-712 has been updated to encompass the remaining phases of the Competency-Based Education Grants.
<b>4. Summary of the new rule or change:</b>
The Competency-Based Education grant program has three phases. Previously, Rule R277-712 only covered the planning phase. The rule was expanded so that the grant processes applied to the implementation and expansion phases, as well. USBE expects funding for the implementation phase to begin this year.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The change aligns this rule with the statute authorizing the Utah State Board of Education (USBE) to issue planning, implementation, and expansion grants. Previously, because the program was in the first year of implementation, this rule only allowed for planning grants.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The change aligns this rule with the statute authorizing USBE to issue planning, implementation, and expansion grants. Previously, because the program was in the first year of implementation, this rule only allowed for planning grants.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The change aligns this rule with the statute authorizing USBE to issue planning, implementation, and expansion grants. Previously, because the program was in the first year of implementation, this rule only allowed for planning grants.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The change aligns this rule with the statute authorizing USBE to issue planning, implementation, and expansion grants. Previously, because the program was in the first year of implementation, this rule only allowed for planning grants.

**F) Compliance costs for affected persons:**

There were no compliance costs for affected persons. The change aligns this rule with the statute authorizing USBE to issue planning, implementation, and expansion grants. Previously, because the program was in the first year of implementation, this rule only allowed for planning grants.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS

611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-5-502
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	05/01/2020
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**R277. Education, Administration.  
R277-712. Competency-based Grant Programs.**

**R277-712-1. 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; and
  - (b) Section 53F-5-502, which requires the Board to:
    - (i) define outcome-based measures for each type of grant awarded to LEA's;
    - (ii) establish a grant application process;
    - (iii) establish a review committee; and
    - (iv) adopt metrics to analyze the quality of a grant application; and
  - (c) 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.

- (2) The purpose of this rule is to:
  - (a) define outcome-based measures for each type of grant awarded to LEA's;
  - (b) establish a grant application process;
  - (c) establish a review committee; and
  - (d) adopt metrics to analyze the quality of a grant application.

**R277-712-2. Definitions.**

- (1) "Advisory committee" means the advisory committee established by the Board in ~~[Section R277-712-3]~~ accordance with Subsection 53F-5-502(3)(c).
- (2) "Grant" means:
  - (a) a planning grant under Section 53F-5-503;
  - (b) an implementation grant under Section 53F-5-504; or
  - (c) an expansion grant under Section 53F-5-505.
- ~~(2)3~~ "Grant program" means the same as that term is defined in Subsection 53F-5-501(5).

**R277-712-3. Competency-based Advisory Committee Membership and Duties.**

- (1) The advisory committee shall include the following ~~ten~~ individuals:
  - (a) the Deputy Superintendent of Instructional Services or the Deputy's designee, who is a non-voting member of the advisory committee;
  - (b) one member who is an expert in blended learning;
  - (c) one member who is an expert in STEM education;
  - (d) one member who is an expert in assessment of student learning;
  - (e) one member who is a former school district superintendent;
  - (f) one member who is a current school administrator;
  - (g) one member who is a current charter school administrator;
  - (h) one member who is a former LEA administrator;
  - (i) one member who is a current teacher; and
  - (j) one member who is a former teacher.
- (2) In addition to the committee members described in Subsection (1), the advisory committee may select additional grant application reviewers to assist the advisory committee with the work described in Subsection (3).
- (3) The advisory committee shall:
  - (a) establish metrics to analyze the quality of a grant application;
  - (b) review an LEA's ~~[planning-]~~ grant application to determine whether the ~~[planning-]~~ grant application:
    - (i) meets the criteria described in ~~[Section 53F-5-503 and Section R277-712-5]~~ applicable statute and rule; and
    - (ii) should be selected by the Board ~~[as one of three LEAs]~~ to receive a ~~[planning-]~~ grant;
    - (c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and
    - (d) perform other duties as directed by:
      - (i) the Board; or
      - (ii) the Superintendent.~~[~~

- (i) meets the criteria described in ~~[Section 53F-5-503 and Section R277-712-5]~~ applicable statute and rule; and
  - (ii) should be selected by the Board ~~[as one of three LEAs]~~ to receive a ~~[planning-]~~ grant;
  - (c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and
  - (d) perform other duties as directed by:
    - (i) the Board; or
    - (ii) the Superintendent.~~[~~
- ~~\_\_\_\_\_ (4) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on grant applications to the Board for approval.]~~

**R277-712-4. Pre-grant Approval Requirements.**

- (1) Before an LEA submits a ~~[planning-]~~ grant application to the advisory committee for approval by the Board, the LEA shall have at least two LEA representatives participate in the competency-based technical assistance training conducted by the Superintendent, including:
  - (a) the school district superintendent or charter school executive director; and
  - (b)(i) the LEA's curriculum director; or
  - (ii) the LEA's proposed competency-based education program manager.
- (2) A member of an LEA's local school board or charter school governing board and other staff identified by the applying LEA may also participate in the technical assistance training described in Subsection (1).

**R277-712-5. Grant Application.**

- (1) An LEA may apply for a ~~[planning-]~~ grant ~~[described in Section 53F-5-503]~~ by submitting an application to the Superintendent.
- (2) The Superintendent shall:
  - (a) develop a grant application for each phase of the grant program;
  - (b) set a deadline for the application to be submitted to the Superintendent; and
  - (c) make the grant application available to LEAs on the Board's website.

**R277-712-6. Procedure and Requirements for Awarding a [Planning] Grant.**

- (1) The advisory committee and the Superintendent shall make recommendations to the Board based on:
  - (a)(i) the criteria described in Subsection 53F-5-503(2) for a planning grant;
  - (ii) the criteria described in Subsection 53F-5-504(2) for an implementation grant; or
  - (iii) the criteria described in Subsection 53F-5-505(2) for an expansion grant;
- (b) the LEA's proposed budget for the LEA's competency-based program; and
- (c) the LEA's outcome based measurements described in Subsection (2).
- (2)(a) ~~[For a planning grant, an]~~ An LEA shall include outcome-based measurements as part of the LEA's competency-based program to measure the performance of the LEA's plan.

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(b) The outcome-based measurements described in Subsection (2)(a) shall include at least one measurement of student growth and proficiency.

(c) The outcome-based measurements described in Subsection (2)(a) may include:

- (i) parent and student satisfaction with the LEA's competency-based program;
- (ii) cost savings;
- (iii) an increase in the LEA's graduation rate; ~~and~~
- (iv) number of credits earned by students through the competency-based program ~~[-]; and~~
- (v) other quality program indicators as listed in Utah's Competency-Based Education Framework.

(3) An LEA may be awarded each subsequent phase of the grant program only after:

- (a) successful participation in the previous phase; and
  - (b) Board approval of the LEA's plan.
- (4) If an LEA's grant application is denied by the Board:
- (a) an LEA may submit a new grant application the next year following the first denial;
  - (b) an LEA may only submit a planning grant application the next year following a second denial and the LEA shall:
    - (i) request technical assistance from the Superintendent prior to re-applying; and
    - (ii) demonstrate increased understanding of competency-based education implementation upon re-application.

**KEY:** competency-based ~~[instruction]~~ education, grant programs  
**Date of Enactment or Last Substantive Amendment:** ~~[October 11, 2016]~~ 2020  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; ~~[53F-5-502]~~ Title 53F, Chapter 5, Part 5; 53E-3-401(4)

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R277-736	Filing No.	52744

**Agency Information**

<b>1. Department:</b>	Education		
<b>Agency:</b>	Administration		
<b>Building:</b>	Board of Education		
<b>Street address:</b>	250 E 500 S		
<b>City, state:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 144200		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule or section catchline:</b>
R277-736. Juvenile Court or Law Enforcement Notice and Information Dissemination
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being created to comply with the statutory requirement found in Section 53G-8-404 that mandates the Utah State Board of Education (USBE) outline the process for sharing information among school staff when notified by Law Enforcement or the Juvenile Courts that a student has been taken into custody or adjudicated for violent felony.
<b>4. Summary of the new rule or change:</b>
This rule establishes that a school principal may not share information received regarding a student who has been taken into custody or adjudicated for a violent felony until the principal has consulted the school's multi-disciplinary team. The multi-disciplinary team is required to use an evidence-based threat assessment to assess the level and threat and determine which staff is relevant for sharing the information.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. Section 53G-8-404 requires USBE to make rules governing the dissemination of information for a student who has been taken into custody or adjudicated for a violent felony. This rule is created to comply with this statutory requirement.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. Section 53G-8-404 requires USBE to make rules governing the dissemination of information for a student who has been taken into custody or adjudicated for a violent felony. This rule is created to comply with this statutory requirement.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. Section 53G-8-404 requires USBE to make rules governing the dissemination of information for a student who has been taken into custody or adjudicated for a violent felony. This rule is created to comply with this statutory requirement.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. Section 53G-8-404 requires USBE to make rules governing the dissemination of information for a student who has been taken into custody or adjudicated for a violent felony. This rule is created to comply with this statutory requirement.

**F) Compliance costs for affected persons:**

There were no independent compliance costs for affected persons. Section 53G-8-404 requires USBE to make rules governing the dissemination of information for a student who has been taken into custody or adjudicated for a violent felony. This rule is created to comply with this statutory requirement.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

**H) Department head approval of regulatory impact analysis:**

The Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-8-404
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	05/01/2020
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**R277. Education, Administration.  
R277-736. Juvenile Court or Law Enforcement Notice and Information Dissemination.**

**R277-736-1. 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) Section 53G-8-404, which requires the Board to make rules governing the dissemination of information related to a student charged with a violent felony.
- (2) The purpose of this rule is to provide the process for information dissemination within an LEA and a school when a student of the LEA and school has been taken into custody or adjudicated by a juvenile court.

**R277-736-2. Definitions.**

- (1) "Evidence-based" means the same as the term is defined in Subsection 53G-8-211(1).
- (2) "Information" means any notifications regarding a student received from a juvenile court or law enforcement agency by an LEA or school pursuant to Subsections 78A-6-112(3)(b) and 78A-6-117(1)(c).
- (3) "Multi-disciplinary team" means the same as the term is used in Section R277-400-8.

**R277-736-3. Dissemination of Information Received.**

- (1)(a) A school principal that receives information from the LEA's governing authority shall not share the information before consulting with the school's multi-disciplinary team.

(b) A school principal may share the information without consulting the school's multi-disciplinary team when the information demonstrates possible imminent harm to self or others.

(2) A school principal and the school's multi-disciplinary team shall use the information regarding a student to assess the level of threat the student poses including potential for:

- (a) self-harm;
- (b) suicide ideation;
- (c) harm to others; or
- (d) harm to school property.

(3) A school principal and the school's multi-disciplinary team shall use an evidence-based threat assessment, as approved by the board, to perform the requirements described in Subsection (2).

(4) A school principal and the school's multi-disciplinary team shall determine, based on the level of threat, the appropriate school staff to inform regarding the information of a student.

(5) A school principal and the school's multi-disciplinary team shall only share the information and data needed to ensure the safety of the student or the school's general population and the victim.

(6) An LEA shall ensure that any action taken toward a student related to the information received is in accordance with restorative justice practices as described in Subsection R277-613-2(12).

**KEY: juvenile justice; information sharing**  
**Date of Enactment or Last Substantive Amendment: 2020**  
**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53G-8-404**

NOTICE OF PROPOSED RULE			
<b>TYPE OF RULE:</b> Amendment			
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-401-3</b>	<b>Filing No.</b>	<b>52745</b>

**Agency Information**

<b>1. Department:</b>	Health		
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy		
<b>Building:</b>	Cannon Health Building		
<b>Street address:</b>	288 N 1460 W		
<b>Mailing address:</b>	PO Box 143102		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R414-401-3. Assessment

<b>3. Purpose of the new rule or reason for the change:</b>
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) 2021.
<b>4. Summary of the new rule or change:</b>
Every nursing facility is assessed at the uniform rate of \$27.56 per patient day, which is an increase from the previous \$24.61 per patient day assessment based upon projected days. Additionally, ICFs/IID are assessed at the uniform rate of \$8.28 per patient day, which is the same rate as the previous assessment based upon projected days. These updates are based on estimates of patient days for SFY 2021 and the appropriation amounts.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The update to the assessment rates is anticipated to be budget neutral as it does not impact the general fund.
<b>B) Local governments:</b>
Local governments that own nursing care facilities or have swing-bed facilities would see an increase in the assessment cost but would also see increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that local governments will see approximately an additional \$3,083,200 in costs, but also see approximately \$8,728,700 in additional revenues.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
About 20 small businesses own nursing care facilities would see an increase in the assessment cost but also see increased revenues as a result of the higher rates that will be paid. These businesses, therefore, will see approximately an additional \$996,100 in costs and approximately \$2,820,000 in additional revenues. ICFs/IID will see similar historical costs based upon no change in the assessment rate.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
About 85 businesses that own nursing care facilities or have swing-bed facilities would see an increase in the assessment cost, but also see increased revenues as a result of the higher rates that will be paid. These businesses, therefore, will see an additional \$3,059,475 in costs, but also see about \$8,661,525 in additional revenues. ICFs/IID will see similar historical costs based upon no change in the assessment rate.

<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
About 58 private and public health providers 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 these other providers will realize an additional \$1,019,825 in costs; however, would realize approximately \$2,887,175 in additional revenues.
<b>F) Compliance costs for affected persons:</b>
Compliance costs include an increased collection of \$2.95 per non-Medicare patient day from each nursing facility.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$3,083,200	\$0	\$0
Small Businesses	\$996,100	\$0	\$0
Non-Small Businesses	\$3,059,475	\$0	\$0
Other Persons	\$1,019,825	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$8,158,600</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$8,728,700	\$0	\$0
Small Businesses	\$2,820,000	\$0	\$0
Non-Small Businesses	\$8,661,525	\$0	\$0
Other Persons	\$2,887,175	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$23,097,400</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$14,938,800</b>	<b>\$0</b>	<b>\$0</b>

<b>H) Department head approval of regulatory impact analysis:</b>
The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see initial assessment costs, but will also see a higher increase in additional revenues.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 26-1-5	Section 26-18-3	Title 26, Chapter 36a

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/30/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-401. Nursing Care Facility Assessment.**

**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 \$[~~24.61~~]27.56 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 \$8.28 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the succeeding month, and [shall]may not combine payments of assessments with other nursing care facilities owned or controlled by a single entity.

**KEY: Medicaid, nursing facility**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2019~~2020

**Notice of Continuation:** November 15, 2018

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

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-506</b>	<b>Filing No.</b>	<b>52746</b>
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**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>Mailing address:</b>	PO Box 143102
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R414-506. Hospital Provider Assessments

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

The purpose of this change, in accordance with the Hospital Provider Assessment Act, is to include a new provision for hospitals that fail to pay the hospital provider assessment in a timely manner.

**4. Summary of the new rule or change:**  
 This amendment specifies penalties and interest for hospitals that fail to pay the hospital provider assessment in a timely manner. It also makes other clarifications and technical changes.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

There is no impact to the state budget because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.

**B) Local governments:**

There is no impact on local governments because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.

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

There is no impact on small businesses because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.

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

There is no impact on non-small businesses because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.

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

There is no impact on Medicaid providers and Medicaid members because this change only clarifies provisions within the text.

**F) Compliance costs for affected persons:**

There is no impact on a single Medicaid provider or Medicaid member because this change only clarifies provisions within the text.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

Businesses will see neither revenue nor costs as this amendment only clarifies provisions to comply with the Hospital Provider Assessment Act.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 26-1-5	Section 26-18-3	Title 26, Chapter 36d
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/30/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-506. Hospital Provider Assessments.**

**R414-506-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36d, Hospital Provider Assessment.

**R414-506-2. Definitions.**

The definitions in Section 26-36d -103 apply to this rule.

**R414-506-3. Audit of Hospitals.**

(1) For a hospital[s] that does not file a Medicare cost report for the time frames outlined in Section 26-36d-203, the ~~Department of Health~~ Division of Medicaid and Health Financing (DMHF) shall audit the hospital's records to determine the correct discharges for the assessment.

(2) A [H]hospital[s] subject to the assessment shall make [their]its records available for reasonable inspection upon written request from [the Department]DMHF. DMHF shall consider a hospital that fails to make its records available to be non-compliant.[Failure to make the records available shall be considered non-compliance] and subject ~~[the hospital]~~ to the penalties set forth in Section R414-506-5.

**R414-506-4. Change in Hospital Status.**

(1)(a) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36d-203, the hospital must submit in writing to ~~[the Division of Medicaid and Health Financing (]DMHF[)]~~, a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:  
Via United States Postal Service:

Utah Department of Health  
DMHF, BCRP  
Attn: Reimbursement Unit  
P.O. Box 143102  
Salt Lake City, UT 84114-3102  
Via United Parcel Service, Federal Express, and similar:  
Utah Department of Health  
DMHF, BCRP  
Attn: Reimbursement Unit  
288 North 1460 West  
Salt Lake City, UT 84116-3231

(b) ~~[The Department]DMHF~~ may identify a hospital that has changed status~~[. If such a hospital is identified, it shall not be included]~~ and will not include that hospital in the subsequent quarterly assessment.

(2) The following provisions apply for any period in which a hospital[For any period where a hospital] is no longer subject to the assessment and notice has been given under Subsection R414-506-4(1)(a), or [was]when the hospital is identified by [the Department]DMHF under Subsection R414-506-4(1)(b):

(a) ~~[the Department]DMHF~~ shall require payment of the assessment from that hospital for the full quarter in which the status change occurred; and

(b) the hospital is exempt from future assessment.

(3) For ~~[S]state [F]fiscal [Y]year~~ 2020 and subsequent years, ~~[prior to]before~~ the beginning of each state fiscal year, ~~[the Department]DMHF~~ shall determine ~~[if]whether~~ a new provider~~[s-are]~~ is subject to the assessment. DMHF will add a newly identified provider[New providers identified will be added] prospectively, beginning with that new state fiscal year. For example, [e.g.,]a May 2019 evaluation [identifying]that identifies a new provider[s] will result in [those]that new provider[s] being added July 2019[.]

**R414-506-5. Penalties and Interest.**

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital ~~[that is-]~~ required to file a Medicare cost report, but the hospital fail[ed]s to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital [five percent]5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital ~~[five percent]5%~~ of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital ~~[five percent]5%~~ of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital ~~[five percent]5%~~ of the unpaid amount. The fine is payable within 30 days of invoice.

(5)(a) If a hospital fails to pay its assessment on or before the due date, DMHF shall suspend payments to the hospital until the assessment and any fines or penalties are paid in full.

(b) DMHF shall provide written notice before withholding payments.

(c) When DMHF rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

**R414-506-6. Rule Repeal.**

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36d-208.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~January 9,~~ 2020

**Notice of Continuation:** July 16, 2015

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-36d

NOTICE OF PROPOSED RULE			
<b>TYPE OF RULE:</b> Amendment			
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-517</b>	<b>Filing No.</b>	<b>52747</b>

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R414-517. Inpatient Hospital Provider Assessments
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change, in accordance with the Inpatient Hospital Assessment Act, is to include a new provision for hospitals that fail to pay the hospital provider assessment in a timely manner.
<b>4. Summary of the new rule or change:</b>
This amendment specifies penalties and interest for hospitals that fail to pay the hospital provider assessment in a timely manner. It also clarifies provisions for a hospital with changed status and makes other technical changes.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>																				
<b>A) State budget:</b>																				
There is no impact to the state budget because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.																				
<b>B) Local governments:</b>																				
There is no impact on local governments because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.																				
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																				
There is no impact on small businesses because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.																				
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):																				
There is no impact on non-small businesses because this change only clarifies provisions within the text. It neither affects member services nor provider reimbursement.																				
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):																				
There is no impact on Medicaid providers and Medicaid members because this change only clarifies provisions within the text.																				
<b>F) Compliance costs for affected persons:</b>																				
There is no impact on a single Medicaid provider or Medicaid member because this change only clarifies provisions within the text.																				
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																				
<b>Regulatory Impact Table</b>																				
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0
Fiscal Cost	FY2021	FY2022	FY2023																	
State Government	\$0	\$0	\$0																	
Local Governments	\$0	\$0	\$0																	
Small Businesses	\$0	\$0	\$0																	
Non-Small Businesses	\$0	\$0	\$0																	

NOTICES OF PROPOSED RULES

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

Businesses will see neither revenue nor costs as this amendment only clarifies provisions to comply with the Inpatient Hospital Assessment Act.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 26-1-5	Section 26-18-3	Title 26, Chapter 36b
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**Public Notice Information**

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

Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/30/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-517. Inpatient Hospital Provider Assessments.**

**R414-517-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36b, Inpatient Hospital Assessment Act.

**R414-517-2. Definitions.**

The definitions in Section 26-36b-103 apply to this rule.

**R414-517-3. Audit of Hospitals.**

(1) For a hospital[s] that does not file a Medicare cost report for the time frames outlined in Section 26-36b-205, the ~~Department of Health~~ Division of Medicaid and Health Financing (DMHF) shall audit the hospital's records to determine the correct discharges for the assessment.

(2) A [H]hospital[s] subject to the assessment shall make [their]its records available for reasonable inspection upon written request from [the Department]DMHF. DMHF shall consider a hospital that fails to make its records available to be non-compliant. Failure to make the records available shall be considered non-compliance and subject ~~[the hospital]~~to the penalties set forth in Section R414-517-6.

**R414-517-4. Change in Hospital Status.**

(1)(a) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36b-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:  
Utah Department of Health  
DMHF, BCRP  
Attn: Reimbursement Unit  
P.O. Box 143102  
Salt Lake City, UT 84114-3102  
Via United Parcel Service, Federal Express, and similar:  
Utah Department of Health

NOTICES OF PROPOSED RULES

DMHF, BCRP  
 Attn: Reimbursement Unit  
 288 North 1460 West  
 Salt Lake City, UT 84116-3231

(b) DMHF may identify a hospital that has changed status and will not include that hospital in the subsequent quarterly assessment.

(2) The following provisions apply for any period in which a hospital [For any period where a hospital] is no longer subject to the assessment and notice has been given under Subsection R414-517-4(1)(a), or when the hospital is identified by DMHF under Subsection R414-517-4(1)(b):

(a) [the Department] DMHF shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment, as outlined in Section 26-36b-210, for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) For [S]state [F]fiscal [Y]year 20[+8]20 and subsequent years, before the beginning of each state fiscal year, [the Department] DMHF shall determine [if]whether a new provider[s] are eligible to receive payments as allowed under Section 26-36b-210. The new providers will also be [is] subject to the assessment. DMHF

will add a newly identified provider prospectively, beginning that [same]new state fiscal year, [as they become eligible to receive the payments as allowed under Section 26-36b-210. New providers identified will be added prospectively beginning with that new state fiscal year.] For example, a May 2019 evaluation that identifies a new provider will result in that new provider being added July 2019.

**R414-517-5. Intergovernmental Transfer Calculation and Schedule.**

DMHF shall calculate at a uniform rate for each hospital discharge. [F]the non-state government hospital-intergovernmental transfer, as specified in Title 26, Chapter 36b, Inpatient Hospital Assessment Act, [shall be calculated at a uniform rate for each hospital discharge. The uniform rate shall be determined] DMHF shall determine the uniform rate by using the total number of hospital discharges for non-state government hospitals[-], and shall apply uniformly [-A]any quarterly changes to the uniform rate [shall be applied uniformly] to all non-state government hospitals.

**R414-517-6. Penalties and Interest.**

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital [that is] required to file a Medicare cost report, but [failed]the hospital fails to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital [five percent]5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital [five percent]5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital [five percent]5% of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital [five percent]5% of the unpaid amount. The fine is payable within 30 days of invoice.

(5)(a) If a hospital fails to pay its assessment on or before the due date, DMHF shall suspend payments to the hospital until the assessment and any fines or penalties are paid in full.

(b) DMHF shall provide written notice before withholding payments.

(c) When DMHF rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

**R414-517-7. Rule Repeal.**

The Department shall repeal this rule in conjunction with the repeal of the Inpatient Hospital [Provider]Assessment Act outlined in Section 26-36b-211.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: [January 29, 2018]2020**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36b**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R414-523	Filing No.	52748

**Agency Information**

<b>1. Department:</b>	Health		
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy		
<b>Building:</b>	Cannon Health Building		
<b>Street address:</b>	288 North 1460 West		
<b>Mailing address:</b>	PO Box 143102		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R414-523. Medicaid Expansion Hospital Provider Assessments
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this new rule is to implement provisions of the Medicaid Expansion Hospital Assessment Act in accordance with Title 26, Chapter 36c.

**4. Summary of the new rule or change:**  
 This new rule designates rate methodology for non-state government hospital-intergovernmental transfers. It also specifies provisions for the audit of hospitals, provisions for change in hospital status, and provisions for penalties and interest.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The state will see an increase of \$12,000,000 in annual revenue due to expansion under the assessment.

**B) Local governments:**

Non-State Government-Owned (NSGO) facilities will pay a portion of about \$3,000,000 of the assessment. Nevertheless, these entities will see long-term gains in revenue as more individuals become eligible under the expansion. There is no data, however, to estimate what those gains in revenue will be.

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

Nearly six small business hospitals will pay a portion of about \$900,000 of the assessment. Nevertheless, these entities will see long-term gains in revenue as more individuals become eligible under the expansion. There is no data, however, to estimate what those gains in revenue will be.

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

Nearly 52 non-small business hospitals will pay a portion of about \$8,100,000 of the assessment. Nevertheless, these entities will see long-term gains in revenue as more individuals become eligible under the expansion. There is no data, however, to estimate what those gains in revenue will be.

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

Up to 90,000 individuals may collectively see out-of-pocket savings up to \$12,000,000, upon becoming eligible for Medicaid services under the expansion.

