UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
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SPECIAL NOTICES

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Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2018 Medicaid Rate Changes

Effective June 1, 2018, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php

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Health
Health Care Financing, Coverage and Reimbursement Policy

Hearing on 1115 Primary Care Network Demonstration Waiver

The Utah Department of Health, Division of Medicaid and Health Financing (DMHF) will hold public hearings to discuss proposed amendments to the 1115 Primary Care Network Demonstration Waiver. Proposed changes to the waiver are required to implement the provisions of H.B. 472 "Medicaid Expansion Revisions", H.B. 435 "Medicaid Dental Benefits", and H.B. 12 "Family Planning Services Amendments", which were passed during the 2018 General Session. In addition, the State is requesting authority to provide specific services to at-risk Medicaid children and youth.

DMHF is requesting authority to implement Medicaid eligibility for adults, age 19 - 64 who have household income up to 95% of the Federal Poverty Level (FPL). In addition, the amendment adds a work requirement for this adult group, provides the authority to require that an adult purchase Employer Sponsored Insurance (if available), and requests the ability to close enrollment in the program if costs are projected to be higher than the money provided for the program.

The State is also requesting authority to:

1. Add dental benefits for Targeted Adult Medicaid members who are receiving Substance Use Disorder (SUD) treatment;

2. Implement Medicaid eligibility for adults not otherwise eligible for Medicaid to provide them with family planning services; and

3. Provide specific services to at-risk Medicaid eligible children and youth in state custody or those at risk of being placed in state custody, and their families.

These topics will be discussed at a public hearing to be held on Thursday, May 17, 2018, from 2:00 p.m. to 4:00 p.m. as part of the Medical Care Advisory Committee (MCAC) meeting. The hearing will be held in Room 125 at the Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah.

The first hour of the meeting will cover dental benefits for Targeted Adult Medicaid members, the family planning services amendment, and services for at-risk Medicaid children and youth.

The second hour of the meeting will cover the amendment to implement Medicaid eligibility for adults with income up to 95% FPL and the related requirements from H.B. 472.

A conference line is available for those who would like to participate by phone: 1-877-820-7831, passcode 378804#. Individuals requiring an accommodation to fully participate in the meeting should contact Jennifer Meyer-Smart at 801-538-6338 by 5:00 p.m. on Friday, May 11, 2018.

Health
Health Care Financing, Coverage and Reimbursement Policy

Comments on 1115 Primary Care Network Demonstration Waiver

The Utah Department of Health, Division of Medicaid and Health Financing (DMHF) is accepting comments regarding proposed amendments to the Primary Care Network 1115 Demonstration Waiver.

A copy of the DMHF Request for Amendment is available online at https://medicaid.utah.gov/1115-waiver.

The public may comment on the proposed amendments through May 31, 2018 by submitting comments online at https://medicaid.utah.gov/public-comments-0

http://health.utah.gov/MedicaidExpansion/comments.html.

Health
Health Care Financing, Coverage and Reimbursement Policy

Outpatient Hospital Supplemental Payments

The Division of Medicaid and Health Financing (DMHF) will submit a change to the Medicaid State Plan to reference the utilization and inflation trend rates for each state fiscal year regarding outpatient hospital supplemental payments.

This change, therefore, references the Medicaid website to find the utilization and inflation trend rates for State Fiscal Year (SFY) 2019 moving forward.

DMHF expects annual savings of about $977,800 in SFY 2019 to result from this change.

This State Plan Amendment (SPA 18-0003-UT) is pending approval from the Centers for Medicare & Medicaid Services and the proposed effective date is July 1, 2018.

A copy of this change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of this change are also available at local county health department offices.

Health
Health Care Financing, Coverage and Reimbursement Policy

Annual Rebasing Update

The Division of Medicaid and Health Financing (DMHF) will submit an amendment to the Medicaid State Plan based on the existing requirement to annually rebase pricing of physician codes.