**F) Compliance costs for affected persons:**

Each hospital will pay a portion of \$12,000,000 in annual cost under the assessment.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$3,000,000	\$0	\$0
Small Businesses	\$900,000	\$0	\$0
Non-Small Businesses	\$8,100,000	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$12,000,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$12,000,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$12,000,000	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$24,000,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$12,000,000</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

Businesses will see initial costs, but will later see overall revenue.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution**

<b>citations (required):</b>		
Section 26-1-5	Section 26-18-3	Title 26, Chapter 36c

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/30/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-523. Medicaid Expansion Hospital Provider Assessments.**

**R414-523-1. Introduction and Authority.**

This rule defines the scope of hospital provider assessment. This rule is authorized under Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act.

**R414-523-2. Definitions.**

The definitions in Section 26-36c-102 apply to this rule.

**R414-523-3. Audit of Hospitals.**

(1) For a hospital that does not file a Medicare cost report for the time frames outlined in Section 26-36c-205, the Division of Medicaid and Health Financing (DMHF) shall audit the hospital's records to determine the correct discharges for the assessment.

(2) A hospital subject to the assessment shall make its records available for reasonable inspection upon written request from DMHF. DMHF shall consider a hospital that fails to make its records available to be non-compliant, and subject to the penalties set forth in Section R414-523-6.

**R414-523-4. Change in Hospital Status.**

(1)(a) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36c-205, the hospital must

submit in writing to DMHF, a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

- Via United States Postal Service:
- Utah Department of Health
- DMHF, BCRP
- Attn: Reimbursement Unit
- P.O. Box 143102
- Salt Lake City, UT 84114-3102
- Via United Parcel Service, Federal Express, and similar:
- Utah Department of Health
- DMHF, BCRP
- Attn: Reimbursement Unit
- 288 North 1460 West
- Salt Lake City, UT 84116-3231

(b) DMHF may identify a hospital that has changed status and will not include that hospital in the subsequent quarterly assessment.

(2) The following provisions apply for any period in which a hospital is no longer subject to the assessment and notice has been given under Subsection R414-523-4(1)(a), or when the hospital is identified by DMHF under Subsection R414-523-4(1)(b):

(a) DMHF shall require payment of the assessment from that hospital for the full quarter in which the status change occurred; and

(b) the hospital is exempt from future assessment.

(3) For state fiscal year 2020 and subsequent years, before the beginning of each state fiscal year, DMHF shall determine whether a new provider is subject to the assessment. DMHF will add a newly identified provider prospectively, beginning with that new state fiscal year. For example, a May 2019 evaluation that identifies a new provider will result in that new provider being added July 2019.

**R414-523-5. Intergovernmental Transfer Calculation and Schedule.**

DMHF shall calculate at a uniform rate for each hospital discharge, the non-state government hospital-intergovernmental transfer, as specified in Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act. DMHF shall determine the uniform rate by using the total number of hospital discharges for non-state government hospitals, and shall apply uniformly any quarterly changes to the uniform rate to all non-state government hospitals.

**R414-523-6. Penalties and Interest.**

(1) If DMHF audits a hospital's records to determine the correct discharges for the assessment for a hospital required to file a Medicare cost report, but the hospital fails to provide its Medicare cost report within the timeline required, DMHF shall fine the hospital 5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(2) If DMHF audits a hospital's records to determine the correct discharges for the assessment because the hospital does not file a Medicare cost report and did not submit its discharges and supporting documentation within the timeline required, DMHF shall fine the hospital 5% of its annual calculated assessment. The fine is payable within 30 days of invoice.

(3) If a hospital fails to fully pay its assessment on or before the due date, DMHF shall fine the hospital 5% of its quarterly calculated assessment. The fine is payable within 30 days of invoice.

NOTICES OF PROPOSED RULES

(4) On the last day of each quarter, if a hospital has any unpaid assessment or penalty, DMHF shall fine the hospital 5% of the unpaid amount. The fine is payable within 30 days of invoice.

(5)(a) If a hospital fails to pay its assessment on or before the due date, DMHF shall suspend payments to the hospital until the assessment and any fines or penalties are paid in full.

(b) DMHF shall provide written notice before withholding payments.

(c) When DMHF rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

**R414-523-7. Rule Repeal.**

DMHF shall repeal this rule in conjunction with the repeal of the Medicaid Expansion Hospital Assessment Act outlined in Section 26-36c-210.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: 2020**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36c**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: New			
Utah Admin. Code Ref (R no.):	R433-002	Filing No. 52740	

**Agency Information**

<b>1. Department:</b>	Health		
<b>Agency:</b>	Family Health and Preparedness, Maternal and Child Health		
<b>Street address:</b>	3760 S Highland Drive		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 142002		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2002		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Nicole Bissonette	801-273-2859	nicolebissonette@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R433-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this new rule is to define rules, membership, and procedures for the Early Childhood Utah Advisory Council, as required by Title 26, Chapter 66.

<b>4. Summary of the new rule or change:</b>
This rule delineates the required membership, duties, and procedures for the Early Childhood Utah Advisory Council.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule results in an estimated fiscal cost for the staff time to complete the following duties: plan, promote, and facilitate quarterly Early Childhood Utah (ECU) Advisory and Executive Meetings, take and distribute meeting minutes, support five workgroups monthly meetings, follow up with partners to ensure required work is completed, development of yearly report for the Governor's Commission. Staff time/benefits are estimated at 20 hours/week at \$50 per hour = \$52,000.
Additionally, the ECU Council consists of 26 voluntary members from various sectors of the community. Nineteen members are state employees. Below is a breakdown of Utah Department of Health (UDOH) and other state members.
UDOH Members: 4 ECU Advisory Meetings at 5 hours (including drive time) = 20 hours x 8 members = 160 hours x \$50 per hour (pay/benefits) = \$19,000. 6 ECU Executive Meetings at 2 hours (including drive time) = 12 hours x 2 members = 24 hours x \$50 per hour (pay/benefits) = \$1,200. 12 Workgroup meetings at 3 hours (including drive time) = 36 hours x members/workgroup = 288 hours x \$50 per hour (pay/benefits) = \$14,400. 8 members x 3 hours = 24 hours/month x 12 = 288 hours/year x \$50 per hour (pay/benefits) = \$14,400 for outside work completed. Estimated Total UDOH member per year \$49,000.
Other STATE Members: 4 ECU Advisory Meetings at 5 hours (including drive time) = 20 hours x 11 members = 220 hours x \$50 per hour (pay/benefits) = \$11,000. 6 ECU Executive Meetings at 2 hours (including drive time) = 12 hours x 4 members = 48 hours x \$50 per hour (pay/benefits) = \$2,400. 12 Workgroup meetings at 3 hours (including drive time) = 36 hours x 11 members/workgroup = 396 hours x \$50 per hour (pay/benefits) = \$19,800. 11 members x 3 hours = 33 hours/month x 12 = 396 hours/year x \$50 per hour (pay/benefits) = \$19,800 for outside work completed. Estimated Total State member per year \$53,000.
<b>B) Local governments:</b>
This proposed rule is not expected to have any fiscal impact of local governments' revenues or expenditures. This rule does not regulate local governments.

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

The ECU council has seven required members from small businesses. At this point, it is a required voluntary position. A breakdown of actual cost is below:

4 ECU Advisory Meetings at 5 hours (including drive time) = 20 hours x 7 members = 140 hours x \$50 per hour (pay/benefits) = \$7,000.

6 ECU Executive Meetings at 2 hours (including drive time) = 12 hours x 3 members = 36hours x \$50 per hour (pay/benefits) = \$1,800.

1 workgroup x 12 meetings = 12 Workgroup meetings at 3 hours (including drive time) = 36 hours x 7 members/workgroup = 252 hours x \$50 per hour (pay/benefits) = \$12,600.

7 members x 3 hours = 21 hours/month x 12 = 252 hours/year x \$50 per hour (pay/benefits) = \$12,600 for outside work completed.

Estimated Total small business member per year= \$34,000.

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

This proposed rule is are not expected to have any fiscal impact of non-small businesses' revenues or expenditures. This rule does not regulate non-small businesses.

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

This proposed rule is not expected to have any fiscal impact of persons other than small businesses, non-small businesses, state or local government entities revenues or expenditures. This rule does not regulate these groups.

**F) Compliance costs for affected persons:**

There are no anticipated costs and no additional resources needed to comply with this rule.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts are be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$154,000	\$154,000	\$154,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$34,000	\$34,000	\$34,000

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$188,000</b>	<b>\$188,000</b>	<b>\$188,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Utah Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

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

There is no fiscal impact on businesses because there are no requirements placed on businesses and any business participation on the committee is voluntary.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 26, Chapter 66		
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members.)

Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/30/2020
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**R433. Health, Family Health and Preparedness, Maternal and Child Health.**

**R433-2. Early Childhood Utah Advisory Council Membership, Duties and Procedures.**

**R433-2-100. Authority and Purpose.**

(1) Pursuant to Section 26-66-101, this rule establishes the membership, duties, and procedures of the Early Childhood Utah Advisory Council.

**R433-2-200. Definitions.**

- (1) The term Commission is defined in Section 26-66-102(1).
- (2) The term Council is defined in Section 26-66-102(2).

**R433-2-300. Council Membership and Terms.**

- (1) Agency Representation. One representative from each of the following Agency entities serves as a voting member:
  - (a) Governor's Early Childhood Commission;
  - (b) Utah Department of Health;
    - (i) Bureau of Maternal and Child Health - Title V;
    - (ii) Bureau of Children with Special Health Care Needs - Program for Infants and Toddlers with Disabilities-Part C;
    - (iii) Integrated Early Childhood Data Systems Program;
    - (iv) Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV);
    - (v) Women, Infants and Children Program (WIC);
    - (vi) Oral Health Program;
    - (vii) Other - Department of Health as determined by the Early Childhood Utah Council, Executive Committee;
  - (c) Utah Department of Workforce Services;
    - (i) Office of Child Care Administrator;
    - (ii) Head Start Collaboration Office, Director;
  - (d) Utah Department of Human Services;
    - (i) Division of Child and Family Services;
    - (ii) Division of Mental Health and Substance Abuse;
  - (e) Utah State Board of Education;

- (i) Program for Infants and Toddlers with Disabilities Part B;
- (ii) McKinney-Vento Homeless Assistance Act;
- (f) Utah Head Start Association, representing;
  - (i) Migrant and Seasonal Head Start; and
  - (ii) American Indian and Alaska Native Head Start.
- (2) Non-Agency Representation. One representative from each of the following Non-Agency entities shall serve as a voting member, unless otherwise indicated:
  - (a) Up to two public or private primary health care industry representatives;
  - (b) Up to two providers from the mental health service community;
  - (c) Early Child Place Based Community grantees, one from each of the three grantees;
    - (d) Local Education Agency;
    - (e) Institution of Higher Education;
    - (f) Local provider of early childhood education and development services, such as a daycare provider, pre-school provider, or similar provider;
    - (g) Family engagement stakeholder;
    - (h) Parent with at least one child between the ages 0-8; and
    - (i) Specialized services provider or related organizations, examples include organizations that provide specialized serves for children.
  - (3) Agency Member Terms. Agency Member Terms are ongoing and do not expire.
  - (4) Non-Agency Member Terms. The term of the non-agency members is three years. The term is renewable for one additional term for a total of six years.
  - (5) Vacancies. Each Agency shall fill a vacancy. Non-agency vacancies are determined by the Executive Committee.
  - (6) Participation. Members shall actively participate to address the purpose of the Council.
  - (7) Other Participants. Participants from organizations, agencies and the public that are not currently voting members may attend the meetings, provide input, and participate in subcommittees. Other participants may vote in subcommittee meetings but may not vote in general Council meetings.

**R433-2-400. Council Leadership, Staff and Subcommittee Requirements.**

- (1) Leadership.
  - (a) Council Chair requirements are as follows.
    - (i) Two voting members of the Council shall serve as co-chairs.
    - (ii) Co-chairs shall serve for a period of two years and rotate off in alternating years to ensure continuity.
    - (iii) One co-chair shall rotate from either the Department of Health, Department of Workforce Services, Department of Human Services and the State Superintendent of Public Instruction, or the Governor's Representative, excluding staff from the Governor's Early Childhood Commission.
    - (iv) The second co-chair shall be elected from the body at large and cannot be from one of the agencies listed or a representative of the Governor's office, or staff of the Governor's Early Childhood Commission.
    - (v) Co-chairs shall conduct meetings of the Council.
  - (b) The Executive Committee shall represent broad perspectives of the early childhood system at Executive Committee meetings where key decisions regarding ECU administrative functions

and future recommendations to the Commissions are made. The Executive Committee shall:

(i) provide guidance to standing subcommittees on which community members are needed and should be serving on the different subcommittees;

(ii) utilize the Early Childhood statewide needs assessment, and the Early Childhood Systems strategic plan to develop policy recommendations;

(iii) review legislative proposals designed to address the needs of children, ages 0-8 years old to determine whether they are data-driven and evidence-based, leading to improved outcomes for children;

(iv) evaluate the annual budget presented by the Governor and the Legislature to determine whether it effectively meets the needs of Utah's young children and their families;

(v) ensure formalized recommendations to the Commission regarding policy or budgetary impacts. Recommendations include feedback collected from state agencies and programs and partners potentially affected by the recommendation;

(vi) review priority areas of the subcommittees to ensure their work includes those tasks required by federal and state early childhood guidelines and regulations; and

(vii) review proposals and recommendations submitted by the individual subcommittees, votes on recommendations and sends recommendations back to subcommittees, as needed.

(2) Subcommittees.

(a) Expectations and Procedures are as follows:

(i) Each voting member of the Council shall serve on at least one standing committee, based on the committee member's area of expertise.

(ii) Each subcommittee submits subcommittee meeting notes to Executive Committee with proposals and recommendations in writing at least two weeks prior to Executive Committee meeting.

(iii) Each subcommittee shall have one chair or two co-chairs. The chairs are elected by a simple majority vote of the voting Council members during an ECU meeting which voting occurs and serve as chair for a term of two years. A subcommittee chair may fill additional consecutive terms as chair, if approved by a majority of the voting membership of ECU.

(iv) Each subcommittee may appoint additional non-voting members to their subcommittee as needed based on area of expertise or for specific projects.

(b) Subcommittee Definitions are as follows:

(i) Promoting Health and Access to Medical Homes. This subcommittee ensures access to health and dental health care services and support for medical homes for young children in the state.

(ii) Early Care and Education. This subcommittee ensures access to quality programs and services that support the early learning and development of young children in the state. This includes both in-home and out-of-home services.

(iii) Social Emotional and Mental Health. This subcommittee ensures access to services to promote healthy social-emotional development in young children in the state, and services to address the needs of children who have or are at risk for developing mental health concerns or challenging behaviors.

(iv) Parent Engagement, Support and Education. This subcommittee ensures access to family-centered, culturally appropriate parenting education and family support services for parents of young children in the state, to promote the ability of parents and families to nurture and support the healthy development of their children.

(v) Data and Research. This subcommittee develops an annual needs assessment that evaluates the needs of children birth

through five and their families; assists in obtaining relevant data and research to support members of the Council, evaluates research in the early childhood development field to support the Executive Committee in the development of evidence-based strategies that address the needs of Utah's early childhood population; and identifies data gaps regionally, racially and economically in Utah's early childhood system.

(vi) Ad Hoc Committees. Time limited ad hoc committees may be formed to work on specific projects requiring expertise or representation beyond the voting membership of the Council.

(3) Staff. The Early Childhood Utah Program, Utah Department of Health shall serve as staff to the Council.

**R433-2-500 Meeting Procedures.**

(1) The Council and subcommittees shall adhere to the following procedures:

(a) Meeting Frequency is as follows:

(i) The Council shall meet at least four times each year or more frequently as determined by the Executive Committee. Notice of the meeting schedule shall be provided to voting members at the first meeting of each calendar year.

(ii) The Executive Committee shall meet at least four times each year or more frequently as needed to facilitate Executive Committee work.

(iii) Subcommittees shall meet at least four times each year. Each subcommittee chair shall call and coordinate committee meetings as needed to facilitate individual subcommittee work.

(b) Electronic Attendance. Meetings shall have an electronic meeting option.

(c) Public Meetings. The four quarterly meetings of the Council shall be conducted in accordance with the Utah Open and Public Meetings Act (Utah Code, Title 52, Chapter 4).

(d) Voting is as follows:

(i) A simple majority of the voting members of the Council constitute a quorum.

(ii) A simple majority of participants at a meeting conduct the transaction of business.

(iii) Decisions, changes, or actions to the strategic plan, scope of work, or bylaws of the Council require a simple majority vote of the members participating at the meeting during which the voting occurs.

(iv) Email and telephone votes may be taken between meetings in accordance with the electronic meetings act.

(e) Proxy. In the event that a Council member cannot attend the Council meeting, Council subcommittee meeting or the Council Executive Committee meeting, that individual may designate a proxy to attend the meeting. The proxy is granted all rights and privileges inherent to the position, including voting privileges, for that meeting.

(f) Record Keeping. Staff to Early Childhood Utah Program shall produce minutes of each Council meeting. Reports, records, and meeting minutes shall be open to the public and follow the Open and Public Meeting Act.

**R433-2-600. Conflict of Interest.**

(1) Pursuant to Utah Code Title 67, Chapter 16, the Committee shall comply with Conflict of Interest laws as follows:

(a) Each voting member of the Council shall be responsible for declaring a conflict of interest when one exists. A conflict of interest may include any matter that may provide direct personal financial benefit for that member.

(b) When a conflict of interest exists, the member refrains from the voting process.

NOTICES OF PROPOSED RULES

(c) Where a conflict of interest is known to exist but is not declared by an individual, one or more members of the Council may ask the individual to refrain from voting on the issue in question.

(d) In the event of a disagreement over whether a conflict of interest exists, the matter is decided by a simple majority vote of the members participating at the meeting.

**R433-2-700. Amendments to the Bylaws**

(1) The Council shall follow a process when making amendments to the Council bylaws as follows:

(a) Proposed amendments are distributed to voting members of the Council at least one week prior to the next regularly scheduled meeting.

(b) Bylaws may be amended or repealed by a simple majority of the voting members participating at any regularly scheduled Council meeting.

**KEY: early childhood Utah**

**Date of Enactment or Last Substantive Amendment: 2020**

**Authorizing, and Implemented or Interpreted Law: 26-66**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-1	Filing No. 52709	No.

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-1. Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule was outdated and that some areas of the rule could use clarification.
<b>4. Summary of the new rule or change:</b>

This amendment removes outdated information, updates citations, corrects list formatting, and makes minor text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
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.			
<b>B) Local governments:</b>			
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.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
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.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
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.			
<b>F) Compliance costs for affected persons:</b>			
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.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>

NOTICES OF PROPOSED RULES

State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
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 effect 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.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Paul Garver, Executive Director			

**Citation Information**

**7. This rule change is authorized or mandated by**

**state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-19-15	Section 67-19-18
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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.

## NOTICES OF PROPOSED RULES

(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, State Officer Compensation, 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 ~~any~~[~~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~~[~~an employee~~] who successfully completes a probationary period ~~for~~[~~for~~] following appointment to a career service position[s].

(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; or

(iv) agency programs.

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

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications; or

(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 ~~any~~[~~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]U.S.C. 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.

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(41) Drug-Free Workplace Act: A congressional act, 41 U.S.C. Section 8101, et seq., 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]~~U.S.C. 1324 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 of 1994, 38 U.S.C. 4301, et seq. (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]~~Non-Exempt: 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)~~.

(54) Grievance Procedures: The statutory process of grievances and appeals as set forth in ~~[Sections]~~Title 67~~[-]~~, Chapter 19a~~[ 101 through 67-19a-501]~~, Grievance Procedures, 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;

(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;or

(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)~~(58) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

~~(60)~~(59) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

~~(61)~~(60) 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)~~(61) 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)~~(62) 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)~~(63) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

~~(65)~~(64) Job Family: A group of jobs that have related or common work content, that ~~[require]~~share common skills, ~~[qualifications, licenses, etc.]~~responsibilities, and requirements, and that normally represents a general occupation area.

~~(66)~~(65) Job Requirements: Skill requirements defined at the job level.

~~(67)~~(66) 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)~~(67) 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)~~(68) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

~~(70)~~(69) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

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(~~74~~70) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(~~72~~71) 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~~72) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(~~74~~73) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(~~75~~74) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(~~76~~75) Nonfeasance: Failure to perform either an official duty or legal requirement.

(~~77~~76) 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~~77) 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~~78) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(~~80~~79) Performance Improvement Plan: A documented administrative action to address standard performance of an employee under Section R477-10-2.

(~~81~~80) 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~~81) 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~~82) 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~~83) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in ~~Section Title 63G[-], Chapter 4[-101 et seq.], Administrative Procedures Act~~ 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~~84) 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, the retiree will receive a reduced retirement allowance.

(~~86~~85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(~~87~~86) 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~~87) Position Identification Number: A unique number assigned to a position for FTE management.

(~~89~~88) Post Accident Drug or Alcohol Test: A drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) 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) 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) Pre-employment~~(89) Pre-employment 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~~90) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(~~92~~91) 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~~92) 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~~93) 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~~94) 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~~95) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of an employee in a highly sensitive [employees] position 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~~96) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(~~98~~97) Reappointment Register: A register of individuals who have, prior to March 2, 2009:

NOTICES OF PROPOSED RULES

(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~~28) 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~~99) 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.

(10~~+~~0) 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.

(10~~2~~1) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service ~~staff~~ employment. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(10~~3~~2) 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~~103) Salary Range: Established minimum and maximum rates assigned to a job.

(10~~6~~4) Schedule: The determination of whether a position meets criteria stipulated in ~~the~~ Title 67, Chapter 19, Utah ~~Code Annotated~~ State Personnel Management Act to be career service (schedule B) or career service exempt (schedule A).

(10~~7~~5) Separation: An employee's voluntary or involuntary departure from state employment.

(10~~8~~6) 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.

(10~~9~~7) 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.

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

(~~111~~109) 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.

(11~~2~~0) 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.

(11~~3~~1) 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.

(11~~4~~2) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994~~[(P.L. 103-353)]~~, 38 U.S.C. 4301, et seq. 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.

(11~~5~~3) 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.

(11~~6~~4) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

(11~~7~~5) 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.

(11~~8~~6) Wage: The fixed hourly rate paid to an employee.

(11~~9~~7) 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 Section 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, 20~~19~~20  
**Notice of Continuation:** April 27, 2017  
**Authorizing, and Implemented or Interpreted Law:** 67-19-6; 67-19-15; 67-19-18

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-2	Filing No.	52713

Agency Information	
1. Department:	Human Resource Management
Agency:	Administration
Room no.:	2120
Building:	State Office Building
Street address:	450 N Main St
City, state:	Salt Lake City, UT
Mailing address:	PO Box 141531
City, state, zip:	Salt Lake City, UT 84114-1531

Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-2. Administration
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule was outdated and that some areas of the rule could use clarification.
<b>4. Summary of the new rule or change:</b>
This amendment removes outdated information, corrects list formatting, makes minor text revisions for clarity and rules styling, and updates citations.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):

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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 52-3-1	Title 63G, Chapter 2	Section 63G-5-201
Title 63G, Chapter 7	Section 67-19-6	Section 67-19-15
Section 67-19-18		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration.**

**R477-2. Administration.**

**R477-2-1. Rules Applicability.**

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;
- (4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;
- (5) employees of the Office of the Attorney General;
- (6) elected members of the executive branch and their Schedule A employees;
- (7) employees of independent entities, quasi-governmental agencies and special service districts; and
- (8) employees in any position that is determined by statute to be exempt from these rules.

**R477-2-2. Compliance Responsibility.**

Agencies shall comply with these rules.

(1) ~~The~~ Except where prohibited by statute, the Executive Director, DHRM, may authorize exceptions to these rules ~~where allowed~~ when:

- (a) applying the rule prevents the achievement of legitimate government objectives; or
  - (b) applying the rule infringes on the legal rights of an employee.
- (2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules, and are subject to compliance audits by DHRM.

**R477-2-3. Fair Employment Practice and Discrimination.**

~~All~~ State personnel actions shall provide equal employment opportunity for ~~all~~ individuals.

- (1) Employment actions including appointment, tenure or term, condition, or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.
- (2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-job related factor, except ~~as provided~~ under Subsection 67-19-15(2)(b)(ii).
- (3) An employee who alleges unlawful discrimination may:
  - (a) submit a complaint to the agency head; and
  - (b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

NOTICES OF PROPOSED RULES

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

**R477-2-4. Control of Personal Service Expenditures.**

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

**R477-2-5. Records.**

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, ~~the~~ Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number~~[-];~~

~~[(i) This information is classified as private under GRAMA.~~

~~[(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.]~~

(b) performance ratings; and

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status, and other personal data.

(2) Personally identifiable information in Subsection (1)(a) is classified as private under GRAMA. An agency may have access to this information and shall maintain the privacy of the information.

(3) DHRM shall maintain, on behalf of agencies, personnel files.

~~[(3)]~~ DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G~~[-2]~~, Chapter 2, Government Records Access and Management Act.

~~[(4)]~~ An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.~~[-]~~

~~[(a)]~~ An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process~~[-];~~

~~[(i)]~~a The employee shall request in writing to the appropriate agency human resource field office that changes occur.

~~[(ii)]~~b The employing agency shall be given an opportunity to respond.

~~[(iii)]~~c Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

~~[(5)]~~6 When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.~~[-]~~

~~[(a)]~~ When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.~~[-]~~

~~[(6)]~~7 ~~[(a)]~~ Upon employee separation, ~~[-]~~DHRM shall retain ~~electronic~~ records ~~for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained~~ according to the applicable record retention schedule.

~~[(7)]~~8 When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical, and I-9 records to the new agency.

~~[(8)]~~9 An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

~~[(9)]~~10 Records related to conduct for which an employee may be disciplined under Subsection R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

~~[(i)]~~11 If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

**R477-2-6. Release of Information in a Reference Inquiry.**

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, ~~of the~~ Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate, or dispose of in accordance with ~~the~~ Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

**R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act – 1986).**

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986, Pub. L. No. 99 603.

**R477-2-8. Public Officers Supervising a Relative or Household Member.**

(1) A public officer may not appoint, directly supervise, or make salary, performance, disciplinary, or other employment matter decisions regarding a family member, including a household member.

(1)]2 A public officer supervising a family member, including a household member, shall make a complete written disclosure of any such relationship to the agency head and be recused from any ~~and all~~ employment matter discussions or decisions relating to the family member, including a household member.

NOTICES OF PROPOSED RULES

**R477-2-9. Employee Liability.**

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, [the ]Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice, or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

**R477-2-10. Alternative Dispute Resolution.**

Agency management may establish a voluntary alternative dispute resolution program under [Chapter]Title 63G, Chapter 5, Governmental Dispute Resolution Act.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**

**Date of Enactment or Last Substantive Amendment: July 1, 20[48]20**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-15; 67-19-18**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-3	Filing No. 52714	

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-3. Classification
<b>3. Purpose of the new rule or reason for the change:</b>

The agency found that some information in the rule needed updating due to S.B. 95 passed in the 2020 General Session, some information was outdated, and that some areas of the rule could use clarification.

**4. Summary of the new rule or change:**

This amendment implements changes resulting from S.B. 95 passed in the 2020 General Session, updates citations, makes minor text revisions for clarity and rules styling, corrects list formatting, and removes an unnecessary provision.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) 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.

**B) 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.

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

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.

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

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

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

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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-19-12
-----------------	------------------

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration.**

**R477-3. Classification.**

**R477-3-1. Job Classification Applicability.**

(1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying [all] positions except for the following positions, which include:

- (a) employees already exempted from DHRM rules in Section R477-2-1;
- (b) [all] employees in:
  - (i) the office and residence of the governor;
  - (ii) the ~~Utah Science Technology and Research Initiative (USTAR)~~;
  - (iii) ~~the~~ Public Lands Policy Coordinating Council;
  - (~~iv~~iii) the Office of the Utah State Auditor; and
  - (iv) the Utah State Treasurer's Office;

NOTICES OF PROPOSED RULES

- (c) employees of the State Board of Education~~[, who are licensed by the State Board of Education];~~
- (d) employees in any position that is determined by statute to be exempt from classified service;
- (e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;
- (f) other persons appointed by the governor under statute;
- (g) temporary employees who work part time indefinite or work on a time limited basis;
- (h) patients and inmates designated as schedule AU;
- (i) members of state and local boards and councils and other employees designated as schedule AQ; and
- (j) educational interpreters and educators as defined by Section ~~[53A-25b]~~ 53E-8-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for ~~[all]~~ employees exempted in Sections R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not ~~[to be]~~ considered classified employees.

(3) Employees in schedule codes AD and AR are not considered classified employees but are subject to ~~[the Job Description and Assignment of Duties sections of this rule]~~ Sections R477-3-2 and R477-3-3.

**R477-3-2. Job Description.**

- (1) DHRM shall maintain job descriptions, as appropriate.
- (~~[1]~~)2 Job descriptions shall contain:
  - (a) job title;
  - (b) distinguishing characteristics;
  - (c) a description of tasks commonly associated with most positions in the job;
  - (d) statements of required knowledge, skills, and other requirements; and
  - (e) FLSA status and other administrative information as approved by DHRM.

**R477-3-3. Assignment of Duties.**

- (1) Management may assign, modify, or remove any position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.
- (2) Significant changes in the assigned duties may require a position classification review as described in Section R477-3-4.

**R477-3-4. Position Classification Review.**

- (1) A formal classification review may be conducted under the following circumstances:
  - (a) as part of a classification study;
  - (b) at the request of agency management, with the approval of the Executive Director, DHRM, or designee; or
  - (c) as part of a classification grievance review.
- (2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.
- (3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.
- (4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

**R477-3-5. Position Classification Grievances.**

- (1) Under Section 67-19-31, an agency or a career service employee may grieve formal classification decisions regarding the classification of a position.
  - (a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.
  - (b) An employee may only grieve a formal classification decision regarding the employee's own position.
- (2) Formal service for classification grievance communication to employees shall be made by:
  - (a) certified mail to the employee's address of record~~[,]~~; and
  - (b) email to the employee's state email account.

~~**R477-3-6. Policy Exceptions.**~~

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

**KEY: administrative procedures, grievances, job descriptions, position classifications**  
**Date of Enactment or Last Substantive Amendment: July 1, 20**~~15~~**20**  
**Notice of Continuation: April 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-4	Filing No. 52715	

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-4. Filling Positions

**3. Purpose of the new rule or reason for the change:**  
 The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.

**4. Summary of the new rule or change:**  
 This amendment corrects list formatting, corrects typographical errors, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) 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.

**B) 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.

**C) Small businesses** ("small business" means a business employing 1-49 persons):  
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**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):  
 These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.

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

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
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Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**  
 The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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.

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Paul Garver, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 67-19-6	Section 67-20-8	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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 [ef] 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[;].

([e]5) An employee appointed under Subsection (4) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

([d]6) [;]If the required work hours of the position meet or exceed [4560]1,560 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]7) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under S[ubs]ection R477-4-8.

([6]8) Agency management shall ensure that [all]new hire appointees in Schedules AB, AC, AD, AR, and AS submit a disclosure statement [pursuant to Utah Code]under 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 Section 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]; and
- (e) [reasonable accommodation for qualified applicants covered under]the Americans With Disabilities Act, 42 U.S.C. 12102.

**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]any career service position vacanc[ies]. 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.

## NOTICES OF PROPOSED RULES

(a) ~~[All-]~~Recruitment announcements shall include the following:

(i) ~~[F]~~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]~~An agency 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]~~under Section 49-11-13 shall be:

(a) ~~[C]~~classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and

(b) ~~[P]~~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-a]~~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.**

~~[(+)]~~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.

NOTICES OF PROPOSED RULES

**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~~ any program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain ~~all~~ any 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 Subsection 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) ~~A~~ an administrative law judge who is appointed by the governor; or

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

(2) The hiring panel shall consist of:

(a) ~~F~~ the head or designee of the hiring agency;

(b) ~~F~~ the Executive Director, DHRM, or designee; and

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

(3) Only the agency heads described in ~~s~~ 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 ~~s~~ 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, 2019**

**Notice of Continuation: April 27, 2017**

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

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-5	Filing No. 52716	

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-5. Employee Status and Probation

<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment makes minor revisions to text for clarity, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
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.
<b>F) Compliance costs for affected persons:</b>
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.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
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 effect 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.			

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Paul Garver, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>	
Section 67-19-6	Subsection 67-19-16(5)(b)

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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, 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 ~~S[ubs]ection 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]~~the human resource information system 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 designated probationary period may not be reduced after ~~[appointment]~~an employee is appointed to the position.

(c) An employee who has completed a probationary period and obtained career service status ~~[shall]~~may 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, 20**~~19~~**20**  
**Notice of Continuation: April 27, 2017**

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

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-6	Filing No.:	52717

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-6. Compensation
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary subsection.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.

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

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

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

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**F) Compliance costs for affected persons:**

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**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 63F-1-106	Section 67-19-6	Section 67-19-12
Section 67-19-12.5	Subsection 67-19-15.1(4)	

**Public Notice Information**

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

Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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)1~~ Each job description shall include a salary range.

~~(b)2~~ Agency approved wage increases within salary ranges shall be:

~~(i)a~~ at least 1/2%, or

~~(ii)b~~ 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%.

~~(e)3~~ Agency approved wage decreases within salary ranges shall be:

~~(i)a~~ at least 1/2%, or

~~(ii)b~~ 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)4~~ Salary increases and decreases ~~shall~~ may 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)-~~s; and

(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~~ any agency involved agrees 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

NOTICES OF PROPOSED RULES

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~~[r]~~ or 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) ~~[A]~~an administrative adjustment determined appropriate by DHRM for administrative purposes~~[-]; or~~

(b) ~~[A]~~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]~~any agency involved agrees 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]~~any agency involved agrees 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]~~is identified in positions under Subsection 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) A~~[H-a]~~ppointments 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 ~~[is]~~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 ~~[s]~~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, including 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) the employee 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]~~under Subsection (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or

NOTICES OF PROPOSED RULES

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 Subsection (3)(a).

(e) An employee in Schedules AB, AN, 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] under 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; and
(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) [F]the final wage may not be less than the salary range minimum[-];

(b) [W]wage decreases shall be at least 1/2% or down to the salary range minimum[-];

(c) [J]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[-]; and

(d) [F]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]Any 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) [S]sustainability of the funding for the cash incentive program;

NOTICES OF PROPOSED RULES

(2) ~~[F]~~the positions eligible to participate in the Pay for Performance program;

(3) ~~[G]~~goals of the program;

(4) ~~[F]~~type of work to be incentivized; and

(5) ~~[A]~~ability to track the effectiveness of the program.

(iii) ~~[AH]~~Any 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. Any[

~~(a) AH]~~ market based bonuses shall be approved by the DHRM Executive Director or designee.

(i) ~~[A]~~ When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(i) ~~[A]~~ budget;

(ii) ~~[B]~~ recruitment difficulties;

(iii) ~~[C]~~ a mission critical need to attract or retain unique or hard to find skills in the market; or

(iv) ~~[D]~~ other market based reasons.

(b) Eligible reason types for market based bonuses include:

(i) 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.

(ii) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(iii) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(iv) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(v) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(vi) 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 ~~[AH]~~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) ~~[AH]~~Any 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 Subsection 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~~[-]; and~~

~~(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 at or above the current salary range maximum shall receive, in lieu of the salary adjustment~~[-]~~from Subsection (1)(a), 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.~~

~~(3)~~3 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)~~4 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)~~5 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)~~6 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 Rule R477-4.

~~(6)~~7 ~~[Agencies]~~An agency shall communicate to ~~all~~any 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) S~~1 state paid term life insurance coverage if determined eligible by the Group Insurance Office and approved through underwriting to participate in the Term Life Program Public Employees Health Plan:

~~(i)~~a Hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

~~(ii)~~b Hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance; and

~~(iii)~~c 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.

(2) Insurance provided under Subsection (1)(b) is medical coverage only and shall be the same plan the employee had at the time of severance.

**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, 20~~19~~20**

**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)**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-7	Filing No.	52718

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2120
<b>Building:</b>	State Office Building
<b>Street address:</b>	450 N Main St
<b>City, state:</b>	Salt Lake City, UT
<b>Mailing address:</b>	PO Box 141531
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531
<b>Contact person(s):</b>	

NOTICES OF PROPOSED RULES

Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R477-7. Leave

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

The agency needs to adjust rules related to sick leave and bereavement leave, implement rules pursuant to S.B. 207 passed in the 2020 General Session, and make small adjustments for clarification and corrections to formatting.

**4. Summary of the new rule or change:**

This amendment implements a new rule section to administer postpartum recovery leave, increases flexibility, corrects list formatting, corrects typographical errors, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) 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.

**B) 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.

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

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.

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

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

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The head of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 34-43-103	Section 39-3-1	Section 63G-1-301
Section 67-19-6	Section 67-19-12.9	Section 67-19-14
Section 67-19-14.7		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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[~~;~~] or 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]any 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]any annual leave and excess hours. An FLSA ~~[non-exempt]~~non-exempt employee shall also be paid in a lump sum for [all]any compensatory hours.
  - (a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for [all]any 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 or pregnancy related reasons that was approved prior to the commencement of the leave period.
  - (d) Unused postpartum recovery leave may not be paid out upon separation from employment.
- (10) After four months cumulative leave in a 24 month period, ~~the~~an 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 Subsection R477-7-5(2) and the [R]retirement [B]benefit in Section R477-7-6.

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**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; and
- (l) [~~A~~]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 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; or
- (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~~]any 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~~]approve the use of sick leave for:

- (a) preventive health and dental care[;];
- (b) maternity[;];
- (c) paternity[~~and~~];
- (d) adoption care[;]; or[~~for~~]
- (e) absence from duty because of illness, injury or disability of:
  - (i) the employee[;];
  - (ii) a spouse[;];
  - (iii) children[~~or~~];
  - (iv) parents[~~living in the employee's home~~];
  - (v) an individual for whom the employee is a legal guardian; or
  - (vi) a qualifying FMLA purposes.

(3) Agency management may [~~grant exceptions~~]approve the use of sick leave 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 [~~ab~~]using sick leave for reasons not listed in Subsections (2) and (3), 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~~]under Subsection 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.

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(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~~ its 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] plan~~ 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

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(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) ~~[F]~~the employee chooses to suspend pension;
- (ii) ~~[F]~~the employee was separated for one year or more;
- (iii) ~~[F]~~the employee was reemployed before January 2,

2014; and  
(iv) ~~[F]~~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[-]; or

(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), only 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, Grievance Procedures; 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~~ any level[s] of grandparents; or
- (f) ~~all~~ any level[s] of grandchildren.

(2) Agency management may grant bereavement leave for other unique family relationships.

**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 the 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)~~2 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.

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(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~~], 38 U.S.C. 4301, et seq.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20\_CFR\_1002.103 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~~55-102.

(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~~Subsection (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 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)~~1 Furlough hours shall be counted for purposes of annual, sick, and holiday leave accrual.

~~(b)~~2 Payment of ~~all~~any state paid benefits shall continue at the agency's expense.

~~(i)~~a Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

~~(ii)~~b 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.

~~(e)~~3 An employee who is furloughed shall continue to pay the employee portion of ~~all~~any benefits. Voluntary benefits shall remain entirely at the employee's expense.

~~(e)~~4 An employee shall return to the current position.

~~(e)~~5 Furlough is applied equitably~~[s-e-g.]~~ to ~~all persons~~any person 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;

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- (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~~[; or]~~;

(f) ~~[A]~~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]~~covered servicemember 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; and

(b) be employed by the state for a minimum of ~~[1250]~~1,250 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]~~notify management of the need 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 designated period of 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) ~~[C]~~compensatory time;

(B) ~~[E]~~excess leave; or

(C) ~~[A]~~annual leave;

(iii)(A) ~~[C]~~converted sick leave;

(B) Program II sick leave; or

(C) Program I sick leave.

(8) When an employee chooses to use FMLA leave, the employing agency shall designate as FMLA leave ~~[all]~~any 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 FMLA eligible employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(1~~[4]~~0) 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 under 29 CFR 825.213, 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.]~~

(1~~[2]~~1) 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.

(1~~[3]~~2) Medical records created for purposes of FMLA and the Americans with Disabilities Act, 42 U.S.C. 12102 shall be maintained in accordance with confidentiality requirements of ~~S[ub]~~section 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;

(i~~[v]~~ii) employee refuses to accept appropriate employment offered by the state; or

(iv) 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]~~5) 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.

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~~(7)6~~ An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.1.

~~(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~~ any 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 ~~S[ubs]ection 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 ~~S[ubs]ection 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) An employee who was not separated from employment may return to work following long term disability when they provide an administratively acceptable medical release allowing a return to work.

(4) Long term disability benefits are provided to eligible employees ~~[in accordance with 49-21-403]~~ under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

**R477-7-18. Disabled Law Enforcement Officer Amendments.**

(1) A law enforcement officer or state correctional officer, as defined in Section 67-19-27, who is injured in the course of employment, as defined in Section 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, Utah State Retirement and Insurance Benefit Act 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 Section R477-7-16, workers compensation leave, and Section 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 ~~[=]~~ provisions.

(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~~ any 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 ~~[non-exempt]~~ non-exempt 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.

(2) ~~Any~~ Any medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of ~~S[ubs]ection R477-2-5.~~

**R477-7-20. ~~[Policy Exceptions]~~ Postpartum Recovery Leave.**

~~[The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).] Postpartum recovery leave means leave hours a state employer provides to an eligible employee to recover from childbirth.~~

(1) An employee is eligible for postpartum recovery leave when:

(a) the employee is eligible for benefits under Subsections R477-6-8(1) and R477-7-1(1);

(b) the employee is not reemployed post-retirement as defined in Section 49-11-1202;

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- (c) the employee gives birth to a child; and
- (d) the employee is not an employee of:
  - (i) the State Board of Education; or
  - (ii) an independent entity as defined in Section 63E-1-102.
- (2) Agency management shall grant paid leave to an eligible employee who requests postpartum recovery leave.
  - (a) An eligible employee may receive up to three weeks of paid leave based on the employee's normal work schedule, including normally scheduled work hours in excess of 40 hours per week.
  - (b) The amount of leave does not change if there are multiple births from a single pregnancy.
  - (c) Postpartum recovery leave shall begin on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.
  - (d) Postpartum recovery leave may not be used intermittently.
  - (e) Postpartum recovery leave runs concurrently with leave under Section R477-7-15.
  - (f) Postpartum recovery leave may not be charged against any accrued leave balance on the employee's record.
- (3) To request postpartum recovery leave, the employee or an appropriate spokesperson shall notify management of the need for leave:
  - (a) thirty days in advance; or
  - (b) as soon as practicable in emergencies.
- (4) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.

**KEY:** holidays, leave benefits, vacations  
**Date of Enactment or Last Substantive Amendment:** July 1, 20~~19~~**20**  
**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; 67-19-14.7

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-8	Filing No. 52719	No.

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-8. Working Conditions
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates citations, makes text revisions for clarity consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 34A-2-114	Section 67-19-6	Section 67-19-6.7
Section 20A-3-103		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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- R477. Human Resource Management, Administration.
- R477-8. Working Conditions.
- R477-8-1. Workweek.

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(1) The state's standard workweek begins Saturday at 12:00 a.m. and ends the following Friday at 11:59 p.m. FLSA ~~[nonexempt]~~non-exempt employees may not deviate from this workweek.

(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, 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)]~~1) establish a written policy governing telecommuting;

~~[(b)]~~2) enter into a written 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)]~~3) not allow participating employees to violate overtime rules;

~~[(d)]~~4) not compensate for normal commute time; and

~~[(e)]~~5) document telecommuting authorization.

**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~~ An employee's lunch period may not be ~~used to shorten a~~ at the beginning or end of their 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 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 of 1938, 29 U.S.C. 201, et seq., 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 ~~any~~ any overtime worked;

(b) recordkeeping guidelines for ~~any~~ any overtime worked;

and

(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]~~ the human resource information system as either FLSA ~~[nonexempt]~~ non-exempt 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, Administrative Procedures Act may not be applied for FLSA appeals purposes.

(3) An FLSA ~~[nonexempt]~~ non-exempt 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]~~ Non-Exempt Employees.**

(1) An FLSA ~~[nonexempt]~~ non-exempt 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]~~ non-exempt 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]~~ non-exempt 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

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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 a[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~~ Non-Exempt 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~~ non-exempt 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~~ Section 207(k), 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~~ non-exempt employee shall be compensated for ~~all~~ any hours worked. An employee who works unauthorized overtime may be disciplined.

(a) ~~All~~ Any time that an FLSA ~~nonexempt~~ non-exempt 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 ~~be~~ 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.

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~~(d)~~4 The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record~~[7]~~ for the specific date the hours were incurred~~[7]~~ in order to be paid.

~~(e)~~5 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)~~6 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 periods not required by federal law as implemented in Subsections (4) and (5).

**R477-8-13. Excess Hours.**

~~(1)~~ An employee may use excess hours the same way as annual leave.

~~(a)~~1 An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

~~(b)~~2 An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

~~(e)~~3 An employee may not accumulate more than 80 excess hours.

~~(d)~~4 Agency management shall pay out excess hours:

~~(i)~~a for ~~(a)~~any hours accrued above the limit set by DHRM;

~~(i)~~b when an employee is assigned from one agency to another; and

~~(i)~~c upon separation.

~~(e)~~5 Agency management may pay out excess hours:

~~(i)~~a automatically in the same pay period accrued;

~~(i)~~b at any time during the year as determined appropriate by a state agency or division; or

~~(i)~~c 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~~non-primary position~~(s)~~ shall be the same as the primary position.

(4) Leave accrual shall be based on ~~(a)~~the total number of hours ~~worked in all positions~~the employee works during a pay period 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. ~~(A)~~Any 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 ~~(O)~~overtime or ~~(C)~~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 Subsection 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; or
- (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 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]~~ non-compliance with Title 34A, Chapter 2, Worker's Compensation Act or Title 34A, Chapter 3, Utah Occupational Disease Act, 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:** ~~[November 7, 2019]~~ **2020**  
**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

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-9	Filing No.	52720

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-9. Employee Conduct
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.

<b>B) Local governments:</b>			
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.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
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.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
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.			
<b>F) Compliance costs for affected persons:</b>			
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.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63G-7-2	Section 67-19-6	Section 67-19-19
Subsection 5 U.S.C. 1502(a)(3)	Utah Exec Order No. 2018-1	

**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency

not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	07/01/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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~~ any other verbal and written job expectations;
  - (iii) report conditions and circumstances, including impairment caused by an employee's use of illicit drugs, controlled substances, alcohol, or other intoxicant, 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 controlled substances, and misuse of volatile substances, shall be subject to administrative action in accordance with Section R477-10-2, Rules R477-11, and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, ~~in accordance with Section under Title 63G[-], Chapter 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~~ under 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;~~ time, equipment, property, supplies, or any influence, power, authority, or confidential information received in ~~that position; nor state time, equipment, property, or supplies]~~ a state position 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 of 1939, 5 U.S.C. ~~[See-]1501 [through 1508] et seq.~~

(1) As modified by ~~the]Section 1502(a)(3), Hatch Modernization Act of 2012, [5 U.S.C. Section 1502(a)(3), the federal Hatch Act restricts the political activity of]~~ a state ~~government]~~ employee[s] whose salary is 100% funded by federal loans or grants may be restricted in political activity.

## NOTICES OF PROPOSED RULES

(a) State employees in positions covered by the Hatch Act may run for public office in ~~nonpartisan~~non-partisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and ~~nonpartisan~~non-partisan 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 Subsection 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)~~4 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)~~5 Any career service employee elected to any partisan or full-time ~~nonpartisan~~non-partisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office.

~~(5)~~6 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)~~7 This rule incorporates by reference the Governor's Amended Executive Order of August 4, 2018, regarding communications with legislators by state employees.

~~(7)~~8 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.**

~~(4)~~ 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)~~1 the waste or misuse of public property, manpower, or funds;

~~(b)~~2 gross mismanagement;

~~(c)~~3 unethical conduct;

~~(d)~~4 abuse of authority; or

~~(e)~~5 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~~may 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]~~, including 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; and

(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~~under 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.

NOTICES OF PROPOSED RULES

(3) An employee may be disciplined according to Rule 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, 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] U.S.C. 1502(a)(3); Utah Exec Order No. 2018-1

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-10	Filing No.	52721

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>	R477-10. Employee Development
<b>3. Purpose of the new rule or reason for the change:</b>	The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>	This amendment corrects list formatting, updates citations, makes text revisions consistent with rules styling, and eliminates unnecessary language.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
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.			
<b>B) Local governments:</b>			
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.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
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.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
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.			
<b>F) Compliance costs for affected persons:</b>			
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.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration.**

**R477-10. Employee Development.**

**R477-10-1. Performance Evaluation.**

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. ~~[The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2.]~~For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) Performance management systems shall satisfy the following criteria[?].

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

(c) Managers or supervisors shall notify employees when their performance plans are implemented or modified.

(d) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) Each fiscal year a state employee shall receive a performance evaluation.

(a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.

(b) A probationary employee may receive a performance evaluation at the end of the probationary period.

**R477-10-2. Performance Improvement.**

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or

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inefficiency, and after consulting with DHRM, agency management may place an employee on an appropriate and documented performance improvement plan in accordance with the following rules[?].

- (1) The supervisor shall discuss the substandard performance with the employee and determine appropriate action.
- (2) Performance improvement plans shall identify or provide for:
  - (a) a designated period of time for improvement;
  - (b) an opportunity for remediation;
  - (c) performance expectations;
  - (d) closer supervision to include regular feedback of the employee's progress;
  - (e) notice of disciplinary action for failure to improve; and[?]
  - (f) a written performance evaluation at the conclusion of the performance improvement plan.
- (3) An employee shall have the right to submit written comment to accompany the performance improvement plan.
- (4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:
  - (a) training;
  - (b) reassignment; or
  - (c) use of appropriate leave;
- (5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

**R477-10-3. Written Warnings.**

Agency management may use written warnings to address performance or conduct problems.

**R477-10-4. Employee Development and Training.**

- (1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.
- (2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.
- (3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.
- (4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.
- (5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.
- (6) Training shall be presented or made available online unless there is a physical or interactive component, the training takes place over consecutive, full-day sessions, or no attendee travels more than 50 miles from their primary residence or place of employment, whichever is closer to the training site, to attend the training.

**R477-10-5. Education Assistance.**

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions[?].

- (a) The educational program will provide a benefit to the state.
- (b) The employee shall successfully complete the required course work or the educational requirements of a program.
- (c) The employee shall agree to repay any assistance received if the employee resigns from state employment within one year of completing educational work.
  - (i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.
- (d) Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.
- (e) The employee shall disclose ~~all~~any scholarships, subsidies, and grant monies provided to the employee for the educational program.
  - (i) Except for funding that must be repaid by the employee, the amount reimbursed by the ~~S~~state may not include funding received from sources in Subsection ~~[R477-10-4](1)(c)~~.
- (2) Agency management shall be responsible for determining the taxable or ~~non-taxable~~non-taxable status of educational assistance reimbursements.