This State Plan Amendment (SPA 18-0006-UT), therefore, updates the effective date of the pricing to July 1, 2018, for the following services:

Home Health Services;
Physician and Anesthesia Services;
Optometry Services;

Speech Pathology Services;
Audiology Services;
Chiropractic Services;
Eyeglasses Services;
Clinic Services;
Physical Therapy and Occupational Therapy;
Rehabilitative Mental Health Services;
Dental Services and Dentures;
Transportation Services (Special Services); and
Transportation Services (Ambulance).

DMHF anticipates this update to the effective dates of service to be budget neutral.

The proposed change is pending Centers for Medicare & Medicaid Services approval.

A copy of the change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the change are also available at local county health department offices.

Health
Health Care Financing, Coverage and Reimbursement Policy

State Teaching Hospital Payments

The Division of Medicaid and Health Financing (DMHF) is submitting a change to the Medicaid State Plan to update provisions for state teaching hospital payments in relation to the Consumer Price Index.

This amendment, therefore, removes a reference to a table no longer published by the United States Department of Labor, Bureau of Labor Statistics, to calculate inflation trends for these types of payments.

This State Plan Amendment (SPA 18-0005-UT) does not affect total annual expenditures for the Medicaid program.

The SPA is pending approval from the Centers for Medicare & Medicaid Services and the proposed effective date is July 1, 2018.

A copy of this change may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the change are also available at local county health department offices.

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 17, 2018, 12:00 a.m., and May 01, 2018, 11:59 p.m. are included in this, the May 15, 2018, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **Proposed Rules** published in this issue of the *Utah State Bulletin* until at least June 14, 2018. 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, 2018, 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.

The Proposed Rules Begin on the Following Page

Administrative Services, Facilities Construction and Management
R23-23
Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42846
FILED: 04/24/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to comply with the provisions of Section 63A-5-205.5. These amendments to Rule R23-23 are required and necessary to conform Rule R23-23 with new Utah Code Section 63A-5-205.5, passed pursuant to H.B. 39 in the 2018 General Session.

SUMMARY OF THE RULE OR CHANGE: Rule R23-23 is authorized under Subsection 63A-5-103(2)(a), which directs the Building Board to make rules necessary for the discharge of duties for the Division of Facilities Construction and Management. These amendments to Rule R23-23 are required and necessary to conform Rule R23-23 with the new Utah Code Section 63A-5-205.5, passed pursuant to H.B. 39 in the 2018 General Session, signed by the Governor on 03/20/2018 and scheduled to take effect 05/07/2018.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-205.5 and Subsection 63A-5-103(2)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amendments to Rule R23-23 will have no anticipated cost or savings for the state. The amendment of Rule R23-23 is required so that the rule is consistent with changes that were made to Section 63A-5-205 by H.B. 39 (2018). Any associated fiscal impacts are attributable to the changes in the statue and not the amendments to this rule, which simply mirrors the changes in the statute. All anticipated impacts have been accounted for in the fiscal note for H.B. 39 (2018).
♦ LOCAL GOVERNMENTS: Amendments to Rule R23-23 will not affect local governments. The amendment of Rule R23-23 is required so that the rule is consistent with changes that were made to Section 63A-5-205 by H.B. 39 (2018). Any associated fiscal impacts are attributable to the changes in the statue and not the amendments to this rule, which simply mirrors the changes in the statute. All anticipated impacts have been accounted for in the fiscal note for H.B. 39 (2018).
♦ SMALL BUSINESSES: Amendments to Rule R23-23 will not affect small businesses. The amendment of Rule R23-23 is required so that the rule is consistent with changes that were made to Section 63A-5-205 by H.B. 39 (2018). Any associated fiscal impacts are attributable to the changes in the statue and not the amendments to this rule, which simply mirrors the changes in the statute. All anticipated impacts have been accounted for in the fiscal note for H.B. 39 (2018).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Amendments to Rule R23-23 will not affect persons other than small businesses, businesses, or local government entities. The amendment of Rule R23-23 is required so that the rule is consistent with changes that were made to Section 63A-5-205 by H.B. 39 (2018). Any associated fiscal impacts are attributable to the changes in the statue and not the amendments to this rule, which simply mirrors the changes in the statute. All anticipated impacts have been accounted for in the fiscal note for H.B. 39 (2018).