**KEY: educational tuition, employee performance evaluations, employee productivity, training programs**

**Date of Enactment or Last Substantive Amendment: July 1, 20~~18~~20**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-11	Filing No. 52722	

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-11. Discipline
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates and corrects citations, and makes text revisions consistent with rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i> ):
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.
<b>F) Compliance costs for affected persons:</b>
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.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
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 effect 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.			

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Paul Garver, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 67-19-6	Section 67-19-18	Section 63G-2-3

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
<b>A) Comments will be accepted until:</b> 06/15/2020

<b>10. This rule change MAY become effective on:</b> 07/01/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b> Paul Garver, Executive Director	<b>Date:</b> 04/28/2020
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**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) the employee 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~~ Any disciplinary actions of career service employees shall be governed by principles of due process and ~~Title 67, Chapter 19a~~ Section 67-19-18. The disciplinary process shall include ~~all~~ each of the following, except as provided under Subsection 67-19-18(4)~~(f)~~.

(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 as defined in ~~accordance with Section~~ Rule R477-1~~(32)~~, reducing the employee's current actual wage, as determined by the agency head~~(-)~~; or

(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(2)(e) and Section R477-11-1, and through the process outlined in this rule.

NOTICES OF PROPOSED RULES

(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 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.

**R477-11-3. Discretionary Factors.**

[~~(4)~~]—]When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(~~[a]~~1) consistent application of rules and standards;

(~~[i]~~a) the agency head or representative need only consider those cases decided under the administration of the current agency head[~~;~~~~—D~~] because 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[~~;~~];

(~~[i]~~b) [~~H~~]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]~~2) prior knowledge of rules and standards;

(~~[e]~~3) the severity of the infraction;

(~~[d]~~4) the repeated nature of violations;

(~~[e]~~5) prior disciplinary/corrective actions;

(~~[f]~~6) previous oral warnings, written warnings, and discussions;

(~~[g]~~7) the employee's past work record;

(~~[h]~~8) the potential of the violations for causing damage to persons or property;

(~~[i]~~9) the strength of the evidence of conduct;

(~~[j]~~10) dishonesty or failing to disclose relevant information;

(~~[k]~~11) the effect on agency operations, including:

(~~[i]~~a) how the wrongdoing relates to the employee's job duties;

(~~[i]~~b) the potential of the conduct to adversely affect public confidence in the agency;

(~~[i]~~c) the potential of the conduct to adversely affect morale and effectiveness of the agency;

(~~[H]~~12) willful or intentional conduct; or

(~~[m]~~13) likelihood of recurrence.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

**Date of Enactment or Last Substantive Amendment: July 1, 20~~19~~20**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R477-12</b>	<b>Filing No.</b>	<b>52723</b>
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**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R477-12. Separations

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

The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.

**4. Summary of the new rule or change:**

This amendment corrects list formatting, corrects typographical errors, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) 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.

**B) 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.

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

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.

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

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

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

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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-19-18
-----------------	------------------

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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.

(a) Management shall send the employee notice that the agency accepts the employee's resignation to the employee's last known address.

(b) The employee may request that the agency head reconsider accepting the resignation within five working days of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

**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) ~~[W]~~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 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]~~when more than one employee is 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.

NOTICES OF PROPOSED RULES

(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~~ any 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, 2019**

**Notice of Continuation: April 27, 2017**

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

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-13	Filing No.	52724

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-13. Volunteer Programs
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment makes text revisions consistent with rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
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.
<b>F) Compliance costs for affected persons:</b>
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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-20-3	Section 67-20-4
Section 67-20-8		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**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.

NOTICES OF PROPOSED RULES

(a) Agency management shall approve ~~all~~any 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, ~~2019~~2020**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-3; 67-20-4; 67-20-8**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-14	Filing No. 52725	

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-14. Substance Abuse and Drug-Free Workplace
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.

<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates citations, makes text revisions consistent with rules styling, and eliminates an unnecessary section.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
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.
<b>F) Compliance costs for affected persons:</b>
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.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
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 effect 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.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Paul Garver, Executive Director			

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 63G-2-3	Section 67-19-6	Section 67-19-18
Section 67-19-33	Section 67-19-34	Section 67-19-35
Section 67-19-36	Section 67-19-37	Section 67-19-38

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
--	------------

<b>10. This rule change MAY become effective on:</b>	07/01/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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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]U.S.C. 5331, et seq., and Section 67-19-36 authorizing drug and alcohol testing, in order to:

- (a) [P]provide a safe, productive work environment that is free from the effects of drug and alcohol abuse;
  - (b) [I]identify, correct and remove the effects of drug and alcohol abuse on job performance; and
  - (c) [A]assure the protection and safety of employees, 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

NOTICES OF PROPOSED RULES

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 functions. If the use of a medication could compromise the safety of employees, the public, or property it is the employee's responsibility to [use] avoid unsafe workplace practices by using appropriate personnel procedures [e.g., call] such as calling in sick, us[e]ing leave, request[ing] a change of duty, notify[ing] a supervisor, or notify[ing] 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 [includ]including dismissal from employment, may be taken if job performance deteriorates [and/] or other accidents occur.

(3) Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, 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]4) Employees shall follow Subsection R477-14-1(2) outside of work if the activity:

([i]a) directly affects the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more; or

([ii]b) prevents the employee from performing [his/her] job duties safely or effectively.

([4]5) [A]Any drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

([5]6) [A]Any drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

([6]7) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

([7]8) Final applicants, who are not current employees, may be subject to [preemployment]pre-employment drug testing at agency discretion, except as required by law.

([8]9) 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.

([9]10) Final candidates for transfer or promotion to a highly sensitive position are subject to [preemployment]pre-employment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promot[ed]ing from one highly sensitive position to another highly sensitive position is subject to [preemployment]pre-employment 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]pre-employment drug testing.

([10]11) 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.

([11]12) This rule incorporates by reference the requirements of 49 CFR 40.87.

([12]13) Th[e]is [S]tate [of Utah] will use a blood alcohol concentration level of .04 for safety sensitive positions and .05 for [all]any other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

([13]14) 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].

([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 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.

([15]16) 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 disciplinary action which may include dismissal.

**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) 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 has a verified positive test for use of a controlled substance or alcohol in violation of these rules may 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) [A]Any 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.

NOTICES OF PROPOSED RULES

(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.

(4) An employee who has a verified positive test for use of a controlled substance or alcohol is subject to follow up testing.

(5) An employee who is convicted 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 of a conviction under Subsection (5) from:

(i) the judicial system;

(ii) other sources; or

(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 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, 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**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-15	Filing No.	52726

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2120
<b>Building:</b>	State Office Building
<b>Street address:</b>	450 N Main St
<b>City, state:</b>	Salt Lake City, UT
<b>Mailing address:</b>	PO Box 141531
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-15. Workplace Harassment Prevention
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting and makes text revisions consistent with rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-19-18	Section 63G-2-305
E.O. No. 2019-1		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration.  
R477-15. Workplace Harassment Prevention.  
R477-15-1. Policy.**

NOTICES OF PROPOSED RULES

It is the policy of [~~the State of Utah~~ this state] 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; and

(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 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[~~;~~ or 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[~~;~~ or retaliation[~~;~~ or both] should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify [~~a witness(es)~~ witnesses], if applicable.

(2) An employee may file an oral or written complaint of workplace harassment[~~;~~ or 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]~~ 4 and R477-15-~~[6]~~ 5.

(c) Any supervisor who has knowledge of workplace harassment[~~;~~ or retaliation[~~;~~ or both] shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) [~~All~~ Any] complaints of workplace harassment[~~;~~ or 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~~ any] 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~~ Any] 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~~ any] 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, 20~~19~~20**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-305; E.O. No. 2019-1 "Prohibiting Unlawful Workplace Harassment, Discrimination, and Retaliation and Ordering a Mandatory Supervisor Training Program"**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-16	Filing No.	52727

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2120	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N Main St	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 141531	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R477-16. Abusive Conduct Prevention
<b>3. Purpose of the new rule or reason for the change:</b>
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment corrects list formatting, corrects typographical errors, updates citations, and makes text revisions consistent with rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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.
<b>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
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.

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

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

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

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.

**F) 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.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.

**6. A) Comments by the department head on the fiscal impact this 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 effect 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.

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 67-19-6	Section 67-24-101
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 07/01/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a

Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration.**

**R477-16. Abusive Conduct Prevention.**

**R477-16-1. Policy.**

It is the policy of [~~the State of Utah~~]this state to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

(a) was intended to cause intimidation, humiliation, or unwarranted distress;

(b) exploits a known physical or psychological disability; or

(c) results in substantial physical or psychological harm caused by intimidation, humiliation, or unwarranted distress.

(2) The following actions do not constitute abusive conduct unless they are especially severe and egregious:

(a) a single act;

(b) appropriate disciplinary or administrative actions;

(c) appropriate coaching or work-related feedback;

(d) reasonable work assignments or job reassignments; or

(e) reasonable differences in styles of management, communication, expression, or opinion.

(3) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(4) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

**R477-16-2. Complaint Procedure.**

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation, or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify [a witness(es)]witnesses, if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in 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) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

**R477-16-3. Investigative Procedure.**

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

NOTICES OF PROPOSED RULES

(a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in abusive conduct 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 of investigative findings and the procedure to request an administrative review of findings pursuant to [Utah Code] Section 67-19a-501.

(3) Participants in any abusive conduct investigation shall treat ~~all~~ any information pertaining to the case as confidential.

**R477-16-4. Abusive Conduct Training.**

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, options available under this rule, and ~~[grievance-]procedures [provided by Utah Code Section] under Title 67[-], Chapter 19a, Grievance Procedures.~~

(b) Agencies shall ensure employees complete training within a reasonable time after 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: abusive conduct, administrative procedures, hostile work environment**

**Date of Enactment or Last Substantive Amendment: July 1, 20~~18~~20**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-~~19-44~~26-101**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R477-101	Filing No.:	52728

**Agency Information**

<b>1. Department:</b>	Human Resource Management		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	2120		
<b>Building:</b>	State Office Building		
<b>Street address:</b>	450 N Main St		
<b>City, state:</b>	Salt Lake City, UT		
<b>Mailing address:</b>	PO Box 141531		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1531		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Bryan Embley	801-618-6720	bkembley@utah.gov	
Please address questions regarding information on this			

notice to the agency.

**General Information**

**2. Rule or section catchline:**  
R477-101. Administrative Law Judge Conduct Committee

**3. Purpose of the new rule or reason for the change:**  
The agency found that some information in the rule needed small adjustments for clarification and corrections to formatting.

**4. Summary of the new rule or change:**  
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**5. Aggregate anticipated cost or savings to:**

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

Paul Garver, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Sections 67-19e-101 through 67-19e-109		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Paul Garver, Executive Director	<b>Date:</b>	04/28/2020
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**R477. Human Resource Management, Administration. R477-101. Administrative Law Judge Conduct Committee. R477-101-1. Authority and Purpose.**

This rule is enacted pursuant to [Utah Code] Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing

NOTICES OF PROPOSED RULES

complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

**R477-101-2. Definitions.**

In addition to the terms defined in ~~[Utah Code]~~Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes ~~[H]~~hearing ~~[O]~~officers employed or contracted by a state agency that meet the criteria described in ~~[Utah Code]~~Subsection 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in ~~[Utah Code]~~Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department ~~[pursuant to Utah Administrative Code]~~under Section R477-101-8 alleging Misconduct by an ALJ.

(7) "Department" means the Department of Human Resource Management.

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides a responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under ~~[Utah Code]~~Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or ~~[Utah Code]~~Section 67-19e-101, et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a Complaint. A Preliminary Investigation may include~~[-but is not limited to]:~~

- ~~(a)~~ examination of documents~~[-] or correspondence[-]; and~~
- ~~(b)~~ interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

**R477-101-3. Jurisdiction.**

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

**R477-101-4. Records Classification and Retention.**

(1) Records prepared by and for the Committee, including ~~[a]~~any Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under ~~[Utah Code]~~Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three years following the conclusion of any Committee activity.

**R477-101-5. Committee.**

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of ~~[a]~~any information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

- (a) a brief description of the Complaint and the investigative results;
  - (b) findings, and;
  - (c) recommendations.
- (9) Committee members ~~[shall]~~may not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

**R477-101-6. Duties of the Chair.**

- (1) The Chair shall:
  - (a) receive, acknowledge receipt of and review Complaints;
  - (b) notify complainants about the status and disposition of their Complaints,

## NOTICES OF PROPOSED RULES

(c) make recommendations to the Committee regarding further proceedings or the disposition of a Complaint;

(d) stay investigation~~(s)~~ or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;

(e) maintain records of the Committee's operations and actions;

(f) compile data to aid in the administration of the Committee's operations and actions;

(g) prepare and distribute an annual report of the Committee's operations and actions;

(h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;

(i) make available to the public the laws, rules, and procedures of the Committee and its operations; and

(j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

### **R477-101-7. Code of Conduct.**

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

### **R477-101-8. Filing Procedure.**

(1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.

(3) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp ~~all~~any Complaints on the date received. ~~Any~~Any filing and other time periods are based upon the Department's working days.

(4) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

### **R477-101-9. Investigation.**

(1) Preliminary Investigation.

(a) The Department shall review ~~all~~any timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.

(b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.

(c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.

(2) Full Investigation.

Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:

(a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the Respondent ALJ that the investigation may be expanded if appropriate;

(c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;

(d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and

(e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

### **R477-101-10. Full Investigative Findings.**

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

### **R477-101-11. Notice.**

(1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.

(2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.

(3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.

(4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's representative. Service of ~~all~~any other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response ~~of~~or after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of

~~any~~ documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

**R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.**

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

**R477-101-13. Committee Meetings.**

(1) The Chair shall rule on ~~any~~ motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for the presentation of information, may bifurcate any ~~and all~~ issues to be considered, and may make any ~~and all~~ other rulings regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3 members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action~~(s)~~, and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

**R477-101-14. Discipline.**

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any ~~or all~~ of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a recommendation.

(2) Any corrective ~~and~~ or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or any state rule~~(s)~~ governing discipline.

**R477-101-15. Reinstatement of Proceedings.**

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

**R477-101-16. Performance Standard.**

(1) The following minimum performance standards shall apply to ~~all ALJ's~~ each ALJ:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive a satisfactory rating on the survey. A satisfactory rating is achieved when an average of at least 65% of collected responses to survey questions for an ALJ is "Agree". Any survey question with a response of "Not enough information to respond" will not be used when calculating the rating.

(2) For any question that does not use the "Agree"/"Disagree" response option, the Committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by ~~Utah Code~~ Section 67-19e-105.

**R477-101-17. Performance Surveys.**

(1) The department shall establish and follow a schedule to survey the performance of each ALJ every four years. The schedule shall be staggered to survey the performance of approximately one quarter of ~~all~~ ALJ's each calendar year.

(2) Survey respondents shall include:

(a) Attorneys who have appeared before the administrative law judge as counsel in the proceeding; and

(b) Staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including ~~but not limited to,~~ pro se parties and witnesses.

~~(3)~~ Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

~~(4)~~ Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

**R477-101-18. Training.**

(1) The department shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in ~~Utah Code~~ Section 67-19e-110.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the department under this section, the administrative law judge shall complete the procedural fairness training program established by the department.

NOTICES OF PROPOSED RULES

**R477-101-19. Hiring of Administrative Law Judges.**

(1) Hiring of administrative law judges must comply with [Utah Code]Section 67-19e-104.5 and [DHRM Rule]Section R477-4-15.

**KEY: administrative law judges, conduct committee**  
**Date of Enactment or Last Substantive Amendment: July 1, 2020[2018]**  
**Notice of Continuation: January 7, 2019**  
**Authorizing, and Implemented or Interpreted Law: 67-19e-101 through 67-19e-109**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R527-258	Filing No.	52710

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Recovery Services	
<b>Street address:</b>	515 E 100 S	
<b>City, state:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0033	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Scott Weight	801-741-7435	sweigh2@utah.gov
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program
<b>3. Purpose of the new rule or reason for the change:</b>
The amendment extends the time period for which an obligor may contact the Office of Recovery Services (ORS) to initiate the ex-prisoner IV-A arrears forgiveness program from 30 days to 6 months.
<b>4. Summary of the new rule or change:</b>
Section R527-38-2 was amended so that an obligor with a IV-A arrears debt which accrued during his/her incarceration has up to 6 months to contact ORS make

payment arrangements and begin the 12-month IV-A arrears forgiveness program.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
ORS collects current and past due child support from non-custodial parents (NCPs) when a custodial parent applies for and receives financial assistance through the Temporary Aid to Needy Families (TANF) program administered by Department of Workforce Services. ORS terms the past due child support debt which accrues under TANF "IV-A arrears". Once collected by ORS, IV-A arrears monies reimburse the state for the costs of supporting children receiving TANF. ORS administers a program by which an ex-prisoner may be forgiven IV-A arrears debts which accrued during his/her period of incarceration if the individual, upon release, pays current child support due in full for at least 12 months. In the past decade an average of 2 NCPs per year participated in the program. This resulted in a \$14,234.48 total yearly average of IV-A arrears debt forgiven. With the proposed rule amendment, the window of opportunity to contact ORS is extended from 30 days to 6 months following release and there would be an estimated 12 NCPs per year participating in the program. This represents a 600% increase. \$14,234.48 average IV-A arrears forgiven times 600% = \$85,406.88. This indicates an on-going estimated \$71,172.40 (85,406.88 – 14,234.48) average yearly increase in forgiven IV-A arrears with the rule amendment. State government is expected to experience an on-going direct fiscal cost and receive a decrease in revenues of approximately \$71,172.40.
<b>B) Local governments:</b>
Administrative rules of the ORS, Child Support Services do not apply to local governments. This rule lengthens the window of opportunity for NCPs to contact ORS to initiate involvement in the ex-prisoner IV-A arrears forgiveness program. Therefore, there are no anticipated costs or savings for local governments due to this amendment.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The amendments to this rule do not change ORS, Child Support Services processes or procedures regarding sending income withholdings or the volume of income withholdings sent. Therefore, there are no anticipated costs or savings to small businesses due to the amendments.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The amendments to this rule do not change ORS, Child Support Services processes or procedures regarding

sending income withholdings or the volume of income withholdings sent. Therefore, there are no anticipated costs or savings to non-small businesses due to the amendments.

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

In the past decade an average of 2 NCPs per year participated in the ORS ex-prisoner IV-A arrears Forgiveness program representing a \$14,234.48 total yearly average amount of IV-A arrears debt forgiven. The condition for debt forgiveness is that the individual pays the current child support due in full for at least 12 months, which benefits the custodial parent and children. With the proposed 6-month window of opportunity, there would be an estimated 12 NCP's per year participating in the program resulting in an average yearly benefit to the participating NCP's of \$85,406.88. This indicates a total estimated yearly average, on-going indirect fiscal benefit of \$71,172.40 (85,406.88 – 14,234.48) to NCPs participating in the program.

**F) Compliance costs for affected persons:**

There is no anticipated cost to other persons due to the amendments to this rule.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$71,172.40	\$71,172.40	\$71,172.40
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	\$71,172.40	\$71,172.40	\$71,172.40
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$71,172.40	\$71,172.40	\$71,172.40
<b>Total Fiscal Benefits</b>	\$71,172.40	\$71,172.40	\$71,172.40
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Services, Ann Silverberg Williamson, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts to businesses because the changes to this rule do not change ORS, Child Support Services processes or procedures regarding sending income withholdings or the volume of income withholdings sent.

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

Ann Silverberg Williamson, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 62A-1-111	Section 62A-11-107	Section 62A-11-320
Section 62A-11-326.1	Section 62A-11-326.1	45 CFR 303.31
45 CFR 303.32		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

<b>10. This rule change MAY become effective on:</b>	06/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Liesa Stockdale, Director	<b>Date:</b>	04/09/2020
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**R527. Human Services, Recovery Services.**

**R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.**

**R527-258-1. Purpose and Authority.**

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.
2. The purpose of this rule is to specify the procedures for collection of IV-D child support and arrears payments after the obligor has been released from prison, ~~[A]~~jail or an in-patient treatment program.

**R527-258-2. Collection from Ex-Prisoners.**

1. If the obligor has been incarcerated for thirty days or more and notifies the Office of Recovery Services (ORS), ~~[A]~~Child Support Services ~~[(ORS/CSS)]~~ or the office is made aware of the release within ~~[30 days]~~six months of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months ~~[after the incarceration release date]~~from the time ORS, CSS is notified or made aware of the release.
2. The ORS, Child Support Services~~[/CSS]~~ will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

**R527-258-3. Enforcing Child Support When the Obligor is an Ex-Prisoner.**

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven one time, if the obligor makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The twelve consecutive month period begins when the obligor is released and they have contacted the office to make payment arrangements within ~~[the allotted 30 days]~~six months of the release date.
2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.
  - a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

- b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent period of incarceration shall be forgiven. IV-A debt forgiveness due to incarceration will only occur one time per obligor.
3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS, Child Support Services~~[/CSS]~~.
4. The obligor's arrearage payment shall be reassessed by the office if the obligor's~~[his/her]~~ financial situation changes during the twelve-month period.

**R527-258-4. Collection from Obligor in Treatment Programs.**

1. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program for thirty days or more, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment.
2. If the obligor is in an in-patient, licensed mental health or substance abuse treatment program and notifies ORS, Child Support Services~~[/CSS]~~ or the office is made aware of the release within 30 days of the release date, the office will only collect current support and one dollar toward the past-due support debt for six months after the in-patient program release date.
3. If the obligor is involved in an out-patient treatment program and notifies ORS, Child Support Services~~[/CSS]~~ or the office is made aware of the treatment within 30 days of the treatment beginning, the office will only collect current support and one dollar toward the past-due support debt for six months after:
  - a. the obligor's initial contact with the office, or
  - b. the office determines that the individual is involved in an out-patient treatment program.
4. ORS, Child Support Services~~[/CSS]~~ will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

**R527-258-5. Enforcing Child Support When the Obligor Is in a Treatment Program.**

1. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven one time, if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and the obligor ~~[s/he]~~ has contacted the office to make payment arrangements within the allotted 30 days.
2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.
  - a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.
  - b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.
  3. If the obligor owes IV-A arrears only, the obligor ~~[s/he]~~ must make twelve consecutive payments to the office based on an assessed amount determined by ORS, Child Support Services~~[/CSS]~~.

NOTICES OF PROPOSED RULES

4. The obligor's arrearage payment shall be reassessed by the office if the obligor's [his/her] financial situation changes during the twelve-month period.

**KEY: administrative law, child support**

**Date of Enactment or Last Substantive Amendment:** ~~February 22, 2013~~ **2020**

**Notice of Continuation:** December 13, 2016

**Authorizing, and Implemented or Interpreted Law:** 62A-1-111; 62A-11-107; 62A-11-320(1); 62A-11-326.1; 45 CFR 303.31; 45 CFR 303.32

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-5	Filing No.	52734

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room no.:</b>	Suite 2110		
<b>Building:</b>	Dept. of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R657-5. Taking Big Game
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Cooperative Wildlife Management Units (CWMUs).
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule establish a management bison permit and set criteria for the use of the permit.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments allows for the use of a management bison permit in units that have a zero management objective for bison these changes can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments add a management bison permit into current regulations, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities provided by management bison permits.
<b>F) Compliance costs for affected persons:</b>
DWR has determined that this amendment will not create additional costs for those participating in bison hunting in Utah.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Brian Steed, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 23-14-18	Section 23-14-19	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	06/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowls, DWR Director	<b>Date:</b>	04/30/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-5. Taking Big Game.**

**R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

**R657-5-38. Bison Hunts.**

(1) To hunt bison, a hunter must obtain a bison permit.  
 (2) [A]Except as provided in Subsection (7), a person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) A hunter's choice bison permit allows a person to take a bison of either sex within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison within the area, during the seasons, and using the weapon types as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

NOTICES OF PROPOSED RULES

(7)(a) A person who has obtained a management bison permit may take a bison of either sex within the unit boundaries and during the season dates established by the Wildlife Board.

(b) Management bison units may be established by the Wildlife Board in areas where management objectives are for zero bison.

(c) Management bison permits may be made available over the counter at a division office.

(d) A person must successfully complete an online orientation course before obtaining a Management Bison permit.

(e) A person who obtains a management bison permit forfeits any bison bonus points accrued under Section R657-62-8 and incurs the associated waiting period identified in Subsection R657-62-18(6)(d) but remains eligible to acquire a management bison permit in subsequent years.

(f) A person may only obtain one bison permit and harvest one bison in a single hunt year.

(8)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point, or obtain any management bison permit, in the following year.

(d) Late questionnaires may be accepted pursuant to Subsection [Rule] R657-42-9(2).

**KEY: wildlife, game laws, big game seasons**

**Date of Enactment or Last Substantive Amendment:** ~~February 10,~~ 2020

**Notice of Continuation:** October 5, 2015

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19; 23-16-5; 23-16-6

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R657-10	Filing No. 52735

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room no.:</b>	Suite 2110
<b>Building:</b>	Dept. of Natural Resources
<b>Street address:</b>	1594 West North Temple
<b>City, state:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146301
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Staci Coons	801-450-3093	stacicoons@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R657-10. Taking Cougar

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

This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Cooperative Wildlife Management Units (CWMUs).

**4. Summary of the new rule or change:**

The proposed amendments to this rule amend the 72 hour response following a depredation incident to 96 hours.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The proposed rule amendments allows for an extended time to respond after a depredation incident this change can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed amendments only amends a current regulation, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals experiencing deprecation damage due to cougars.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those individuals experiencing deprecation damage due to cougars in Utah.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Natural

Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	04/30/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-10. Taking Cougar.**

**R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking and pursuing cougar.

NOTICES OF PROPOSED RULES

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking cougar.