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. These amendments to Rule R23-23 are required and necessary to conform Rule R23-23 with the new Utah Code Section 63A-5-205.5, passed pursuant to H.B. 39 (2018).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
♦ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
♦ Michael Kelley by phone at 801-538-3105, or by Internet E-mail at mkelley@agutah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Ned Carnahan, Building Board Chair

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
There are no anticipated regulatory or fiscal impact that the changes to this rule with have on non-small businesses.

The amendment of Rule R23-23 is required so that the rule is consistent with changes that were made to Section 63A-5-205 by H.B. 39 passed in the 2018 General Session, which has been signed by the Governor and scheduled to go into effect May 7, 2018. Any associated fiscal impacts are attributable to the changes in the statue and not the amendments to this rule, which simply mirrors the changes in the statute. All anticipated impacts have been accounted for in the fiscal note for H.B. 39 (2018).

R23. Administrative Services, Facilities Construction and Management.
R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
[~~R23-23-1. Purpose.~~

~~The purpose of this rule is to comply with the provisions of Section 63A-5-205.~~

~~R23-23-2. Authority.~~

~~This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.~~

~~R23-23-3. Definitions.~~

~~(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.~~
~~(2) In addition:~~
~~(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.~~
~~(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.~~
~~(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~
~~(d) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:~~
~~(i) works at least 30 hours per calendar week; and~~
~~(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.~~
~~(e) "State" means the State of Utah.~~

~~R23-23-4. Applicability of Rule.~~

~~(1) Except as provided in Subsections R23-23-4(2) or R23-23-4(3) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board, and~~
~~(a) applies to a prime contractor if the prime contract is in the amount of $2,000,000 or greater at the original execution of the contract; and~~
~~(b) applies to a subcontractor if the subcontract is in the amount of $1,000,000 or greater at the original execution of the contract.~~
~~(2) This Rule R23-23 does not apply if:~~
~~(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;~~
~~(b) the contract is a sole source contract; or~~
~~(c) the contract is an emergency procurement.~~
~~(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R23-23-4(1).~~
~~(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.~~

R23-23-5. Contractors and Subcontractors to Comply with Section 63A-5-205.

(1) All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

(2) If a subcontractor of the contractor is subject to Section 63A-5-205(3) or Section R23-23-4, the contractor shall:

(a) Place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(b) certify to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1603 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. A Contractor (including Design Professional) shall demonstrate compliance with Subsection 63A-5-205(6)(a) or (b) at the time of execution of each initial contract described in Subsection 63A-5-205(3).

(a) The compliance is subject to an audit by the Department of Administrative Services, the Division or the Office of the Legislative Auditor General.

(b) A Contractor (including Design Professional) subject to Subsection 63A-5-205(3) shall demonstrate to the director that the Contractor has and will maintain an offer of qualified health insurance coverage for the Contractor's employees and employees' dependents.

(c) Such demonstration shall be a certification on the form provided by Division. The form shall also require compliance with Subsection R23-23-5(2) regarding subcontractors.

(d) The actuarially equivalent determination required for the qualified health insurance coverage is met by the Contractor if the Contractor provides the Division with a written statement of actuarial equivalency attached to the certification, which is not more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. The Contractor is responsible for collecting the statements as required by law from any of the subcontractors at any tier that must do so.

(2) For purposes of this Rule R23-23-7, actuarially equivalency is achieved by meeting or exceeding the commercially equivalent benchmark for the qualified health insurance coverage identified in Subsection 63A-5-205(1)(c) that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

(3) The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

(4) Any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(5) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Subsections (3) through (10) of 63A-5-205 include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of Section 63A-5-205 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(5)(c)(i) as provided in Subsection 63A-5-205(8)(b). An employee has a private right of action only against the employee's employer to enforce the provision of Subsection 63A-5-205(8).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.]

R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.5.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(2)(a), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205.5 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Demonstration of Compliance.

(1) At such time as a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain and submit to the director a written Statement of Compliance in the form published on the division's website.