**R657-10-21. Livestock Depredation and Human Health and Safety.**

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past [72]96 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredateing cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3)(a) A depredateing cougar may be taken by those persons authorized in Subsection (1)(a) with:

([a]i) any weapon authorized for taking cougar; or

([b]ii) with the use of snares only with written authorization from the director of the division and subject to [all the]each condition[s] and restriction[s] set out in the written authorization.

([i]b) The option in Subsection (3)(b) may only be authorized in the case of a chronic depredation situation where numerous livestock have been killed by a depredateing cougar and must be verified by Wildlife Services or division personnel.

(4)(a) The [D]division may issue depredation permits to take cougar on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by cougar.

(b) The [D]division may:

(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;

(ii) determine the legal weapons and methods of take allowed; and

(iii) specify the area and season that the permit is valid.

(5)(a) Any cougar taken under Subsection (1)(a) or (4)(a) shall remain the property of the state and must be delivered to a division office or employee within [72]96 hours.

(b) The division may issue a cougar damage permit to a person who has killed a depredateing cougar under Subsection (1)(a) that authorizes the person to keep the carcass.

(c) A person that takes a cougar under Subsection (1)(a) or (4)(a) may acquire and use a limited entry permit or harvest objective cougar permit in the same year.

(d) Notwithstanding Subsections (5)(b) and (5)(c), a person may retain no more than one cougar annually.

(6)(a) Hunters interested in taking depredateing cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredateing cougar as needed.

**KEY: wildlife, cougar, game laws**

**Date of Enactment or Last Substantive Amendment: [March 24,] 2020**

**Notice of Continuation: August 1, 2016**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-33	Filing No.	52736

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room no.:</b>	Suite 2110		
<b>Building:</b>	Dept. of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R657-33. Taking Bear
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Cooperative Wildlife Management Units (CWMUs).
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule amend the 72 hour response following a depredation incident to 96 hours and allows for the take of depredateing bears for chronic losses of livestock.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>			
The proposed rule amendments allows for an extended time to respond after a deprecation incident this change can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.			
<b>B) Local governments:</b>			
Since the proposed amendments only amend a current regulation, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
The proposed rule amendments will not directly impact small businesses because a service is not required of them.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i> ):			
These amendments do not have the potential to create a cost impact to those individuals experiencing deprecation damage due to bears.			
<b>F) Compliance costs for affected persons:</b>			
DWR has determined that this amendment will not create additional costs for those individuals experiencing deprecation damage due to bears in Utah.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Brian Steed, Executive Director			

<b>Citation Information</b>		
<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 23-14-18	Section 23-14-19	

<b>Public Notice Information</b>
<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	04/30/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-33. Taking Bear.**

**R657-33-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

**R657-33-23. Livestock and Commercial Crop Depredation.**

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past [72]96 hours:

(a) the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredating bear and the division may:

(i) authorize a local hunter to take a bear using a valid permit; or

(ii) request that the offending bear be removed by Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or  
 (b) snares only with written authorization from the director of the division and subject to ~~all the~~any conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of chronic depredation verified by Wildlife Services or division personnel where numerous livestock have been killed by a depredating bear.

(4) A person authorized under Section (3) to take depredating bear may take no more than two bears per incident.

(5)(a) The division may issue depredation permits to take bear on specified private lands and public land grazing allotments with a chronic depredation situation where numerous livestock have been killed by bear.

(b) The division may:

(i) issue one or more depredation permits to the affected livestock owner or a designee, provided the livestock owner does not receive monetary consideration from the designee for the opportunity to use the depredation permit;

(ii) determine the legal weapons and methods of take allowed; and

(iii) specify the area and season that the permit is valid.

(6)(a) Any bear taken under Subsection (1)(a) or (5)(a) shall remain the property of the state and must be delivered to a division office or employee within 96 hours.

(b) The division may issue a bear depredation permit to a person who has killed a depredating bear under Subsection (1)(a) or (5)(a) that authorizes the person to keep the carcass.

(c) A person that takes a bear under Subsection (1)(a) or (5)(a) may acquire and use a limited entry permit or harvest objective cougar permit in the same year.

(d) Notwithstanding Subsections (6)(b) and (6)(c), a person may retain no more than one bear annually.

(7)(a) The division may issue one or more control permits to an owner or lessee of private land to remove a bear causing damage to cultivated crops on cleared and planted land provided the following conditions are satisfied:

(i) the landowner or lessee contacts the appropriate division office within [72]96 hours of the damage occurring or provides documentation of previous chronic damage incidents;

(ii) the damaged cultivated crop is raised and utilized by the landowner or lessee for commercial gain and with a reasonable expectation of generating a profit;

(iii) at least 5 acres of the private land is placed in agricultural use pursuant to Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504;

(iv) the division confirms that the private land where the cultivated crop occurs has experienced chronic recurring damage from bears, or that there will likely be chronic recurring damage if offending bears are not immediately removed;

(v) the landowner, an immediate family member, or an employee of the owner on a regular payroll, and not hired specifically to take bear, receives the control permit from the division to remove the bear prior to initiating such action; and

(vi) the bear removal is otherwise in accordance with Utah law.

(b) The division may issue control permits described in Subsection ([4]Z)([\*]a) to identify restrictions necessary and to balance the threat to commercial crops on cleared and planted land and the wildlife resource, such as:

NOTICES OF PROPOSED RULES

(i) locations on the landowner or lessee's private property where offending bears may be taken;

(ii) the total number of control permits that may be issued; and

(iii) reporting requirements to the division.

(c) Nothing herein mandates the division to issue control permits for a landowner or lessee to remove bears from their private property in lieu of:

(i) the landowner or lessee taking nonlethal preventative measures in protecting their private property; and

(ii) the division undertaking wildlife management techniques as they deem appropriate.

~~(5)8(a)~~ Any bear taken pursuant to Subsections (1)~~(a)~~ and ~~(4)7~~ shall:

(i) be delivered to a division office or employee within 48 hours; and

(ii) remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredate bear if that person wishes to maintain possession of the bear.

(b) A person may only retain one bear carcass annually under this Section.

~~(6)(a) Hunters interested in taking depredate bear as provided in Subsection (1)(b) may contact the division.~~

~~(b) Hunters will be contacted by the division to take depredate bear as needed.]~~

**KEY: wildlife, bear, game laws**  
**Date of Enactment or Last Substantive Amendment: [March 24,] 2020**  
**Notice of Continuation: November 28, 2017**  
**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-2**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-37	Filing No.	52737

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room no.:</b>	Suite 2110		
<b>Building:</b>	Dept. of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule or section catchline:</b>
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Cooperative Wildlife Management Units (CWMUs).
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) allow for a general season unit to be managed for a higher buck to doe ratio and older age class animals, consistent with limited entry units; and 2) add buck pronghorn and antlerless pronghorn to the list of species that qualify for the CWMU program.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments alter management strategies for general season units and add both buck and antlerless pronghorn to the list of species in the program, all of these changes can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments make adjustments to current regulations, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b>

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities provided by CWMUs.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those participating in big game hunting in Utah.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 23-23-3

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

**Agency head or designee, and title:** Mike Fowks, DWR Director  
**Date:** 04/30/2020

**R657. Natural Resources, Wildlife Resources.**

**R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.**

**R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management Units are established to:

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- (a) increase wildlife resources;
- (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;
- (d) create satisfying hunting opportunities;
- (e) provide adequate protection to landowners who open their lands for hunting; and
- (f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

**R657-37-4. Cooperative Wildlife Management Unit Management Plan.**

(1)(a) The landowner association shall manage the CWMU in compliance with a CWMU Management Plan approved by the division.

(b) The CWMU management plan shall be consistent with statewide and unit management objectives for the respective species hunted on the CWMU.

(c) CWMUs that occur within a general season unit may be managed for higher buck to doe ratios and older age class animals, consistent within a limited entry unit.

(2)(a) The CWMU Management Plan shall be completed as part of the certificate of registration application and renewal processes.

(b) If approved by the Wildlife Board, the CWMU management plan is incorporated into the CWMU's certificate of registration.

(c) Amendments to the CWMU Management Plan may be requested by the Wildlife Board, the division, or the CWMU landowner association operator or president, and may result in an amendment to the certificate of registration, consistent with Section R657-37-5.5.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii) dates that the general public with buck or bull CWMU permits will be allowed to hunt;

(iv) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(v) an explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(vi) an explanation of how the public is compensated by the CWMU when public land is included;

(vii) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(viii) County Recorder Plat Maps or equivalent maps depicting boundaries and ownership for [a#]each parcel of real property within the CWMU;

(ix) two original 1:100,000 USGS maps depicting [a#]each interior and exterior boundar[ies]y of the proposed CWMU;

(x) strategies and methods that avoid, mitigate, and if necessary compensate for adverse impacts to adjacent landowners and lessees resulting from the operation of the CWMU;

(xi) strategies and methods that avoid, mitigate, and if necessary compensate for adverse impacts to agricultural lessees within and adjacent to the CWMU;

(xii) identification of areas within the CWMU that are closed to hunting by both public and private hunters;

(xiii) any request for reciprocal agreements.

(b) The division shall review [a#]each CWMU Management Plan[s] and make recommendations to the Wildlife Board.

(4)(a) CWMU operators are required to complete a CWMU training session provided by the division on an annual basis.

(b) Failure to complete the CWMU training session may result in the CWMU operator being referred to the CWMU Advisory Committee described in Section R657-37-15 or may result in administrative action taken against a certificate of registration as described in Section R657-37-14.

**R657-37-7. Operation by Landowner Association.**

(1)(a) A CWMU must be operated by a landowner association who is represented by a president or a landowner association operator.

(b) A landowner association president or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association president, or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association president or landowner association operator may enter into reciprocal agreements with other landowner association presidents or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsection[s] R657-37-4(3)(a)(xii).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU;

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief; ~~[-#]~~

(iv) be used with unused vouchers as provided in Subsection R657-37-9(12)(a); or

(v) be used to achieve antlerless harvest objectives for big game populations that may migrate across different CWMUs.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(d) The division may identify an individual to administer and coordinate reciprocal agreements and [a#]each expenditure of funds generated therefrom.

(e) The division must provide written approval prior to any expenditure of funds generated from reciprocal agreement permits.

(f) The administrator of the reciprocal agreement program must provide an annual accounting of proceeds generated from reciprocal agreement permits and how those funds were spent or administered.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permittees a minimum of:

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- (i) five days to hunt with buck, bull or turkey permits; and
- (ii) three days to hunt with antlerless permits.
- (b) Sunday hunt days may not be included in minimum hunt days except by mutual agreement of the permittee and the operator.
- (c) General public CWMU permittees shall be allowed to hunt the entire CWMU during their established season dates, unless areas are deemed closed to both public and private hunters and described in the CWMU Management Plan as closed.
- (d) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

- (i) clearly post ~~at~~ each boundary of the CWMU at all corner[s], fishing stream[s] crossing property lines, road, gate[s], and right[s]-of-way entering the land with signs that are a minimum of 8 ½ by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and
- (ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU.

(c) The general public may use accessible public land portions of the CWMU for ~~at~~ legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

(7) A landowner association member may not harass or haze wildlife in an effort to retain animals on the CWMU or herd animals onto the CWMU unless:

- (a) the division determines that such actions are necessary to mitigate agricultural damage on neighboring lands;
- (b) the CWMU is fulfilling their obligations described in their CWMU Management Plan regarding agricultural damage to neighboring landowners; and
- (c) the division provides prior written authorization approving the actions of the CMWU.

**R657-37-9. Permit Allocation.**

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

- (a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or
- (b) named by the landowner association member or landowner association operator.

(2) CWMU landowner association members and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.

(3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(4)(a) The division and the landowner association operator must, in accordance with Subsection (4), determine:

- (i) the total number of permits to be issued for the CWMU; and
- (ii) the number of permits that may be offered by the landowner association to the general public as defined in Subsection R657-37-2(2)(c).

(b) In determining the total number of permits allocated under Subsection (4)(a), the division will consider:

- (i) acreage and habitat conditions on the CWMU;
- (ii) management objectives of the CWMU and surrounding wildlife management units;
- (iii) classification and survey data;
- (iv) depredation and nuisance conflicts; and
- (v) other factors that may influence hunt quality and the division's ability to meet wildlife management objectives.

(c) A CWMU may only offer a management buck permit for a public hunter if that CWMU lies entirely within a wildlife management unit that also offers management buck hunts.

(5) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU.

(6)(a) Big game permits may be allocated using an option from:

- (i) table one for moose and pronghorn; or
- (ii) table two for elk and deer.

(b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and buck pronghorn and at least 60% of the antlerless moose and antlerless pronghorn permits will be allocated to the public and distributed via the public drawing.

(ii) Notwithstanding subsection (b)(i) above and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN		
Cooperative Wildlife Management Unit's Share		
Option	Bucks/Bulls	Does/Antlerless
1	60%	40%
Public's Share		
Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

NOTICES OF PROPOSED RULES

TABLE 2

ELK AND DEER		
Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

  

Public's Share		
Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(7)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under [s]Subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three-year average may result in discipline under [s]Section R657-37-14.

(8) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(9) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(10) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(11) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(12)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

(i) [F]the voucher donation is approved by the director prior to transfer;

(ii) ~~No more than one voucher is donated per year by a landowner association;~~

~~[(iii)]~~ [F]the voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

~~[(iv)]~~ [F]the recipient of the voucher is identified prior to obtaining the director's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before August 1<sup>st</sup> the year the CWMU voucher is to be redeemed.

(d) [v]Vouchers may be used in reciprocal hunting agreements ~~[described]~~ in accordance with Subsection R657-7-(2)(b).

(13)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to ~~[a]~~the public permit holders that would otherwise draw out on the public permits.

**KEY: wildlife, cooperative wildlife management unit**

**Date of Enactment or Last Substantive Amendment:** ~~July 22, 2019~~**2020**

**Notice of Continuation:** May 6, 2018

**Authorizing, and Implemented or Interpreted Law:** 23-23-3

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-57	Filing No. 52673	

**Agency Information**

<b>1. Department:</b>	Natural Resources		
<b>Agency:</b>	Wildlife Resources		
<b>Room no.:</b>	Suite 2110		
<b>Building:</b>	Dept. of Natural Resources		
<b>Street address:</b>	1594 W North Temple		
<b>City, state:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 146301		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Staci Coons	801-450-3093	stacicoons@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R657-57. Division Variance Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is established to provide authority, standards, and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control. The current amendment is needed due to the restrictions counties have put in place because of the COVID-19

pandemic. Sportsmen holding permits for the spring hunts have been unable to access the land that their permit is valid on due to not living in that county. This amendment allows certain types of permits to be extended to the next years season.

**4. Summary of the new rule or change:**

The proposed amendments to this rule adds the effects of COVID-19 to the list of qualifying events that will allow for a season variance on specified permits.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

The proposed rule amendments adds COVID-19 to the list of qualifying events that allow for a season extension this change can be initiated within the current workload and resources of the Division of Wildlife Resources (DWR), therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

**B) Local governments:**

Since the proposed amendments add a qualifying event for the purpose of seasons extensions, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities as there is no additional charge to extend a season on a permit.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those participating in big game hunting in Utah.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 23-14-18	Section 23-14-19
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	04/20/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-57. Division Variance Rule.**

**R657-57-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

**R657-57-4. Division Variance Authority Scope.**

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife document to the same or substantially similar hunt in the following year, provided:

- (i) the variance request involves a wildlife document for a:
  - (A) once-in-a-lifetime hunt under Rule R657-5;
  - (B) conservation permit hunt under Rule R657-41;

- (C) limited entry landowner permit hunt under Rule R657-43;
- (D) poaching-reported reward permit hunt under Rule R657-5;
- (E) CWMU hunt obtained through the operator or landowner under Section R657-37-9; or
- (F) a wildlife exposition permit under Rule R657-55;
- (ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in Section R657-57-6;[~~and~~]

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued;[~~and~~]

(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;

(iv) any changes in unit descriptions and season dates in the extension year are applied; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.[-]

(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.

(c) Notwithstanding the limitations in Subsection (1)(a) on wildlife documents eligible for season extension variance relief, the division may grant a season extension variance for a limited entry hunt, provided:

(i) the applicant possessing the limited entry permit was substantially precluded from participating in the hunt for COVID-19 related personal health concerns or general public health restrictions imposed by the federal government, a state, or a local government;

(ii) the season for the limited entry hunt began on or after March 1, 2020 and ended on or before July 1, 2020; and

(iii) the variance relief sought and extended is otherwise in compliance with the provisions of this rule.

(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:

(i) the variance request involves a wildlife document for a:

- (A) limited entry hunt or once-in-a-lifetime hunt; or
- (B) any other hunt that triggers a waiting period to participate in a Division administered drawing;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in Section R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued;[~~and~~]

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.

NOTICES OF PROPOSED RULES

(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:

(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;

(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in Section R657-57-6; and

(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and

(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued;~~and~~

(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:

(i) the variance request involves a wildlife document for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);

(ii) the applicant was significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in Section R657-57-6;

(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;

(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and

(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.

(5)(a) An individual applying for a variance on a permit awarded through a Division administered drawing may only apply for and receive one season extension variance for each permit received.

(b) An individual applying for a variance on a Conservation permit, CWMU permit redeemed from a private voucher, or a Limited Entry Landowner Permit, may apply for and receive a maximum of two season extension variances for each permit received.

(c) An individual who has already been provided the maximum number of season extensions for their relevant permit, but who is still unable to hunt, is limited to restoration of preference or bonus points, a refund, or both, so long as they otherwise qualify.

(d) An individual receiving a variance for a CWMU permit or Limited Entry Landowner permit redeemed from a private voucher must receive permission from the CWMU Operator or respective landowner to hunt during the variance period.

(6)(a) A Division administered drawing for purposes of Subsections (2) and (5) does not include a drawing conducted at a wildlife exposition pursuant to Rule R657-55.

(b) Permits distributed through a wildlife exposition pursuant to Rule R657-55 are eligible for the same variance relief and are subject to the same variance restrictions as permits distributed via a Division administered drawing.

(7) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.

**R657-57-6. Qualifying Events and Conditions.**

(1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely or substantially precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:

(a) personal illness or injury;

(b) the death, or significant injury or illness of an immediate family member;~~[-]~~

(c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency; or

(d) COVID-19 related personal health concerns or general public health restrictions imposed by the federal government, a state, or a local government.

**R657-57-7. Variance Application.**

(1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within 120 days of the:

(a) last day of the hunting season for which a season extension variance is requested; or

(b) drawing application deadline for which a bonus or preference point variance is sought.

(2) The Division may not grant a variance under this rule when the application is received beyond the 120 days limitation period set forth in Subsection (1).

(3) An application for a season extension variance under Subsection R657-57-4(1), a bonus point restoration and waiting period waiver variance under Subsection R657-57-4(2), or a preference point restoration variance under Subsection R657-57-4(3) shall contain the following information and documentation:

(a) name, address and telephone number of the applicant;

(b) a brief statement of the variance relief sought;

(c) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag;

(d) a statement verifying the applicant was substantially precluded from participating in a qualified hunt because of:

(i) personal illness or injury;

(ii) the death, or significant injury or illness of an immediate family member;~~[-]~~

(iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency; or

(iv) COVID-19 related personal health concerns or general public health restrictions imposed by the federal government, a state, or a local government[-]; and

(e) corroborating documentation of the qualifying event or condition listed in Subsection (~~2~~)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate;~~[-]~~

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating[-];

NOTICES OF PROPOSED RULES

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of duty while deployed or mobilized[-]; or

(iv)(A) a physician's written statement explaining and verifying that underlying health conditions place the applicant at risk of life-threatening COVID-19 complications, if contracted, and that participation in the permitted activity will significantly increase the applicant's risk of contracting COVID-19; or

(B) a photocopy of the COVID-19 related federal, state, and local laws, orders, or directives substantially precluding the applicant from participating in the permitted activity.

(4) An application for a bonus or preference point variance under Subsection R657-57-4(4) shall contain the following information and documentation:

- (a) name, address and telephone number of the applicant;
- (b) a brief statement of the variance relief sought;

(c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;

(d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of:

- (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or

(iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of their duty while deployed or mobilized.

(5) The Division may reject an application that is incomplete or that contains false or misleading information.

(6) The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.

(7) The Division should make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

**R657-57-10. Wildlife Board Appeals.**

(1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and

received by the Division within 30 calendar days of the issuance date on the Division's decision.

(2) The appeal shall contain the following information and documentation:

(a) name, address and telephone number of the petitioner;

(b) a statement of the variance relief sought and justification for the relief;

(c) a description of the wildlife document application for which the variance is sought, including the document number, species and sex, season dates, and weapon type;

(d) the original wildlife document for which the variance is sought;

(e) a statement describing the degree of lost opportunity because of an event or condition; and

(f) corroborating documentation of the event or condition listed in Subsections R657-57-7(3)(d) and (4)(d), which may include:

- (i) a physician's written statement;
- (ii) a certified death certificate photocopy;
- (iii) a photocopy of the military orders;
- (iv) a letter from an employment supervisor on official

letterhead;[-~~or~~]

(v) court documentation; or

(vi) a photocopy of relevant COVID-19 laws, orders, or directives.

(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.

(4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.

(5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner may be given an opportunity to address the Wildlife Board concerning the appeal.

(a) The Wildlife Board will provide the petitioner notice of the date, time, and location of the hearing.

(b) Failure to participate in the hearing may result in dismissal of the variance appeal.

(6) The Wildlife Board may sustain, overturn, or modify the Division's decision which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in Sections R657-57-11 through R657-57-13.

(7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~February 10,~~ **2020**

**Notice of Continuation:** **July 19, 2018**

**Authorizing, and Implemented or Interpreted Law:** **23-14-18; 23-14-19**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R657-62	Filing No.	52738

**Agency Information**

<b>1. Department:</b>	Natural Resources
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NOTICES OF PROPOSED RULES

<b>Agency:</b>	Wildlife Resources	
<b>Room no.:</b>	Suite 2110	
<b>Building:</b>	Dept. of Natural Resources	
<b>Street address:</b>	1594 W North Temple	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-62. Drawing Application Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Cooperative Wildlife Management Units (CWMUs).
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule: 1) establish a management bison permit, and 2) set criteria for the use of bonus points and waiting periods.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments allow for the use of a management bison permit in units that have a zero management objective for bison. These changes can be initiated within the current workload and resources of the DWR, therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendments adds a management bison permit into current regulations, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.

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

The proposed rule amendments will not directly impact small businesses because a service is not required of them.

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

The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.

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

These amendments do not have the potential to create a cost impact to those individuals wishing to participate in the hunting opportunities provided by management bison permits.

**F) Compliance costs for affected persons:**

DWR has determined that this amendment will not create additional costs for those participating in bison hunting in Utah.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Natural Resources, Brian Steed, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Brian Steed, Executive Director

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 23-14-18	Section 23-14-19	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/15/2020

**10. This rule change MAY become effective on:** 06/22/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Fowlks, DWR Director	<b>Date:</b>	04/30/2020
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**R657. Natural Resources, Wildlife Resources.**

**R657-62. Drawing Application Procedures.**

**R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-8. Bonus Points.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or  
 (ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for:

- (i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;
- (ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;
- (iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;
- (iv) once-in-a-lifetime species including cooperative wildlife management units;
- (v) limited entry bear;
- (vi) restricted bear pursuit;
- (vii) antlerless moose;
- (viii) ewe Rocky Mountain bighorn sheep;
- (xi) ewe desert bighorn sheep;
- (x) cougar; and
- (xi) turkey.

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications may be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until ~~all~~ reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for

NOTICES OF PROPOSED RULES

reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

- (i) each species applied for; and
- (ii) each bonus point for that species.

(6) Bonus points are forfeited if:

(a) a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing; or

(b) a provision in a rule issued by the Wildlife Board specifically forfeits bonus points.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

**R657-62-18. Big Game.**

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet ~~all~~ age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) ~~all~~ of the following:

(A) buck deer - limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) ~~all~~ once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a general archery buck deer permit;

(ii) for general any weapon buck deer;

(iii) for general muzzleloader buck deer; and

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(b) Youth applicants who apply for a general buck deer permit.

(i) Youth will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(3) Reserved

(4) Drawing Order.

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) general buck deer -- lifetime license;

(vi) general buck deer -- dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after ~~all~~ choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(5) Groups

(a) Limited Entry

NOTICES OF PROPOSED RULES

- (i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.
- (b) Group applications are not accepted for management buck deer or bull elk permits.
- (c) Group applications are not accepted for Once-in-a-lifetime permits.
- (d) General season
- (i) Up to four people may apply together for general deer permits.
- (ii) Up to four youth may apply together for youth general any bull elk permits.
- (iii) Up to four youth may apply together for youth general deer permits.
- (6) Waiting Periods
  - (a) Deer waiting period.
    - (i) Any person who draws or obtains a limited entry, premium limited entry, management, or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of five seasons.
      - (ii) A waiting period does not apply to:
        - (A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;
        - (B) cooperative wildlife management unit, limited entry, premium limited entry, or landowner buck deer permits obtained through the landowner; or
        - (C) buck deer wildlife expo permits, as provided in Section R657-55-6.
      - (b) Elk waiting period.
        - (i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.
          - (ii) A waiting period does not apply to:
            - (A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;
            - (B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner; or
            - (C) bull elk wildlife expo permits, as provided in Section R657-55-6.
          - (c) Pronghorn waiting period.
            - (i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.
              - (ii) A waiting period does not apply to:
                - (A) conservation, sportsman, poaching-reported reward permits;~~[-or]~~
                - (B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner; or
                - (C) buck pronghorn wildlife expo permits, as provided in Section R657-55-6.
              - (d) Once-in-a-lifetime species waiting period.
                - (i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or mountain goat through the big game drawing or sportsman permit drawing may not receive another once-in-a-lifetime permit

in the big game drawing or sportsman permit drawing in the same year.