(2) At such time as a subcontractor of a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain from the subcontractor a written Statement of Compliance in the form published on the division's website.

R23-23-4. Compliance Subject to Audit.

A contractor or subcontractor's compliance with Section 63A-5-205.5 is subject to an audit by the division or the Office of the Legislative Auditor General.

R23-23-5. Penalties.

The penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of Section 63A-5-205.5 may include:

(1) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(2) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(3) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(4) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract.

R23-23-6. Benchmark Available on Division's Website.

The commercially equivalent benchmark for the qualified health insurance coverage that is provided by the Department of Health in accordance with Utah Code Subsection 26-40-115(2) is available on the division's website.

KEY: health insurance, contractors, contracts, contract requirements

Date of Enactment or Last Substantive Amendment: [~~July 22, 2016~~]2018

Notice of Continuation: June 10, 2014

Authorizing, and Implemented or Interpreted Law: 63A-5-103([1]2)([e]a); 63A-5-205.5

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42854
FILED: 04/27/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to changes in IRS mileage reimbursement rates, state mileage reimbursement rates need to be changed. Also, because of a change in the Consumer Price Index (CPI) calculation, meal per diem rates required change. Lastly, because hotel booking rates have increased, lodging per diem rates have changed.

SUMMARY OF THE RULE OR CHANGE: These rule changes increases reimbursement rates for mileage, lodging, and food.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is likely that all state government agencies will have a direct inestimable cost associated with these changes in reimbursement rates. The cost is inestimable due to the burden associated with collecting and analyzing historical reimbursement forms used for expenditures made against the old reimbursement rates.

♦ LOCAL GOVERNMENTS: These rule changes are not expected to have any fiscal impact on local governments because local governments are not subject to the rule being adjusted.

♦ SMALL BUSINESSES: An indeterminate number of small businesses in the hotel and restaurant industries (NAICS 722511, 722513, 721110) may see an indirect inestimable benefit impact from increased revenues because employees will be eligible for increased reimbursement while traveling. The state cannot determine the impact due to the burden of collecting and analyzing source material.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These rule changes are not expected to have any fiscal impact on other persons' revenues or expenditures, because no other parties are expected to be involved in transactions of this nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because these amendments change reimbursement rates and do not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. Small businesses may see an increase in revenue. However, the Division of Finance cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Cory Weeks by phone at 801-538-3100, or by Internet E-mail at cweeks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: John Reidhead, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses
An indeterminate number of large businesses in the hotel and restaurant industries (NAICS 722511, 722513, 721110) may see an indirect inestimable benefit impact from increased revenues because employees will be eligible for increased reimbursement while traveling. The state cannot determine the impact due to the burden of collecting and analyzing source material.

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is [~~$42.00~~]$43.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	[~~$18.00~~]$19.00
Total	[~~$42.00~~]$43.00

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$22.00
Total	$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to [~~$67~~]$69 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to [~~$58~~]$59 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct [~~$15~~]$16, leaving a premium allowance for lunch and dinner of actual up to [~~$52~~]$53.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to [~~$47~~]$49.

(iii) If dinner is provided deduct [~~$32~~]$33, leaving a premium allowance for breakfast and lunch of actual up to [~~$35~~]$36.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to [~~$45~~]$46.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to [~~$41~~]$42.

(iii) If dinner is provided deduct [~~$28~~]$29, leaving a premium allowance for breakfast and lunch of actual up to $30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the [~~United States Department of State Meal and Incidental Expenses (M and IE)~~]federal reimbursement rate for [~~their~~]the location as of the date of travel.

(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State			
[~~$42.00~~]$43.00	[~~$32.00~~]$33.00	[~~$18.00~~]$19.00	$0
Out-of-State			
$46.00	$36.00	$22.00	$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-6:00 *no meals	2nd Quarter a.m. 6:01-12:00 *B	3rd Quarter p.m. 12:01-6:00 *B, L	4th Quarter p.m. 6:01-11:59 *B, L, D
In-State			
$0	$10.00	$24.00	[~~$42.00~~]$43.00
Out-of-State			
$0	$10.00	$24.00	$46.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns after 6:00 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	$75.00 plus tax and mandatory fees
Blanding	$75.00 plus tax and mandatory fees
[~~Bluff~~	~~$90.00 plus tax~~]
Bluff	$95.00 plus tax and mandatory fees
Brigham City	$80.00 plus tax and mandatory fees
[~~Bryce Canyon City~~	~~$75.00 plus tax~~]
Bryce Canyon City	$80.00 plus tax and mandatory fees
Cedar City	$80.00 plus tax and mandatory fees
[~~Duchesne~~	~~$80.00 plus tax~~]
Duchesne	$85.00 plus tax and mandatory fees
Ephraim	$75.00 plus tax and mandatory fees
Farmington	$85.00 plus tax and mandatory fees
Fillmore	$75.00 plus tax and mandatory fees
Garden City	$80.00 plus tax and mandatory fees
Green River	$85.00 plus tax and mandatory fees
Hanksville	$75.00 plus tax and mandatory fees
Heber	$85.00 plus tax and mandatory fees
[~~Kanab~~	~~$85.00 plus tax~~]
Kanab	$90.00 plus tax and mandatory fees

[~~Layton~~	~~$85.00 plus tax~~]
Layton	$90.00 plus tax and mandatory fees
Logan	$85.00 plus tax and mandatory fees
Mexican Hat	$90.00 plus tax and mandatory fees
[~~Moab~~	~~$100.00 plus tax~~]
Moab	$110.00 plus tax and mandatory fees
Monticello	$80.00 plus tax and mandatory fees
[~~Ogden~~	~~$85.00 plus tax~~]
Ogden	$90.00 plus tax and mandatory fees
Panguitch	$75.00 plus tax and mandatory fees
[~~Park City/Midway~~	~~$100.00 plus tax~~]
Park City/Midway	$110 plus tax and mandatory fees
Price	$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	$85.00 plus tax and mandatory fees
Roosevelt/Ballard	$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane	$85.00 plus tax and mandatory fees
Torrey	$85.00 plus tax and mandatory fees
Tremonton	$90.00 plus tax and mandatory fees
Vernal	$95.00 plus tax and mandatory fees
All Other Utah Cities	$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the traveler's Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

(c) Travelers may be reimbursed, up to the maximum reimbursements rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of [~~40~~]42 cents per mile or [~~53~~]54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [~~53~~]54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of [~~40~~]42 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of [~~40~~]42 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 53 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~August 7, 2017~~]2018
Notice of Continuation: February 8, 2018
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Career Service Review Office, Administration
R137-1
Grievance Procedure Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42844
FILED: 04/23/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments are mandated by changes to

Sections 67-19a-101 through 67-19a-501 made by H.B. 183 and H.B. 383 passed in the 2018 General Session.

SUMMARY OF THE RULE OR CHANGE: H.B. 183 (2018) eliminated the requirement that the Career Service Review Office (CSRO) hire a certified court reporter to record hearings. H.B. 383 (2018) defined terms, included the review of "abusive conduct investigations" in the list of subjects over which the CSRO has jurisdiction, prohibited retaliation against an employee advocate, amended deadlines for submitting grievances, and allowed an employee to skip steps in the grievance process where warranted. These rule changes make technical and conforming changes required by H.B. 183 and H.B. 383. Additionally, these rule amendments change the page limitations for motions filed at the CSRO.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19a-101 through 67-19a-501

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These rule changes do not impose costs or savings to the state in addition to those already contemplated by fiscal note in the legislative process.
♦ LOCAL GOVERNMENTS: The grievance procedures affect only state employees and employers and do not apply to other entities.
♦ SMALL BUSINESSES: The grievance procedures affect only state employees and employers and do not apply to other entities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the CSRO is no longer required to hire a certified court reporter, if a CSRO decision is appealed to the Utah Court of Appeals, this cost shifts to the appealing party. This anticipated cost is incremental because the appealing party has always been responsible for transcription costs. This cost shift is made necessary by the legislative amendments and was contemplated by the fiscal note in the legislative process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of hiring a court reporter shifts from the CSRO to the appealing party. This cost shift is made necessary by the legislative amendments and was contemplated by the fiscal note in the legislative process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The grievance procedures affect only state employees and employers and do not apply to other entities.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CAREER SERVICE REVIEW OFFICE
ADMINISTRATION
ROOM 1120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Akiko Kawamura by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at akawamura@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2018