(ii) Except as provided in Subsection (iii), once-in-a-lifetime restrictions do not apply to obtaining:

(A) wildlife expo permits for once-in-a-lifetime species in the wildlife expo drawing, as provided in Rule R657-55; and

(B) Management bison permits, as provided in Subsection R657-5-38(7).

(iii) Any person who obtains a wildlife expo permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in Rule R657-62 and the guide[-]books of the Wildlife Board for taking big game.

(iv) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~February 10,~~ 2020

**Notice of Continuation:** April 9, 2019

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R661-6	Filing No.	52699

**Agency Information**

<b>1. Department:</b>	Navajo Trust Fund		
<b>Agency:</b>	Trustees		
<b>Street address:</b>	150 E 500 N		
<b>City, state:</b>	Blanding, UT 84511		
<b>Mailing address:</b>	PO Box 142315		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Tony Dayish	435-678-1468	tdayish@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R661-6. Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment clarifies the rule.
<b>4. Summary of the new rule or change:</b>
The changes in Section R661-6-301 will fund Certificate Program or Associates Degree but not both. The changes in Section R661-6-801 make consistent 15 calendar days for all deadlines for the Grievance and Appeal Process.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no cost effect to the state budget. UNTF does not receive an appropriation from the state budget. The Utah Navajo Trust Fund (UNTF) operates from funding derived from oil and gas royalties, rent revenues, and interest revenues.
<b>B) Local governments:</b>
There is no cost effect to the local governments. This amendment is about clarifying an existing scholarship assistance rule. Local governments are not expected to contribute funds for this program. UNTF provides the funding for this program and bears the cost of administration and compliance.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no cost effect to the small businesses. This amendment is about clarifying an existing scholarship assistance rule. Small businesses are not expected to contribute funds for this program. UNTF provides the funding for this program and bears the cost of administration and compliance.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no cost effect to the non-small businesses. This amendment is about clarifying an existing scholarship assistance rule. Non-small businesses are not expected to contribute funds for this program. UNTF provides the funding for this program and bears the cost of administration and compliance.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):

There is no cost effect to other persons. This amendment is about clarifying an existing scholarship assistance rule. Other persons are not expected to contribute funds for this program. UNTF provides the funding for this program and bears the cost of administration and compliance.

**F) Compliance costs for affected persons:**

There is no cost effect to the affected persons. This rule amendment will limit the number of lower level degrees or certificates to only one. UNTF provides the funding for this program and bears the cost of administration and compliance.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

Tony Dayish, UNTF Administrator, has reviewed and approved this regulatory analysis that there is no cost

effect. The education specialist reviews student applications and considers numerous criterions already.

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

There is no cost effect on businesses.

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

Tony Dayish, UNTF Administrator

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 51, Chapter 10		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tony Dayish, Administrator	<b>Date:</b>	04/27/2020
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**R661. Navajo Trust Fund, Trustees.  
R661-6. Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program.  
R661-6-301. Eligibility.**

(1) Applicants must meet the UNTF residency requirement in accordance with the UNTF Residency Rule R661-3-101 every three years.

(a) The residency requirement may have to be renewed more often than three years if a name change or record change becomes essential.

(2) The applicant must be enrolled in at least six (6) credit hours of approved college courses during the regular academic term. Course work must apply towards an approved degree or certificate program from an accredited post-secondary institution.

(a) Repeated and/or audited courses will not be funded by UNTF. If a student changes majors and has to retake lower level courses, only one transition academic term will be paid by UNTF.

(b) The eligible San Juan County, Utah Navajo College student must maintain a 2.0 grade point average on a 4.0 grade point scale. UNTF has the discretion to provide incremental scholarship bonuses to students who obtain a GPA greater than 2.0

(i) Official transcripts are required at the beginning of every fall semester; thereafter, grade reports from the previous academic term shall be submitted to UNTF following the completed academic term.

(ii) Awards are made on a first-come, first-served basis.

(c) If a student's GPA falls below 2.0, UNTF will provide a warning letter to the student and place the student on probation. If a student's GPA is below 2.0 for two consecutive semesters, the student will be ineligible for any further UNTF assistance unless the student is able to bring their GPA to 2.0 or above using their own resources or non-UNTF resources.

(3) San Juan County, Utah, Navajo Students are eligible for UNTF assistance in obtaining a One-year or two-year Certificate, Associates, Baccalaureate, Masters, or Doctorate degree.

(a) Eligible San Juan County, Utah, Navajo College Students shall declare a major in a given field no later than two (2) years after commencement of higher-[ ]level education so that proper counseling and academic advice can be provided

(b) Only one bachelor's degree will be funded by UNTF, unless the second degree is closely related to the first degree and if the same prerequisite general education classes can be used.

(c) The limit for Associates Degree is 75 credit hours and 145 credit hours for a Bachelors' Degree.

(d) A "degree contract" must be agreed upon between the college and the student and submitted to UNTF to receive funding. A "degree contract" is a list of core [eɸ]classes and prerequisites required to obtain a degree.

(e) Only one one-year or two-year certificate, or one Associate Degree will be funded by UNTF, unless the certificate or Associate Degree are related to and are part of a program that leads to a further certificate or degree.

(f) UNTF will fund a certificate or degree program for a student, but not both.

(4) Graduate students must submit a letter of acceptance and be eligible for UNTF Scholarship, and must carry the minimum graduate studies requirement of the College. An exception will be made if the course work is one of a special requirement for the professional track and/or tenure such as a special license or certification.

(5) High School Concurrent Enrollment Program students must meet the eligibility criteria regarding all requirements for the UNTF Higher Education Scholarship and Financial Assistance Program with the following modifications:

(a) Applicant shall provide a letter of recommendation from his/her high school counselor or school officials for concurrent enrollment program participation. The letter should address the student's ability to meet the demands of concurrent enrollment.

(b) Students must maintain at least a 3.0 grade point average

NOTICES OF PROPOSED RULES

(GPA) in their high school studies to be eligible for this program.

(c) The maximum amount of UNTF assistance available annually is determined by the UNTF Board. The UNTF assistance can be increased by the UNTF Board of Directors based on the Utah colleges cost data that is maintained by the State of Utah-Department of Education.

(6) On-line or correspondence courses may be taken as long as earned credits are applied to a degree program or a recognized certification program under UNTF funding guidelines.

(a) All UNTF Higher Education Scholarship eligibility requirements must be met by the applicant before any assistance toward the on-line/correspondence courses will be approved.

(b) Students attending on-line/correspondence courses shall be eligible for UNTF funding if enrolled in at least three (3) credit hours of approved college course work.

**R661-6-801. Grievance and Appeal Procedures.**

(1) Grievance and Appeals Procedures: A student applicant may file a grievance with the UNTF Education Specialist if the student disagrees with the decision rendered regarding his/her funding.

(a) The written grievance shall be submitted to the Education Specialist within ~~fourteen (14)~~ fifteen (15) calendar days from the date the adverse decision was mailed to the student.

(b) The written grievance statement must contain a justification for re-consideration of the Education Specialist's decision, including attachment of documents which may support such justification.

(2) The Education Specialist shall report receipt of the written grievance to the UNTF Financial Manager for review. The UNTF Financial Manager shall make a determination regarding the substance of the grievance within ~~ten (10)~~ fifteen (15) calendar days of receipt of the written grievance.

(a) If the grievant is dissatisfied with the Financial Manager's decision, an appeal may be filed with UNTF.

(i) To appeal the decision of the UNTF Financial Manager, an applicant may submit a written request for a hearing to the UNTF Scholarship Appellate Committee within ~~ten (10)~~ fifteen (15) calendar days from the date the adverse decision was mailed to the student, via the Education Specialist.

(A) The Applicant must include a written justification statement setting forth with specificity the reason(s) why the decisions made by the Higher Education Specialist and the Financial Manager should be reversed.

(B) The Applicant shall include copies of all documentation supporting the justification identified in the Applicant's statement.

(ii) The Appellate Committee must commence a hearing with within ~~fourteen (14)~~ fifteen (15) calendar days of the receipt of the request.

(iii) The student shall be notified in writing by certified mail ~~seven (7)~~ fifteen (15) calendar days prior to the hearing.

(iv) A decision by the Appellate Committee shall be rendered within fifteen (15) calendar days after the Committee hearing.

(3) Appellate Committee

(a) The Appellate Committee is comprised of: 1) two members of the UNTF Dine' Advisory Committee, 2) the UNTF Administrator, 3) a college student, and 4) a representative from another state agency or institution of higher learning.

(b) The Appellate Committee may choose not to hear a case if the grieving party has not submitted a justification in writing with appropriate and necessary supportive documentation.

(4) Appellate Committee Hearing Procedures

(a) Attorneys, court advocates, or any type of legal

representation are not allowed in the Appellate Committee Hearing. Family members or other persons are not allowed in the Committee Hearing. The attendees of the hearing will consist of the Appellate Committee members, the UNTF Education Specialist, and the Applicant (Grievant).

(b) A letter will be sent to the UNTF Education Specialist and the Student/Grievant of the Appellate Committee's decision on the matter. This will be the final decision and final step of the UNTF Appeal and Grievance process.

**KEY: scholarships, endowment fund, college, Utah Navajo Trust Fund (UNTF)**

**Date of Enactment or Last Substantive Amendment: ~~March 14, 2017~~ 2020**

**Authorizing, and Implemented or Interpreted Law: 51-10**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R661-7	Filing No.	52700

**Agency Information**

<b>1. Department:</b>	Navajo Trust Fund		
<b>Agency:</b>	Trustees		
<b>Street address:</b>	150 E 500 N		
<b>City, state:</b>	Blanding, UT 84511		
<b>Mailing address:</b>	PO Box 142315		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Tony Dayish	435-678-1468	tdayish@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R661-7. Utah Navajo Trust Fund Housing Projects Program
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment clarifies the rule and adds a new section.
<b>4. Summary of the new rule or change:</b>
The changes in Section R661-7-101 clarify language regarding criterion numbering system. The changes in Section R661-7-201 clarify language regarding ADA-compliant requirements. The changes in Section R661-7-601 indicate only Utah Navajo Trust Fund (UNTF) staff can perform purchasing functions on housing projects. Section R661-7-901 is a new section that adds a new program to assist Utah Navajos that are above low-

income status.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

There is no cost effect to the state budget. UNTF does not receive an appropriation from the state budget. UNTF operates entirely from funding derived from oil and gas royalties, rent revenues, and interest revenues.

**B) Local governments:**

There is no cost effect to local governments. This rule amendment has to do with clarifying existing rules, placing the responsibility of purchasing on UNTF staff, and adding a new program to assist Utah Navajos that are above low-income status. UNTF would be responsible to administer this rule, not the local governments.

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

There is no cost effect to small businesses. This rule amendment has to do with clarifying existing housing assistance rules, placing the responsibility of purchasing on UNTF staff, and adding a new program to assist Utah Navajos that are above low-income status. UNTF would be responsible to administer this rule, not small businesses. Some small businesses may benefit by selling their goods and services due the new non-low-income program, but the amount cannot be determined.

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

There is no cost effect to the non-small businesses. This rule amendment has to do with clarifying existing housing assistance rules, placing the responsibility of purchasing on UNTF staff, and adding a new program to assist Utah Navajos that are above low-income status. UNTF would be responsible to administer this rule, not the non-small businesses.

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

There is no cost effect to other persons. This rule amendment has to do with clarifying existing housing assistance rules, placing the responsibility of purchasing on UNTF staff, and adding a new program to assist Utah Navajos that are above low-income status. UNTF would be responsible to administer this rule, not other persons.

**F) Compliance costs for affected persons:**

There is no cost effect for compliance costs to affected

persons. UNTF has the responsibility of bearing the compliance costs with this rule.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

UNTF Administrator, Tony Dayish, has reviewed and approved this fiscal analysis and has determined that there are no regulatory cost impacts for this amendment.

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

There are no cost effects on businesses. In the past, the Utah Navajo Chapters of the Navajo Nation government have performed some of the tasks for purchasing building materials and it has caused variations and near violations of the state purchasing rules. This change will allow for a consistent approach for UNTF and vendors to purchasing building materials that complies with the state purchasing

rules. Businesses will be happy with the consistent approach.

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

Tony Dayish, UNTF Administrator

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 51, Chapter 10	
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tony Dayish, Administrator	<b>Date:</b>	04/27/2020
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**R661. Navajo Trust Fund, Trustees.**

**R661-7. Utah Navajo Trust Fund Housing Projects Policy.**

**R661-7-101. Requesting UNTF Housing Assistance.**

(1) Individuals requesting UNTF housing assistance must apply to their respective Chapter and follow the Chapter's procedures for application, required documents, and prioritization. All requests, budget preparation, updates and progress reports will be processed initially through the Chapter.

(a) The requesting Chapter or organization has the primary responsibility to identify clients most in need of housing assistance and shall provide written confirmation that the applicant has not received funding to construct a new home from UNTF, Navajo Royalties

Holding Fund, other housing agencies or funding source within the past 20 years.

(b) Chapters are required to maintain housing assistance policies and procedures and submit a copy of the policy to UNTF once every three (3) years, and when updated or amended.

(i) The Chapter policy should include a prioritization system that utilizes ~~in accordance with the Navajo Housing Services Department~~ a numbering system for each criterion. ~~[-If not already provided for in the Navajo Housing Services Department numbering system, -]~~ D[isabled, elderly and veteran applicants shall be considered first on the housing priority assistance list.

(ii) The Chapter shall have a housing application review committee.

(c) The Chapter must submit an approved resolution along with the Housing priority list that supports the request.

(d) Applicants must meet UNTF residency criteria.

**R661-7-201. Types of Housing Assistance.**

(1) New House construction from footing to exterior and interior ~~finish~~ completion.

(2) Completion of construction on houses that were started but not completed.

(3) Additions of a room(s) such as a bedroom, bathroom, or kitchen.

(4) Remodel or Renovation includes:

(a) Renovation or retrofit to accommodate ADA-compliant features, ~~clients for handicapped accessibility,~~ including but not limited to, additions/expansion for large bathrooms, walk-in, roll-in showers, widening of hallways and doorways, expansion of stoop or deck size, exterior ramps leading up to doorways.

(b) Improvement of an existing structure such as roof repair, floor installation or replacement.

(c) Weatherization measures, including replacement of broken windows or dilapidated doors, and installation of draft-proof windows, sealant, caulking, weather stripping, etc.

(d) Renovation of trailers or modular/manufactured homes, including the stabilization of the foundation with appropriate skirting and/or masonry foundation.

(e) Installation of house wiring, indoor plumbing, plumbing fixtures, kitchen cabinetry.

(f) Financial assistance for housing located off reservation land in San Juan County, Utah, is limited to renovation. The applicant must provide proof of ownership of the property.

**R661-7-601. Purchasing**, ~~[es Shall Be Made on Separate Invoices for Separate Applicants.]~~

(1) Only UNTF staff trained in the State of Utah Purchasing Rules are allowed to engage in purchasing activities for Chapter Projects using UNTF funds.

(2) Chapter responsibilities will be to:

(a) Identify the project or client to be assisted, in accordance with Chapter housing selection procedures;

(b) Determine the scope of work;

(c) Submit the appropriate documentation needed for the project; and

(d) Meet with UNTF staff at the beginning stages of the project.

(3) UNTF staff will execute the purchasing functions, including obtaining estimates or utilizing appropriate purchasing procedures, such as Requests for Qualifications, Requests for Proposals, or Invitations for Bids.

NOTICES OF PROPOSED RULES

(4) If a chapter executes a project without involving UNTF, that expense will not be eligible for reimbursement and the project may not be able to be completed.

(5) Building materials shall not be purchased and delivered at commencement of construction.

([1]6) Purchases and deliveries of materials shall be completed in phases according to the following schedule.

Phase 1: Foundation materials for footing, stem wall, piers, rebar, anchor bolts, and redwood or treated lumber

Phase 2: House Shell materials for framing, trusses, OSB plywood, siding, roofing, vents

Phase 3: Exterior Doors and Windows

Phase 4: Rough-in House wiring and Plumbing

Phase 5: Insulation and Drywall

Phase 6: Flooring

Phase 7: Finish Carpentry: Cabinets, Casing and Baseboard, Exterior trim, Soffit, Interior and Exterior Painting

Phase 8: Finish House wiring and Plumbing

([2]7) Purchases for Stoops, Steps, or Decks can be performed at any point after Phase 1.

([3]8) All documentation must be submitted to the Chapter

(a) Requests for payment must include all materials receipts as well as verification signed by the homeowner, chapter representative, or UNTF representative picking up the items or signing for the delivery.

(b) The person signing the receipt shall deliver the receipt to the Chapter and/or UNTF office and shall safeguard materials from theft or damage.

(c) Upon receipt of material verification forms by the UNTF Administration, invoices will be processed for payment directly to the vendor.

**R661-7-701. Funding.**

(1) UNTF preference is to fund projects on a reimbursement basis. However, in exceptional circumstances the UNTF Administrator has the authority to make advance disbursements up to Five Thousand Dollars (\$5,000.00) for mobilization expenses.

(2) UNTF will disburse approved funding directly to Chapters<sup>[,]</sup> or identified and approved contractors and/or vendors.

(3) The Chapter or UNTF will retain ten percent (10%) of the approved contractor billings until proof of completion of the housing project is provided to UNTF.

(4) The Chapter shall provide UNTF staff with an annual report identifying percentage of project completion and an explanation of what remains to be completed.

**R661-7-901. New Housing Capital Matching Program.**

(1) An applicant with at least 33.33% of the capital needed for an eligible project may be eligible for the Housing Capital Matching Program.

(2) The applicant must be approved by the Chapter as an eligible Utah Navajo qualifying for UNTF assistance.

(3) The matching funds must be in the form of cash. The eligible project must be funded in full, and cash must be received by UNTF prior to commencement of construction.

(4) The matching funds cannot be in the form of a loan to the applicant or any other type of lien.

(5) Eligible projects include new housing, additions, or major renovations, including ADA compliant features. Houses that are two stories or more are not eligible.

(6) An applicant may not own another home at the time of entering into this program.

**KEY: housing, chapter, Utah Navajo Trust Fund (UNTF), eligible purchases**

**Date of Enactment or Last Substantive Amendment: ~~October 24, 2016~~ 2020**

**Authorizing, and Implemented or Interpreted Law: 51-10**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R661-9-401	Filing No. 52701	

**Agency Information**

<b>1. Department:</b>	Navajo Trust Fund		
<b>Agency:</b>	Trustees		
<b>Street address:</b>	150 E 500 N		
<b>City, state:</b>	Blanding, UT 84511		
<b>Mailing address:</b>	PO Box 142315		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Tony Dayish	435-678-1468	tdayish@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R661-9-401. Funding
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment adds a funding limit. This is a fiduciary responsibility to ensure the entire funding does not come only from the Utah Navajo Trust Fund (UNTF) on big expensive projects.
<b>4. Summary of the new rule or change:</b>
This change adds the limit of \$600,000 or 35% of total cost per project and makes \$1,000,000 available for public facility projects.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no cost effect to the state budget. UNTF receives its funding from oil and gas royalties, rent revenues, and interest revenues. UNTF does not receive state appropriated monies.

<b>B) Local governments:</b>			
There is no cost effect to local governments. Match funding is required from the Navajo Nation's Capital Improvement budget and other match funding resources before and after this amendment.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There is no cost effect to small businesses because small businesses are not expected to contribute funds to a Public Facility Project that may cost \$500,000 to \$5,000,000 and the amendments of limiting the amount that UNTF contributes to a project has no effect on small businesses.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There if no cost effect to non-small businesses because non-small businesses are not expected to contribute funds to a Public Facility Project that may cost \$500,000 to \$5,000,000 and the amendments of limiting the amount that UNTF contributes to a project has no effect on non-small businesses.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There if no cost effect to other persons because other persons are not expected to contribute funds to a Public Facility Project that may cost \$500,000 to \$5,000,000 and the amendments of limiting the amount that UNTF contributes to a project has no effect on other persons.			
<b>F) Compliance costs for affected persons:</b>			
There is no compliance cost effects to the affected persons. UNTF has the responsibility for compliance with the UNTF rules.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

**H) Department head approval of regulatory impact analysis:**

UNTF Administrator, Tony Dayish, has reviewed and approved this fiscal analysis. There is no regulatory cost impact.

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

The head of UNTF, Tony Dayish, has reviewed and determined that there is no fiscal impact on businesses. These big expensive projects require the assistance of the Division of Facilities Construction and Management (DFCM), project managers, architects, engineers, code review, licensed building contractors, subcontractors, and coordination with the end user of the project. These projects are developed and initiated when there is a legitimate need, when the end users focus their energy and interest, when the collection of funding occurs, when land is made available, etc. It is difficult to predict when all these factors will happen at one time, which is what is needed to make a project go. So it is difficult to predict what type of fiscal impact this has on businesses.

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

Tony Dayish, UNTF Administrator

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 51, Chapter 10		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tony Dayish, Administrator	<b>Date:</b>	04/27/2020
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**R661. Navajo Trust Fund, Trustees.**  
**R661-9. Utah Navajo Trust Fund Public Facility Projects.**  
**R661-9-401. Funding.**  
 (1) Chapters willing to use a portion of their annual allocation will have preference for funding by the Fund.  
 (2) Unless waived by the Dine Advisory Committee or the Board of Trustees, match funding for a project is required.  
 (3) UNTF may fund up to \$600,000 or 35% of the total project cost per project, whichever is less. UNTF may decide to fund up to \$1,000,000 in a given fiscal year, and as the DAC and Board of Trustees approves the annual budget.

**KEY: chapter public facilities, Utah Navajo Trust Fund (UNTF)**  
**Date of Enactment or Last Substantive Amendment:** ~~June 23, 2016~~ **2020**  
**Authorizing, and Implemented or Interpreted Law:** 51-10-205(4)(a)

NOTICE OF PROPOSED RULE			
<b>TYPE OF RULE:</b> Amendment			
<b>Utah Admin. Code Ref (R no.):</b>	<b>R661-10-201</b>	<b>Filing No.</b>	<b>52702</b>

**Agency Information**

<b>1. Department:</b>	Navajo Trust Fund
<b>Agency:</b>	Trustees

<b>Street address:</b>	150 E 500 N	
<b>City, state:</b>	Blanding, UT 84511	
<b>Mailing address:</b>	PO Box 142315	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Tony Dayish	435-678-1468	tdayish@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R661-10-201. UNTF STT Funding
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment corrects a dollar amount.
<b>4. Summary of the new rule or change:</b>
The decimal needs to be in the right place to read \$500 instead of \$5,000.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no cost effect to the state budget. UNTF does not receive an appropriation of money from the state budget; any fiscal liability from this program would rest upon UNTF.
<b>B) Local governments:</b>
There is no cost effect to local governments. UNTF does not receive an appropriation of money from local governments for this program; any fiscal liability from this program would rest upon UNTF.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no cost effect to small businesses. UNTF does not receive an appropriation of money from small businesses for this program; any fiscal liability from this program would rest upon UNTF.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no cost effect to non-small businesses. UNTF does not receive an appropriation of money from non-small businesses for this program; any fiscal liability from this program would rest upon UNTF.

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

There is no cost effect to other persons. UNTF does not receive an appropriation of money from other persons for this program; any fiscal liability from this program would rest upon UNTF.

**F) Compliance costs for affected persons:**

There is no cost effect to the affected persons (students). UNTF has the responsibility of compliance with this rule.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2020	FY2021	FY2022
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

UNTF Administrator, Tony Dayish, has reviewed and approved this fiscal analysis.

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

There is no fiscal impact that this rule has on businesses. Fortunately, no applicant has tried to take advantage of this mistake where the decimal point was in the wrong place.

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

Tony Dayish, UNTF Administrator

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 51, Chapter 10		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tony Dayish, Administrator	<b>Date:</b>	04/27/2020
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**R661. Navajo Trust Fund, Trustees.**

**R661-10. Utah Navajo Trust Fund Short-Term Training Program.**

**R661-10-201. UNTF STT Funding.**

UNTF STT funding is a supplemental funding source which must be matched with other funding sources.

(1) The maximum UNTF contribution amount will be determined in each fiscal year of the UNTF annual budget.

NOTICES OF PROPOSED RULES

(a) The UNTF contribution shall not exceed 50% of the total cost for tuition, fees, books, supplies, and for living expenses per program attended.

(b) UNTF contribution may also provide for living expenses which if provided shall not exceed \$500.00 per month, which shall be disbursed by the institution on a monthly basis during the training program.

(2) Applicants may only receive STT funding one time.