AUTHORIZED BY: Akiko Kawamura, Administrator

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

The proposed amendment is not expected to have fiscal impact on any large businesses revenues or expenditures because this rule governs procedure in administrative actions exclusively pertaining to state employees and employer agencies. This rule does not have any impact on other entities.

The administrator of the Career Service Review office has reviewed and approved this fiscal analysis.

R137. Career Service Review Office, Administration.
R137-1. Grievance Procedure Rules.
R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the person appointed under Subsection 67-19a-201[~~(1)~~](2)(b).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of a lower level decision.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties.

"CSRO" means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-[~~406~~]501.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means [~~a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.~~]harmless error, mistake, inadvertence, surprise, a failure to discover evidence that, through due diligence, could not have been discovered in time to meet the applicable time period, misrepresentation or misconduct by the employer, or any other reason justifying equitable relief.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-[~~406~~]501 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures[~~ to the evidentiary/step 4 level~~].

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance[~~ case at the evidentiary/step 4 level~~].

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance[~~ issue to the evidentiary/step 4 level~~].

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated [~~evidentiary/step~~]Level 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302[~~(1)~~](3), and Section R477-3-5.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRO or the administrator are deemed filed on the date actually received[~~, and are so date-stamped~~]. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the Career Service Review Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

(b) A person receiving a subpoena issued by the CSRO will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least five full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the [~~requesting party delivering the subpoena to the person named.~~]CSRO by E-mail, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services,[~~ or to send it by E-mail,~~] or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-9. Hearing Dates, Continuance/Extension of Time.

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, for grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the administrator shall set a date for [~~the~~]an evidentiary[~~/step~~]Level 4 hearing that is:

(a) within 30 days of the administrator's determination; or

(b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing, provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

(i) whether the request was timely made in writing; and

(ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees and reporting employees alleging retaliatory action, as defined by Subsections 67-19a-101[~~(7)~~](3) and 67-19a-101[~~(8)~~](10), may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals[~~ for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA~~].

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to [~~the Evidentiary/Step~~]Level 4[~~ Level~~].

All grievances shall be reviewed to determine:

(1) Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsections 67-19a-202(1)[~~(a) and~~], 67-19a-202[~~(1)(6)~~](2), and 67-19a-202(3), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the CSRO from awarding fees or costs to an employee's attorney or representative. Pursuant to Subsection 67-19a-402.5(6)(a), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee in a retaliatory action grievance.

(2) Pro Se Status. A party or person to a grievance proceeding may appear pro se. When a party or person appears pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, an advocate, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). Pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2, or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in filing or processing a grievance, or for not appearing at a scheduled proceeding. An employee may file a motion for an enlargement of the time limits for filing or processing a grievance consistent with Section 67-19a-401 (6) (a).

(a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure [~~Steps~~]Levels.

Persons acting on grievances pursuant to Sections 67-19a-402[~~ and 67-19a-402.5~~], and in accordance with these rules, shall conduct their filings through the following [~~steps, or~~]levels[~~,~~] of increasing accountability:

[~~Step~~]Level 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance [~~then becomes~~]is a formal complaint necessitating a response. [~~Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. Such responses are to be issued by only one supervisor, director, etc. at each step.~~]At all levels of procedure, the parties must comply with the time periods outlined in Sections 67-19a-401 and 67-19a-402. If a supervisor is the subject of a grievance or complaint, the employee may proceed directly to Level 2.

[~~Step~~]Level 2; If the grievance is not resolved at [~~step~~]Level 1, the employee may advance their grievance to the agency or division director (or director's designee) at [~~step~~]Level 2. [~~Step 2 requires the grievance be reviewed by the agency or division director or designee;~~]If an agency or division director is the subject of a grievance or complaint, the employee may proceed directly to Level 3.