**KEY: Utah Navajo Trust Fund (UNTF), short-term training program**

**Date of Enactment or Last Substantive Amendment: [June 23, 2016]2020**

**Authorizing, and Implemented or Interpreted Law: 51-10-205(4)(a)**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R661-13	Filing No.	52703

**Agency Information**

<b>1. Department:</b>	Navajo Trust Fund		
<b>Agency:</b>	Trustees		
<b>Street address:</b>	150 E 500 N		
<b>City, state:</b>	Blanding, UT 84511		
<b>Mailing address:</b>	PO Box 142315		
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Tony Dayish	435-678-1468	tdayish@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R661-13. Veterans' Housing Program Policy
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment clarifies the rule and adds a new subsection.
<b>4. Summary of the new rule or change:</b>
The change increases amount of Veterans Housing Assistance to a higher amount, require matching sources, and include house renovation projects as eligible projects in addition to new housing projects.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no cost effect to the state budget. UNTF does not receive state appropriated monies.
<b>B) Local governments:</b>
The local Utah Navajo Chapters have to contribute a match amount to the UNTF Veterans Housing Fund using UNTF allocations to Chapters. Because the UNTF Veterans amount is higher, the Chapter's contribution from their UNTF allocation is lower, so it has a beneficial effect to Chapters, who can then assist more non-veterans with housing. The cost effect to UNTF is a zero sum game since both amounts are coming from UNTF. Other than this, there is no cost effect to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no cost effect to small businesses. The only interaction with small businesses on Veterans Housing projects is the buying of building materials which is expected to stay at the same rate as before.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There is no cost effect to non-small businesses. There is no interaction with non-small businesses on Veterans Housing projects.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no cost effect to other persons. The only other persons affected would be the client that is benefitting from the Veterans house that is being built.
<b>F) Compliance costs for affected persons:</b>
There is no compliance cost effect to the affected persons. It is beneficial since it makes it slightly easier to receive assistance for the Veteran because the Chapter is more likely to assist a Veteran since the Chapter has to come up with a little less money from their UNTF Chapter allocation.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
UNTF Administrator, Tony Dayish, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
There is no fiscal impact on businesses other than a slight percentage of increase in the purchase of building materials since Chapters are more likely to approve more Veteran's Housing due to this change.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Tony Dayish, UNTF Administrator			

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Title 51, Chapter 10		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tony Dayish, Administrator	<b>Date:</b>	04/27/2020
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**R661. Navajo Trust Fund, Trustees.**

**R661-13. Veterans' Housing Program Policy.**

**R661-13-1. Veterans' Housing Program Policy.**

(1) Definitions

(a) "Veteran" is defined as a person who served in the active military, naval, coast guard, or air services, and who was discharged or released there from under conditions other than dishonorable, and who served (90) days or more during war time and 181 days or more during peace time. The definition of a Veteran as used herein includes Widows and Gold Star Mothers.

(b) A "widow" is defined as a surviving spouse who was validly married to and lived with the veteran continuously from the date of marriage to the date of the veteran's death and has not remarried. The term "widow" used in this guideline includes widowers.

(i) A "Gold Star Mother" is defined as a mother whose child was killed in the line of duty (killed in action) or has been declared missing in action.

(2) Program for eligible veterans requesting new house construction assistance.

(a) Applicants shall work directly with their respective Community Veterans Organization first then to the Chapter through which they are seeking housing assistance.

(i) All requests, budget preparation, updates and progress reports, will be processed through the Chapter.

NOTICES OF PROPOSED RULES

(ii) Veterans' Housing projects will follow the regular Chapter project procedures for housing projects.

(b) The Applicant's Chapter shall identify match-funding sources in order to maximize the number of applicants that can be assisted with this program.

(i) UNTF will maintain a Veteran's Housing set aside with a limit, per applicant, of \$[45,000]60,000 [per applicant] from UNTF and \$40,000 from other sources for new house construction, or 60% of the house renovation cost from UNTF and 40% from other sources.

(ii) A Chapter may use their own chapter crew, contractor, or request the UNTF crew to build these houses for veterans.

(3) Types of Assistance

(a) New construction projects, assistance includes funding for building materials and/or labor. Matching funding will be required from other sources.

(b) House renovation projects: assistance includes funding for building materials and/or labor.

(c)[(b)] Individuals eligible to apply for assistance:

- (i) veteran; and
  - (ii) recipient of the most priority points.
- (4) Eligibility and Selection Criteria

(a) Applicants for UNTF housing assistance must first submit application to their Utah Chapter.

(b) A UNTF Veterans Housing Program application must be filled out and submitted to the Utah Chapter where the applicant resides, including homesite lease, allotment deed, leasehold interest, and/or other legal landownership documentation, and house size and floor plan that is acceptable to the Chapter.

(c) Applicant must be a Veteran as defined herein. Applicant must verify that he/she is a veteran by proof of separation papers (DD-214).

(d) Applicant must be a San Juan County, Utah resident as required by Rule R661-3.

(5) There must be proof that applicant's housing condition is substandard, dilapidated or is inadequate in terms of the capacity to meet the basic living standards of the veteran household.

(a) Proof that applicant is homeless or is living in borrowed housing or with relatives;

(b) The Utah Chapter where the applicant resides shall make the initial determination of eligibility for UNTF assistance

(6) The Chapter shall take into consideration:

- (a) income;
- (b) family size;
- (c) age;
- (d) health
- (e) housing condition;
- (f) Chapter priority listing; and,
- (g) ineligibility for other housing programs.

(7) The Chapter shall also use the following priority rating system in reviewing Veteran applications:

(a) Handicapped and Disabled (up to 25 points) applicants, Disabilities sustained from Military Service (up to 25 points), Nonservice-connected disabilities (up to 10 points)

(b) Elderly applicants (up to 25 points), 65 years of age or older (25 points), 59 B 64 years old (10 points).

(c) Family size and Overcrowded conditions (up to 25 points: 5 points for veteran, 5 points for every family member, but no more than 25 points).

(i) If the Veteran is living with relatives, only the immediate family members shall be eligible for points consideration.

(ii) Immediate family members are the applicant, the applicant's spouse, the applicant's biological son(s) and/or daughter(s),

and any legally-adopted children that are living with the applicant on a full-time basis at the time of application.

(d) Housing/Dwelling Conditions (up to 25 points), If the existing house belongs to the veteran, the house condition shall be evaluated, taking into consideration the interior, exterior, roof, insulation, windows, doors, type of structure, year built (age of house).

- (i) Good condition 0 points
- (ii) Fair condition 5 points
- (iii) Poor condition 15 points
- (iv) Very Poor condition 25 points
- (iv) Homeless 25 points

(6) Veteran Housing Projects shall be completed with 24 months of approval by the UNTF board.

**KEY: veterans, veterans' housing**

**Date of Enactment or Last Substantive Amendment: [September 21, 2019]2020**

**Authorizing, and Implemented or Interpreted Law: 51-10-205(4)(a)**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R728-409	Filing No.	52730

**Agency Information**

<b>1. Department:</b>	Public Safety		
<b>Agency:</b>	Peace Officer Standards and Training		
<b>Street address:</b>	410 W 9800 S		
<b>City, state:</b>	Sandy UT 84070		
<b>Mailing address:</b>	410 W 9800 S		
<b>City, state, zip:</b>	Sandy UT 84070		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Scott Stephenson	801-256-2322	sstephen@utah.gov	
Kim Gibb	801-556-8198	kgibb@utah.gov	

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R728-409. Suspension, Revocation, or Relinquishment of Certification
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of the rule amendment is to incorporate changes made upon passage of H.B. 43, passed in the 2020 General Session.

**4. Summary of the new rule or change:**

The changes:

- 1) specify that, the respondent is only entitled to materials after filing a written response with the Division of Peace Officer Standards and Training (POST) as required in Section R728-409-7;
- 2) specify that the council will consider rather than review the Administrative Law Judge's (ALJ's) findings of fact and conclusions of law;
- 3) include a letter of caution as a potential action type; and
- 4) specify that the council does not have appellate review authority of the ALJ's findings of fact and conclusions of law.

**Fiscal Information**

**5. Aggregate anticipated cost or savings to:**

**A) State budget:**

POST does not anticipate any costs or savings to the state budget as a result of this administrative rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

**B) Local governments:**

POST does not anticipate any costs or savings to local governments as a result of this administrative rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

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

POST does not anticipate any costs or savings to small businesses as a result of this administrative rule change. No small businesses will be impacted by the rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

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

POST does not anticipate any costs or savings to non-small businesses as a result of this administrative rule change. No non-small businesses will be impacted by the rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an

additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

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

POST does not anticipate any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities as a result of this administrative rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

**F) Compliance costs for affected persons:**

POST does not anticipate any compliance costs for affected persons as a result of this administrative rule change. The changes only clarify the council's role with regards to the adjudicative proceeding, add an additional action type that may be recommended by the ALJ, and specify that a written response must be filed in order to receive materials in connection with an administrative proceeding.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0

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Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head approval of regulatory impact analysis:**

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

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

There are not any small or non-small businesses in Utah that will be impacted as a result of this rule amendment. The rule amendment specifies that, the respondent is only entitled to materials after filing a written response with POST as required in Section R728-409-7, and incorporates applicable statutory changes made in H.B. 43 (2020), that clarify the council's role with regards to the adjudicative proceeding, and include an additional action type that may be recommended by the ALJ.

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

Jess L. Anderson, Commissioner

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 53-6-211	Section 53-6-211.5	Section 53-6-309
Section 53-6-311		

**Incorporations by Reference Information**

(If this rule incorporates more than two items by reference, please include additional tables.)

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
<b>Official Title of Materials Incorporated (from title page)</b>	POST Council Disciplinary Guidelines

<b>Publisher</b>	Utah Department of Public Safety, Peace Officer Standards and Training
<b>Date Issued</b>	January 4, 2016

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/15/2020
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<b>10. This rule change MAY become effective on:</b>	06/22/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Scott Stephenson, Director	<b>Date:</b>	05/11/2020
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**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~~ that 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~~ that 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~~ each peace officer or dispatcher certification[s], pursuant to Section 53-6-211.5 or 53-6-311, ~~which~~ that precludes a respondent from:

(i) admission into a training program conducted by ~~or~~ ~~under the approval of,~~ the division, or an entity approved by 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~~ each peace officer or dispatcher certification[s], ~~which~~ that precludes a respondent from:

(i) admission into a training program conducted by ~~or~~ ~~under the approval of,~~ the division, or an entity approved by 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~~ each peace officer or dispatcher certification[s]; and;

(h) "Traffic offense" means ~~all offenses~~ an offense named in the following parts:

(i) ~~41-6a~~ Title 41, Section 6a, Part 3, Traffic-Control Devices;

(ii) ~~41-6a~~ Title 41, Section 6a, Part 6, Speed Restrictions;

(iii) ~~41-6a~~ Title 41, Section 6a, Part 7, Driving on Right Side of Highway and Passing;

(iv) ~~41-6a~~ Title 41, Section 6a, Part 8, Turning and Signaling for Turns;

(v) ~~41-6a~~ Title 41, Section 6a, Part 9, Right-of-Way;

(vi) ~~41-6a~~ Title 41, Section 6a, Part 10, Pedestrians' Rights and Duties;

(vii) ~~41-6a~~ Title 41, Section 6a, Part 11, Bicycles, Regulations of Operation;

(viii) ~~41-6a~~ Title 41, Section 6a, Part 12, Railroad Trains, Railroad Grade Crossings, and Safety Zones;

(ix) ~~41-6a~~ Title 41, Section 6a, Part 13, School Buses and School Bus Parking Zones;

(x) ~~41-6a~~ Title 41, Section 6a, Part 14, Stopping, Standing, and Parking;

(xi) ~~41-6a~~ Title 41, Section 6a, Part 15, Special Vehicles;

(xii) ~~41-6a~~ Title 41, Section 6a, Part 16, Vehicle Equipment;

(xiii) ~~41-6a~~ Title 41, Section 6a, Part 17, Miscellaneous Rules; and

(xiv) ~~41-6a~~ Title 41, Section 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~~ a respondent is charged with or convicted of a crime;

(b) ~~F~~ there is evidence a respondent has engaged in conduct ~~which~~ that is a criminal act under law, but ~~which~~ that has not been criminally charged or where criminal prosecution is not anticipated;

(c) ~~A~~ 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~~ 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~~ 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~~ that is limited to:

(a) ~~A~~ a violation of an employer's policy or procedure; or

(b) ~~S~~ 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.

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(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 Section 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) ~~[F]~~the respondent fails to file the response required in ~~[rule]~~Section R728-409-7; or

(b) ~~[F]~~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. The respondent is only entitled to those materials after filing a written response with the division as required by Section R728-409-7.

(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]~~ that includes a statement of:

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(a) ~~[F]~~the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

(b) ~~[F]~~the ALJ's conclusions of law; and

(c) ~~[F]~~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~~consider the ~~matter~~ALJ's findings of fact and conclusions of law ~~and~~in order to determine whether a letter of caution, or suspension or revocation of the respondent's certification is appropriate based upon the ~~facts of the case~~the ALJ's findings and the POST Disciplinary Guidelines adopted January 4, 2016, which this rule incorporates by reference ~~which were adopted on June 7, 2010 and amended on June 14, 2018~~.

(6) The council does not have appellate review authority of the ALJ's findings of fact and conclusions of law.

**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 Section 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) ~~[F]~~the respondent;

(b) ~~[F]~~the respondent's employer if the respondent is employed as a peace officer or dispatcher; and

(c) ~~[F]~~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 Subsections 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 pursuant to Subsections 53-6-211(6) and 53-6-309(6).

(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: ~~June 24, 2019~~ 2020**

**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**

NOTICE OF PROPOSED RULE			
TYPE OF RULE: Amendment			
Utah Admin. Code Ref (R no.):	R877-23V-24	Filing No.	52694

**Agency Information**

<b>1. Department:</b>	Tax Commission	
<b>Agency:</b>	Motor Vehicle Enforcement	
<b>Building:</b>	Utah State Tax Commission	
<b>Street address:</b>	210 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT 84134	
<b>Mailing address:</b>	210 N 1950 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84134	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chantay Asper	801-297-3901	casper@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R877-23V-24. Advisory Board Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
The reason for the change is to establish procedures for the motor vehicle business advisory board to conduct electronic meetings when necessary or expedient.
<b>4. Summary of the new rule or change:</b>
Specifies the requirements and procedures consistent with the Utah Open and Public Meeting Act for the motor vehicle business advisory board to conduct electronic meeting under certain circumstances.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed amendment is unlikely to result in a measurable fiscal impact to state government revenues because the necessary equipment is readily available.
<b>B) Local governments:</b>
This proposed amendment is unlikely to result in measurable fiscal impact on local governments' revenues because the necessary equipment is readily available.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This proposed amendment is unlikely to result in measurable costs or savings to small businesses because the necessary equipment is readily available.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

This proposed amendment is unlikely to result in measurable costs or savings to non-small businesses because the necessary equipment is readily available.

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

This proposed amendment is not expected to result in costs or savings to persons other than small businesses or local governments because the necessary equipment is readily available.

**F) Compliance costs for affected persons:**

This proposed amendment is not expected to result in any change to compliance costs for affected persons because the necessary equipment is readily available.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>H) Department head approval of regulatory impact analysis:</b>	
Commissioner Rebecca L. Rockwell of the Utah State Tax Commission, has reviewed and approved this fiscal analysis.	
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>	
This proposed amendment is unlikely to result in either costs or savings to businesses.	
<b>B) Name and title of department head commenting on the fiscal impacts:</b>	
Rebecca Rockwell, Commissioner	

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>	
Section 41-3-106	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/15/2020

<b>10. This rule change MAY become effective on:</b>	06/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Rebecca L. Rockwell, Commissioner	<b>Date:</b>	04/23/2020
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**R877. Tax Commission, Motor Vehicle Enforcement.**

**R877-23V. Motor Vehicle Enforcement.**

**R877-23V-24 Advisory Board Procedures Pursuant to Utah Code Ann. Section 41-3-106.**

(1) "Board" means the Advisory Board established in Section 41-3-106.

(2) The board is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A board member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one board member is at an anchor location; and

(c) each participating board members may be heard by any person attending at an anchor location.

**KEY: taxation, motor vehicles**

**Date of Enactment or Last Substantive Amendment:** ~~2020 July 14, 2016~~

**Notice of Continuation:** November 10, 2016

**Authorizing, and Implemented or Interpreted Law:** 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

**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.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R21-3	Filing No. 52674

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Debt Collection	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 South 2700 West Floor 3	
<b>City, state, zip:</b>	Taylorsville, UT 84127-2128	
<b>Mailing address:</b>	Division of Finance, PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
John Reidhead	801-957-7734	jreidhead@utah.gov
Cory Weeks	801-957-7713	cweeks@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>	
R21-3. Debt Collection Through Administrative Offset	
<b>3. Effective Date:</b>	
04/20/2020	
<b>4. Purpose of the new rule or reason for the change:</b>	
The purpose of this rule allows the Office of State Debt Collection to suspend matching receivables in the event of a declared state of emergency. This was necessitated by COVID-19 economic relief measures approved by the governor's office.	
<b>5. Summary of the new rule or change:</b>	
The added language to the rule explains how the division may suspend matching receivables in the administrative offset program in the event of a declared state of emergency. (EDITOR'S NOTE: A corresponding proposed amendment to Rule R21-3 is under ID No. 52679 in this issue, May 15, 2020, of the Bulletin.)	
<b>6. Regular rulemaking would:</b>	
X	cause an imminent peril to the public health, safety, or welfare;

cause an imminent budget reduction because of budget restraints or federal requirements; or
place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>
This rule change authorizes actions taken as part of the state's COVID-19 relief efforts.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
\$330,000 lost FY2020 revenue to the Division of Finance estimated from fees that would have been collected on levies had the office not halted operations.
It is also estimated that the state government will have about \$4,600,000 in lost collection of receivables for FY2020.
If the actions in this rule are exercised again in the future, timing impacts make future years inestimable.
<b>B) Local governments:</b>
It is estimated that local governments will have about \$500,000 in lost collection of receivables in FY2020.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There should be no impact for small businesses. This rule only applies to government entities.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
Individuals that otherwise would have been garnished will receive a cumulative benefit of \$5,430,000, equal to the amount of estimated lost revenues and collections for state and local governments.
<b>8. Compliance costs for affected persons:</b>
None--The only cost of compliance is hours spent by Division of Finance staff.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
I have reviewed this fiscal analysis, and agree with the described fiscal impacts associated with this rule.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Tani Pack Downing, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-3-310	Subsection 63A-3-504 (2)(f)	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Reidhead, Director	<b>Date:</b>	04/20/2020
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**R21. Administrative Services, Debt Collection.**  
**R21-3. Debt Collection Through Administrative Offset.**  
**R21-3-1. Purpose.**

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

**R21-3-2. Authority.**

This rule is established pursuant to Subsection 63A-3-310, and Subsection 63A-3-504(2)(f), which authorize the Division of Finance to establish, by rule, an implementation of the debt collection technique of administrative offset.

**R21-3-3. Definitions.**

In addition to terms defined in Section 63A-3-501, the following terms are defined below as follows:

- (1) "Division" means the Division of Finance.
- (2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

**R21-3-4. Eligible Accounts Receivable.**

- (1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.
- (2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

**R21-3-5. Submission of Accounts Receivable to the Division.**

- (1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:
  - (a) name of entity;
  - (b) social security number or federal employer's identification number of the entity;
  - (c) amount of delinquent account receivable; and
- (2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

**R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.**

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the State's Accounting System (FINET).

**R21-3-7. Notification to Debtors.**

All notifications required in 63A-3-303 must be sent within two business days of the date listed on the notice.

**R21-3-8. Notification and Response.**

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

**R21-3-9. Treatment of Injured Spouse Forms.**

(1) Subject to Subsection R21-3-9(2), upon receipt of an injured spouse claim from the spouse of a debtor, a garnisher shall:

(a) Review the claim for validity;

(b) Determine the frequency of claims made; and,

(c) Release the offset of matched funds proportionate to the income of the injured spouse using the following formula: (income of injured spouse/total household gross income) x levied amount.

(2) Recognizing that garnishers are not statutorily required to honor injured spouse claims:

(a) Agencies garnishing taxes under this section must honor at least a first-time injured spouse claim that is determined to be valid.

(b) Subsequent claims may be denied at the discretion of the garnisher.

(3) Valid injured spouse claims should require at a minimum:

(a) Federal tax returns

(b) IRS Form 8379

(c) Income documents, including all Form W-2s and Form 1099s.

(d) State tax returns.

**R21-3-10. Offsetting Matched Accounts.**

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

(a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the administrative offset; plus

(b) the amount identified in Subsection R21-3-8(3) to satisfy the delinquent account receivable.

**R21-3-11. Release of Matched Accounts by the Division.**

(1) In the event of a declared state of emergency, the division may suspend matching receivables in the administrative offset program subject to the following:

(a) The suspended matching of receivables submitted under this rule may not infringe upon the rights of victims. Receivables collected on behalf of victims may include restitution orders, wage claims and past due child support.

(b) The division is not required to receive consent from agencies submitting receivables under this rule, but is required to notify parties listed by the agency in writing prior to suspension.

(2) If a matched account is not garnished within 21 days of the date matched, the division shall release the tax overpayment or other state payment to:

(a) First, the next agency with a matched receivable that is not suspended, if any; or,

(b) Second, the entity to which the tax overpayment is owed or the entity for which the payment is due.

**R21-3-~~14~~12. Release of Offset Funds by the Division.**

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

**R21-3-~~12~~13. Credit of Accounts Receivable.**

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

**R21-3-~~13~~14. Administrative Fee.**

Pursuant to Section 63A-3-502(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

**KEY: accounts receivable, administrative offset**

**Date of Enactment or Last Substantive Amendment: April 20, 2020**

**Notice of Continuation: March 17, 2017**

**Authorizing, and Implemented or Interpreted Law: 63A-3-310; 63A-3-504(2)(f)**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R305-7-104	Filing No. 52677

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Fourth Floor, South	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144810	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4810	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Becky Larsen	801-536-0095	beckylarsen@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule or section catchline:**

R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers

**3. Effective Date:**

04/20/2020

**4. Purpose of the new rule or reason for the change:**

The Utah Department of Environmental Quality (UDEQ) has rulemaking authority under Subsection 19-1-201(1)(d)(ii) to make procedural rules that govern adjudicative proceedings under Section 19-1-301, and special adjudicative proceedings under Section 19-1-301.5. UDEQ has promulgated those rules, codified at Rule R305-7. Subsection R305-7-104(5), in part, governs the form and timeliness of filings to initiate adjudicative proceedings regarding agency actions. Filing to initiate an adjudication on an agency decision must occur within 30 days of that decision. See Subsection R305-7-203(5) (for petitions for review); and Subsection R305-7-303(5) (for requests for agency action). The current rule expressly states that email submission is insufficient to initiate an adjudicative proceeding in Subsection R305-7-104(5)(a). Therefore, paper submissions that must be filed in person or by mail are currently the only filing option to initiate new adjudicative proceedings.

The UDEQ offices are located in the Multi-Agency State Office Building (MASOB). The MASOB is now closed to the public due to the COVID-19 Pandemic. Few agency employees currently staff the agency offices. Consequently, although the current rule requires that those wishing to initiate an adjudicative proceeding must file a paper copy in person, or via an overnight courier service, at MASOB, they cannot do so at this time because the building is closed to the public. Although filing by U.S. Mail is still an option under the rule, processing of mail may be delayed due to reduced on-site staffing. Nothing in the rule requires a filer to use mail if personal filing is not available and hand-delivery, either in person or via an overnight courier service, are still allowed under the rule.

The closing of the MASOB to the public and both Salt Lake City and Salt Lake County shelter in place orders suggest that allowing people to enter the MASOB and have contact with the limited staff onsite is a threat to public health, safety, or welfare as it might contribute to further spreading of COVID-19. The reason for this closing is to prevent the spread of the virus. Even if the MASOB were open to the public for the limited purposes of complying with the filing requirements of Section R305-7-105 raises the risk that, for example, an asymptomatic carrier of COVID-19 could unwittingly spread the virus to others in MASOB.

UDEQ divisions continue to function and make final agency actions through limited on-site staff and

telework. Those final agency decisions trigger the right to seek a legal remedy by initiating adjudicative proceedings. Because the MASOB is currently closed and agency actions issued by DEQ must provide notice as to how appeals are to be filed, a standard 120-day rulemaking process to allow for electronic submission would be too long and may impair the right of interested members of the public or industry to initiate adjudicative proceedings based on agency decisions made in the interim. Because such decisions are made routinely by all divisions of UDEQ, the lack of an immediate ability to file to initiate adjudicative proceedings presents an imminent threat to public health, safety, and welfare that must be addressed immediately. Therefore, an emergency rule filing is necessary to allow, on a temporary basis, electronic filing of Requests for Agency Action and Petitions for Review to avoid impairing the ability to initiate an adjudicative proceeding.

**5. Summary of the new rule or change:**

The new changes would allow temporary electronic filing of requests for agency action and petitions for review to initiate adjudicative proceedings contesting UDEQ actions.

**6. Regular rulemaking would:**

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

**Specific reason and justification:**

The MASOB is closed to the public due to the COVID-19 Pandemic, which is currently the only place allowed by rule to file contests to agency decisions. The legal right to contest agency decisions is provided under the Utah Administrative Procedures Act and Title 19 of the Environmental Quality Code, and impairment of the ability to exercise that right is an imminent peril to the public welfare. Therefore, a rule amendment that allows for electronic filing of new administrative adjudications, in lieu of personal filing at the MOSAB, is necessary. As agency decisions are currently being made daily or weekly and the standard 120-day rulemaking would exceed the standard 30-day deadline for filing to initiate an adjudicative proceeding, an emergency rule filing is necessary to temporarily address this situation until the pandemic ends and MASOB reopens to the public.

**Fiscal Information**

**7. Aggregate anticipated cost or savings to:**

**A) State budget:**

There is no anticipated cost or savings to the state budget, as the state will simply be receiving electronically-filed requests for agency action or petitions

for review.
<b>B) Local governments:</b>
None anticipated, as the state is the governmental entity that receives petitions for review or requests for agency action. Should a local government seek to initiate an adjudication, it will result in the marginal savings of not having to send an employee to file in person.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
Any savings to small businesses will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
Any savings will be to those who do not have to incur expenses to travel to MASOB to file to initiate an adjudicative proceeding.
<b>8. Compliance costs for affected persons:</b>
No anticipated costs because these regulations exist in another form.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
This will have no impact on businesses based on our fiscal analysis.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
L. Scott Baird, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Subsection 19-1-201(1)(d)(ii)	Section 63G-3-304	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	L. Scott Baird, Executive Director	<b>Date:</b>	04/20/2020
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**R305. Environmental Quality, Administration.  
R305-7. Administrative Procedures.  
R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers.**

(1) (a) The rules governing service of Initial Orders and Notices of Violation are provided in R305-7-302.

(b) Filing and service of all papers in adjudicative proceedings shall be made by email except as otherwise provided in this R305-7-104 and in R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313. Adjudicative proceedings may~~shall not~~ be initiated by U.S. Mail or by email, in accordance with~~Initiation of adjudicative proceedings through traditional (paper) filing is governed by~~ subsection (5), below.

(c) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(d) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(e) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director; and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by subsection (5).

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c)(i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)").

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by

NOTICES OF 120-DAY (EMERGENCY) RULES

telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

- (i) a PDF document; or
- (ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service of paper documents to the extent that filing and service of paper documents is allowed or required by this Rule.

(a) Filing and service of paper documents shall be made:

- (i) by United States mail, postage pre-paid;
- (ii) by hand-delivery; or
- (iii) by overnight courier delivery~~[-or]~~

~~[-or] (iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.]~~

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

~~(d) [(i) Except as provided in R305-7-104(5)(b), a] A document that is filed or served by U.S Mail or overnight delivery service shall be considered filed or served on the date it is mailed or picked up by the overnight delivery service. A document that is filed or served by email shall be considered filed or served on the date that it is sent, subject to the service requirements set forth in subsection (5)(a) [or provided to the overnight delivery service]. [ A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mailbin.]~~

(5)(a) After April 1, 2020, adjudicative proceedings before the Department may be initiated by service upon the Administrative Proceedings Hearing Officer via email at DEQAPRO@utah.gov, or by service of paper documents upon the applicable Director and the Administrative Proceedings Hearing Officer, in accordance with subsection (4)(c)(i) or (ii). If an adjudicative proceeding [Email does not constitute filing and is not adequate to initiate an adjudicative proceeding] under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5 is initiated via email at DEQAPRO@utah.gov, a [A] paper copy [paper, signed original] of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene that is filed by email shall be [filed traditionally and] served as provided in R305-7-104(2) and (4).

(b) The filing of [To be timely,] a Request for Agency Action, Petition for Review, or a Petition to Intervene in accordance with subsection (5)(a) shall be deemed to be timely [must be received by the Director and the Administrative Proceedings Records Officer] as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

**KEY: administrative procedures, adjudicative procedures, hearings**

**Date of Enactment or Last Substantive Amendment: April 20, 2020**

**Notice of Continuation: October 26, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5; 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503**

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R512-80</b>	<b>Filing No. 52733</b>
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**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Child and Family Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 North 1950 West	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Carol Miller	801-557-1772	carolmiller@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule or section catchline:</b>
R512-80. Definitions of Abuse, Neglect, and Dependency
<b>3. Effective Date:</b>
04/30/2020
<b>4. Purpose of the new rule or reason for the change:</b>
This rule is being changed in response to H.B. 244 passed during the 2020 General Session.
<b>5. Summary of the new rule or change:</b>
The proposed changes to this rule bring the rule in-line with statute from H.B. 244 (2020).

<b>6. Regular rulemaking would:</b>	
<input type="checkbox"/>	cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/>	cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/>	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
H.B. 244 (2020) becomes effective in May 2020. Changes to this rule bring it in line with those statutory requirements.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>	
<b>A) State budget:</b>	
The proposed changes to this rule are not expected to have any fiscal impacts on state government revenues or expenditures as the revised language brings the rule current to language in H.B. 244 (2020).	
<b>B) Local governments:</b>	
There is no impact to local governments due to these rule changes. These revisions bring the rule in-line with H.B. 244 (2020).	
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):	
There is no impact to small businesses due to this rule modification. These revisions bring the rule in-line with H.B. 244 (2020).	
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):	
There is no impact to other persons due to revision made to this rule. These revisions bring the rule in-line with H.B. 244 (2020).	
<b>8. Compliance costs for affected persons:</b>	
There are no compliance costs for affected persons associated with implementing this rule because these changes are not fiscal in nature.	
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>	
After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to small or non-small businesses because this rule brings definitions used by the Division of Child and Family Services in-line with statute.	
<b>B) Name and title of department head commenting on</b>	

<b>the fiscal impacts:</b>
Ann Williamson, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section	62A-4a-	
102		

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Diane Moore, Director	<b>Date:</b>	04/29/2020
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**R512. Human Services, Child and Family Services.  
R512-80. Definitions of Abuse, Neglect, and Dependency.  
R512-80-1. Purpose, Interpretation, and Authority.**

(1) Purpose. Under Utah law, Child and Family Services is responsible for providing child welfare services and protecting children from abuse, neglect, and dependency. In determining what constitutes abuse, neglect, or dependency, the definitions in Sections 62A-4a-101, et. seq., Sections 78A-6-105, et. seq., the Criminal Code, these Administrative Rules, and court opinions shall apply. These definitions are intended to clarify those definitions or judicial opinions. Conduct that qualifies as abuse, neglect, or dependency under a criminal statute or the Judicial Code or under Child and Family Services' civil statutes (Sections 62A-4a-101, et. seq.), however, shall qualify as abuse, neglect, or dependency even if these definitions inadvertently fail to bring such conduct within the scope of a particular definition. Some criminal statutes recognize defenses to abuse, neglect, or dependency that may not be applicable in Child and Family Services' civil investigations of child abuse, neglect, or dependency.

(2) Interpretation. Child and Family Services' statutes and these definitions shall be interpreted broadly to protect children from abuse, neglect, or dependency. These definitions shall be applied and interpreted according to the following principles:

(a) These definitions supersede earlier definitions.

(b) In cases of ambiguity, the Child and Family Services' definition shall be construed to harmonize with the relevant statutory definitions (as interpreted by the courts) and to further Child and Family Services' statutory responsibility to protect children and act in the best interest of the child.

(3) Authority. This rule is authorized by Section 62A-4a-102.

**R512-80-2. Definitions.**

(1) "Abandonment" means conduct by either a parent or legal guardian showing a conscious disregard for parental obligations where that disregard leads to the destruction of the parent-child relationship, except in the case of the safe relinquishment of a newborn child pursuant to Section 62A-4a-802. Abandonment also includes conduct specified in Section 78A-6-508.

(2) "Abuse" is as defined in Section 78A-6-105. It includes but is not limited to child endangerment, Domestic Violence Related Child Abuse, emotional abuse, fetal exposure to alcohol or other harmful substances, dealing in material harmful to a child, Pediatric Condition Falsification or medical child abuse (formerly Munchhausen

NOTICES OF 120-DAY (EMERGENCY) RULES

Syndrome by Proxy), physical abuse, sexual abuse, and sexual exploitation.

(3) "Child endangerment" means subjecting a child to threatened harm. This also includes conduct outlined in Sections 76-5-112 and 76-5-112.5.

(4) "Chronic abuse" is as defined in Section 62A-4a-101.

(5) "Chronic neglect" is as defined in Section 62A-4a-101.

(6) "Cohabitant" is as defined in Section 78B-7-102. (See Definitions in Administrative Rule R512-205.)

(7) "Custodian" means a person who has legal custody of a child or a person responsible for a child's care as defined in Section 62A-4a-402.

(8) "Dealing in material harmful to a child" means distributing (providing or transferring possession), exhibiting (showing), or allowing immediate access to material harmful to a child or any other conduct constituting an offense under Sections 76-10-1201 through 1206.

(9) "Dependency" is as defined in Section 62A-4a-101. Dependency includes safe relinquishment of a newborn child as provided in Section 62A-4a-802.

(10) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct. (See Definitions in Administrative Rule R512-205.)

(11) "Educational neglect" means failure or refusal to make a good faith effort to ensure that a child receives an appropriate education, after receiving notice that the child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner in accordance with Sections 78A-6-105 and 78A-6-319.

(12) "Emotional abuse" means engaging in conduct or threatening a child with conduct that causes or can reasonably be expected to cause the child emotional harm. This includes but is not limited to:

(a) Demeaning or derogatory remarks that affect or can reasonably be expected to affect a child's development of self and social competence; or

(b) Threatening harm, rejecting, isolating, terrorizing, ignoring, or corrupting.

(13) "Environmental neglect" means an environment that poses an unreasonable risk to the physical health or safety of a child.

(14) "Failure to protect" means failure to take reasonable action to remedy or prevent child abuse or neglect. Failure to protect includes the conduct of a non-abusive parent or guardian who knows the identity of the abuser or the person neglecting the child, but lies, conceals, or fails to report the abuse or neglect or the alleged perpetrator's identity.

(15) "Failure to thrive" means a medically diagnosed condition in which the child fails to develop physically. This condition is typically indicated by inadequate weight gain.

(16) "Fetal exposure to alcohol or other harmful substances" means a ~~condition in which a child has been exposed to or is dependent upon harmful substances as a result of the mother's use of illegal substances or abuse of prescribed medications during pregnancy, or has fetal alcohol spectrum disorder.~~condition in which a newborn is adversely affected by the child's mother's substance abuse during pregnancy, has fetal alcohol syndrome or fetal alcohol spectrum disorder, or demonstrates drug or alcohol withdrawal symptoms. For the purpose of this definition, newborn withdrawal symptoms due to medications taken by the mother as legally prescribed, without indication of misuse, are expected and are not required to be reported.

(17) "Harm" is as defined in Section 78A-6-105. (See also the definition of "threatened harm".)

(18) "Material harmful to a child" means any visual, pictorial, audio, or written representation (in whatever form, including performance) that includes pornographic or sexually explicit material, including nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that:

(a) Taken as a whole, appeals to the prurient interest in sex of a child, and

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a child, and

(c) Taken as a whole does not have serious value for a child. "Serious value" includes only serious literary, artistic, political, or scientific value for a child.

(19) "Medical neglect" means failure or refusal to provide proper or necessary medical, dental, or mental health care or to comply with the recommendations of a medical, dental, or mental health professional necessary to the child's health, safety, or well-being. Exceptions and limitations are as provided in Section 78A-6-105.

(20) "Molestation" is as defined in Section 78A-6-105.

(21) "Neglect" is as defined in Section 78A-6-105. It includes but is not limited to abandonment, educational neglect, environmental neglect, failure to protect, failure to thrive, medical neglect, non-supervision, physical neglect, and sibling at risk.

(22) "Non-supervision" means the child is subjected to accidental harm or an unreasonable risk of accidental harm due to failure to supervise the child's activities at a level consistent with the child's age and maturity.

(23) "Pediatric Condition Falsification" (formerly Munchausen Syndrome by Proxy) means a cluster of symptoms or signs, circumstantially related, in which the parent or guardian misrepresents information and/or simulates or produces illness in a child, has knowledge about the etiology of the child's illness but denies such knowledge, seeks multiple medical procedures, or acute symptoms and signs of the illness cease when the child is separated from the parent or guardian.

(24) "Perpetrator" means a person substantially responsible for causing child abuse or neglect, or a person responsible for a child's care who permits another to abuse or neglect a child. (See also Section 76-5-109.)

(25) "Physical abuse" means non-accidental physical harm or threatened physical harm of a child that may or may not be visible. It includes unexplained physical harm of an infant, toddler, disabled, or non-verbal child. "Physical harm" includes but is not limited to "physical injury" and "serious physical injury" as defined in Section 76-5-109.

(26) "Physical neglect" means failure to provide for a child's basic needs of food, clothing, shelter, or other care necessary for the child's health, safety, morals, or well-being.

(27) "Serious harm" includes but is not limited to "serious physical injury" as defined in Section 76-5-109.

(28) "Severe abuse" is as defined in Section 78A-6-105.

(29) "Severe neglect" is as defined as in 78A-6-105.

(30) "Sexual abuse" is as defined in Section 78A-6-105. Sexual abuse also includes forcing a child under 18 years of age into marriage or cohabitation with an adult in an intimate relationship.

(31) "Sexual exploitation" is as defined in Section 78A-6-105.

(32) "Sibling at risk" means a child who is at risk of being abused or neglected because another child in the same home or with the same caregiver has been or is abused or neglected.

(33) "Threatened harm" means ~~[any conduct that subjects a child to unreasonable risk of harm or any condition or situation likely to cause harm to a child.]~~ actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect. (See definition of "harm".)

**KEY:** child welfare  
**Date of Enactment or Last Substantive Amendment:** April 30, 2020  
**Notice of Continuation:** October 13, 2016  
**Authorizing, and Implemented or Interpreted Law:** 62A-4a-102

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R986-700	Filing No. 52676

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Employment Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R986-700-900. Emergency Rules, Pandemic
<b>3. Effective Date:</b>
04/20/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of the new emergency section is to maintain services for child care subsidy families and providers during the COVID-19 pandemic.
<b>5. Summary of the new rule or change:</b>
The new emergency section allows the Department of Workforce Services, Office of Child Care to exclude Federal Pandemic Unemployment Compensation from unearned income for purposes of determining eligibility for child care subsidy payments.
<b>6. Regular rulemaking would:</b>

X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
Due to the COVID-19 pandemic, there are child care subsidy (CC) customers who have lost employment through no fault of their own and require additional funds in order to care for their children. Excluding the \$600 per week Federal Pandemic Unemployment Compensation (FPUC) payments from CC income eligibility determinations will allow families who are eligible for CC to maintain eligibility while receiving FPUC, thus allowing them to return to work more quickly once business resumes. The emergency section also allows child care providers to continue to receive CC funding based on the enrollment of families covered. This will allow child care providers to have the resources to maintain payroll, pay rent, pay for materials, and meet health and safety requirements for families continuing to need child care.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The new emergency section is not expected to have any fiscal impacts on state revenues or expenditures. There are no additional state employees or resources needed to oversee the new emergency section. The new emergency section will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state through the federal Child Care and Development Fund.
<b>B) Local governments:</b>
The new emergency section is not expected to have any fiscal impact on local governments' revenues or expenditures because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The majority of child care providers are small businesses (North American Industry Classification System (NAICS) 624410). It is anticipated that this new emergency section will allow approximately 397 families with 725 children to continue to receive child care based on data obtained on April 17, 2020. The average subsidy payment per child each month is \$478. As a result, this will allow approximately \$346,550 per month to continue to flow to child care providers so they can maintain their businesses. In the absence of the rule change, these programs will lose this funding at a time when enrollment and revenues in programs are dramatically reduced.

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

It is anticipated that this emergency section will allow approximately 397 families with 725 children to continue to receive child care based on data obtained on April 17, 2020. The average subsidy payment per child each month is \$478. The new emergency section will support low-income parents to maintain their child care arrangements during the COVID-19 pandemic.

**8. Compliance costs for affected persons:**

The new emergency section is not expected to cause any compliance costs for affected persons because the amendment does not create any new administrative fees. Provider compliance responsibilities are not changed with this amendment.

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

The funding for child care is provided by the federal Child Care and Development Block Grant (CCDBG). At this time, child care programs continue to receive subsidy payments for all families that were determined eligible for subsidies at the time of application unless their earnings exceed the federally established income threshold of 85% of the state median income (SMI). The CCDBG Act allows states to establish the definition of "income" for purposes of determining whether a family is at 85% SMI. Utah includes standard unemployment benefits as "income" for purposes of eligibility. This rule will not change that underlying requirement. However, by excluding the additional unemployment payment of \$600 per week established in the Coronavirus Aid, Relief, and Economic Security Act of 2020 for all qualified UI recipients, Utah will be supporting the child care businesses that rely on family tuition payments to meet most operating expenses by maintain program income through a stable child care subsidy program. This is of great economic importance to Utah given that approximately 38% of licensed centers and 18% of licensed family child care programs have already had to

close during the COVID-19 pandemic due to low enrollment.

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

Jon Pierpont, Executive Director

**Citation Information**

**10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):**

Section 35A-3-310	Section 53F-5-210
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jon Pierpont, Executive Director	<b>Date:</b>	04/20/2020
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**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-900. Emergency Rules, Pandemic.**

(1) This section supersedes any conflicting provisions of Rules R986-200 and R986-700.

(2) Federal Pandemic Unemployment Compensation under Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

**KEY: child care, grant programs**

**Date of Enactment or Last Substantive Amendment: April 20, 2020**

**Notice of Continuation: September 3, 2015**

**Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110; 53F-5-210**

**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.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R70-610	Filing No. 50172

### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state, zip:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-538-7150	twaller@utah.gov
Kelly Pehrson	801-538-7102	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R70-610. Uniform Retail Wheat Standards of Identity
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

This rule is adopted under the authority of Section 4-2-102, as well as Section 4-5-104 that allows the Department of Agriculture and Food (Department) to make rules to efficiently enforce the Utah Wholesome Food Act and Section 4-5-207 that allows the Department to adopt rules establishing definitions and standards of identity.

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule should continue because it provides standards of identity and labeling standards for wheat grown and sold in Utah that ensure that products are safe and consumers and businesses are fully aware of what they are purchasing.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Kelly Pehrson, Deputy Commissioner	<b>Date:</b>	04/29/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R70-620	Filing No. 50178

### Agency Information

<b>1. Department:</b>	Agriculture and Food
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FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state, zip:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-538-7150	twaller@utah.gov
Kelly Pehrson	801-538-7102	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R70-620. Enrichment of Flour and Cereal Products
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is promulgated under the rulemaking authority of Section 4-5-104 that allows the Department of Agriculture and Food to make rules to enforce the Utah Wholesome Food Act.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule should continue because it adopts federal standards related to enrichment standards and labeling requirements for vitamins and minerals added to flour and cereal products. These standards protect the public and ensure transparency in products they are buying.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kelly Pehrson, Deputy Commissioner	<b>Date:</b>	04/29/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R70-950</b>	<b>Filing No. 50179</b>
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**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state, zip:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule catchline:</b>
R70-590. Uniform National Type Evaluation
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is promulgated under the authority of Section 4-9-103 which allows the Department of Agriculture and Food (Department) to make rules related to enforcement of Title 4, Chapter 9, related to weights and measures.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it adopts the National Type Evaluation Program and allows the Department to require any weight or measure or any weighing or measuring instrument be issued a certificate of conformance with the program. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kelly Pehrson, Deputy Commissioner	<b>Date:</b>	04/29/2020
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(LEAs) and third party providers from offering incentives for student enrollment. Therefore, this rule should be continued.

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-417</b>	<b>Filing No. 50423</b>
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	04/16/2020
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**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111-3272	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule catchline:**  
R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or Disbursement for Enrollment or Participation

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Board; and 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.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There were no written comments received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is necessary because it provides standards and procedures for prohibiting local education agencies

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-40</b>	<b>Filing No. 50989</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state, zip:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule catchline:**  
R414-40. Private Duty Nursing Service

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 26-18-3 requires the Department of Health (Department) to implement the Medicaid program through administrative rules, and Section 26-1-5 authorizes the Department to adopt rules as necessary for the provision of Medicaid services.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Department did not receive any written or oral comments regarding this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Department will continue this rule because it sets forth provisions of eligibility and coverage for Medicaid members, and specifies program requirements and reimbursement for Medicaid providers.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/28/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R434-100</b>	<b>Filing No. 51105</b>
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**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Primary Care and Rural Health	
<b>Room no.:</b>	361	
<b>Street address:</b>	3760 S Highland Drive	
<b>City, state, zip:</b>	Salt Lake City, UT 84106	
<b>Mailing address:</b>	PO Box 142005	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2005	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ashley Moretz	801-273-6605	amoretz@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule catchline:</b>
R434-100. Physician Visa Waivers

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Subsection 1182(e) and Section 1184 of Title III of the Immigration and Nationality Act and 22 CFR 41.63 provide that the state may request a waiver of the federal two year home residence requirement on behalf of J-1 visa physicians each fiscal year if they work in a medically underserved area of the state and if the waiver is in the public interest. Utah Code Section 26-1-18 authorizes the Utah Department of Health to implement this program. Utah Administrative Rule R434-100 establishes the criteria to determine whether it is in the public interest to request a J-1 visa waiver for an applicant. It establishes the procedures for the submission, review, and disposition of applications.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

No written comments have been received since the last five-year review of the rule from interested persons supporting or opposing the rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The rule should be continued because it has met the requirements of its authorizing statute and the rule has facilitated a well-administered program that meets the statutory purposes of Section 26-1-18 providing physician services in areas that typically have difficulty attracting and retaining physicians.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	04/13/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R495-883</b>	<b>Filing No. 51180</b>
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**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Administration	
<b>Street address:</b>	515 East 100 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84102-4211	
<b>Mailing address:</b>	PO Box 45033	
<b>City, state, zip:</b>	Salt Lake City, UT 84102-4211	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Casey Cole	801-741-7523	cacole@utah.gov
Jonah Shaw	801-538-4225	jshaw@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

<b>2. Rule catchline:</b>
R495-883. Children in Care Support Services

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

The Office of Recovery Services (ORS) has the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law pursuant to Section 62A-11-107. Provisions found in Section 62A-11-104 require the office to provide child support services to those children who lives out of the home in protective custody, temporary custody, or custody or care of the State. ORS is required to collect child support and third party payments in behalf of children placed in the custody of the in accordance with Sections 78A-6-1106, 78B-12-101 et seq., 62A-1-117, 62A-11-301 et seq., and Federal Regulations 45 CFR 300-307.

Section 78B-12-106 authorizes recovery of support from a natural or adoptive parent whose minor child becomes the ward of the , or any other state until the child reaches the age of majority. Section 78B-12-108 requires the parent without physical custody of the child to pay the amount of support ordered without the need to modify the order for the state when the child is outside the home in custody of the State. Section 78B-12-301 and Section 78B-12-302 provide ORS the base amounts to be used when establishing or modifying child support orders and Section 62A-11-320.5 and Section 62A-11-320.6 provide the authority for ORS to conduct a review and adjustment of a support order when there are substantial changes in circumstances. This rule provides needed information for ORS to provide services to children in the care or custody of the pursuant to federal regulations and state laws.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There have been no comments received since the last five-year review of the rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule should be continued because the laws and guidelines that require ORS to establish and modify child support orders and collect support for children who are in the care or custody of the state are still in effect. This rule also provides additional information for ORS to use when establishing and enforcing orders for children in care or custody of the state.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Ann Williamson, Executive Director	<b>Date:</b>	04/15/2020
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-231</b>	<b>Filing No. 51414</b>
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**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

Please address questions regarding information on this notice to the agency.

**General Information**

**2. Rule catchline:**

R590-231. Workers' Compensation Market of Last Resort

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 31A-2-201 authorizes the Insurance Commissioner to write rules to implement the provisions of Title 31A, Insurance Code. Section 31A-19a-404 authorizes the Insurance Commissioner to adopt rules to record and report statistical data and experience rating data. Section 31A-20-103 authorizes the Insurance Commissioner to define by rule lines and classes of insurance. Section 31A-22-1010 sets the reporting requirements for workers' compensation deductible policies.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Insurance Department (Department) has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is not necessary any longer. While performing this five-year review, it was determined that the rule should be repealed. The Department will begin the repeal filing process immediately but the rule is continued so the repeal can go through the process.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer I	<b>Date:</b>	04/17/2020
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR EXPIRATIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

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NOTICE OF EXPIRED RULE		
Utah Admin. Code Ref (R no.):	R765-571	Filing No. 51990

### Agency Information

<b>1. Department:</b>	Regents (Board of)
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Regents Building, The Gateway
<b>Street address:</b>	60 S 400 W
<b>City, state, zip:</b>	Salt Lake City, UT 84101-1284
<b>Mailing address:</b>	PO Box 45202
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0202
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Nancy Lancaster	801-957-7102	nllancaster@utah.gov

### General Information

<b>2. Title of rule (catchline):</b>	
R765-571. Delegation of Purchasing Authority	
<b>3. Effective Date:</b>	04/29/2020
<b>4. Summary:</b>	
The five-year review and notice of continuation was not filed on Rule R765-571 by the deadline so it expired and will be removed from the Utah Administrative Code.	

**End of the Notices of Notices of Five Year Expirations Section**



## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Human Services

#### Administration

No. 52591 (Amendment): R495-810. Government Records Access and Management Act  
Published: 03/15/2020  
Effective: 05/11/2020

#### Administration, Administrative Services, Licensing

No. 52595 (Amendment): R501-12. Foster Care Services  
Published: 03/15/2020  
Effective: 05/11/2020

No. 52578 (Amendment): R501-22. Residential Support Programs  
Published: 03/1/2020  
Effective: 05/11/2020

### Insurance

#### Administration

No. 52585 (Amendment): R590-277. Prohibited Policy Provisions  
Published: 03/15/2020  
Effective: 04/22/2020

### Labor Commission

#### Boiler, Elevator and Coal Mine Safety

No. 52612 (Amendment): R616-3. Elevator Rules  
Published: 04/01/2020  
Effective: 05/11/2020

### UTech Board of Trustees

#### Administration

No. 52603 (Amendment): R945-1. UTech Technical College Scholarship  
Published: 04/01/2020  
Effective: 05/11/2020

### Workforce Services

#### Employment Development

No. 52521 (Amendment): R986-100. A Client Must Inform the Department of All Material Changes  
Published: 03/15/2020  
Effective: 04/20/2020

No. 52604 (Amendment): R986-700. Child Care Assistance  
Published: 04/01/2020  
Effective: 05/09/2020

#### Housing and Community Development

No. 52602 (Amendment): R990-101. Qualified Emergency Food Agencies Fund (QEFAF)  
Published: 04/01/2020  
Effective: 05/09/2020

### Unemployment Insurance

No. 52589 (Amendment): R994-508. Appeal Filing Procedures Amendments  
Published: 03/15/2020  
Effective: 04/22/2020

**End of the Notices of Rule Effective Dates Section**