[~~Step~~]Level 3; If the grievance is not resolved at [~~step~~]Level 2, the employee may advance their grievance to the department head, executive director, or commissioner (or director's designee) at [~~step~~]Level 3.[~~ Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.~~]

[~~Step~~]Level 4; If the grievance is not resolved at [~~step~~]Level 3, the employee may advance their grievance to the CSRO at [~~step~~]Level 4. [~~Step 4 is~~]For grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the CSRO provides an evidentiary de novo hearing, conducted before a CSRO hearing officer. When the CSRO receives a request for administrative review of an abusive conduct investigation filed under Section 67-19a-202(3), no evidentiary hearing is required.

The purpose [~~for~~]of the [~~above steps, or~~]levels[~~,~~] is to curtail employees from having to submit their grievances to persons [~~in agency management~~]not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances. Grievances by a reporting employee alleging retaliatory action filed under Section 67-19a-202(2) and requests for the CSRO to review the findings of an abusive conduct investigation filed under Section 67-19a-202(3) are not subject to Levels 1-3 and may be filed directly with the CSRO.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been [~~suspended without pay,~~]demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3.[~~ Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.~~]

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO[~~ at the evidentiary/step 4 level~~].

(2) When appealed to the CSRO, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(i) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(ii) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-402.5, 67-19a-403 and 67-19a-404.

(2) Determination. The administrator has authority to determine which types of grievances may be heard at [~~the evidentiary/step 4 level~~]Level 4. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to [~~the evidentiary/step 4 level~~]Level 4 are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in [~~Subsections 67-19a-202(1)(a) or 67-19a-202(1)(b) and referenced in Subsection 67-19a-302(1) and 67-19a-302(3) are precluded from advancement to the evidentiary/step 4 level.~~]Sections 67-19a-202(1), 67-19a-202(2) or 67-19a-202 (3) are precluded from advancement to Level 4. [~~When the grievance is precluded from the evidentiary/step 4 level, the matter under dispute shall be deemed as final at the level of the department head/step 3 according to Subsection 67-19a-302(2).~~]For grievances filed under Section 67-19a-202(1), if the CSRO does not have jurisdiction at Level 4, the matter shall be deemed final at Level 3 according to Section 67-19a-302(3).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA is incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA, which are incorporated by reference.

(b) [~~The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.~~]A decision reached by the CSRO upon administrative review of the findings resulting from an abusive conduct investigation under Section 67-19a-501 is final and not subject to appeal.

(c) A decision reached by the CSRO in reviewing a retaliatory action grievance from a reporting employee, as defined by Subsections 67-19a-101[~~(7)~~]10 and 67-19a-101[~~(8)~~]11,may be appealed to the Utah Court of Appeals.

(6) Summary Judgment. The administrator or the (Presiding Officer, Utah Code Ann. Section 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 3; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals[~~ or to the district court~~], the appealing party is responsible for having the CSRO's recording transcribed by a certified court reporter and for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate[~~ or trial~~] court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and [~~evidentiary/step 4~~]Level 4 proceedings before the CSRO.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All initial administrative and [~~evidentiary/step 4~~]Level 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

[~~(b) An administrative review of the file, pursuant to Subsections 67-19a-403(2) and 67-19a-402.5(2)(b)(2), is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.~~]

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person. The hearing officer may also expel any persons whose presence is antagonistic, oppressive, intimidating or appears to have a chilling effect on the witness under examination.

(5) Presentation of Case. Each party is given the opportunity to make an opening statement and to present evidence. After the evidence is closed, each party may offer a closing argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record and make a ruling or take the objection under advisement to be ruled upon later.

(b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsections 67-19a-406(2) and 67-21-3.5.

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205 of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the administrator or appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO administrator or hearing officer has discretion to entertain discovery motions on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the [~~presiding~~]CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known[~~ at the prehearing/scheduling conference, or~~] by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Unless otherwise specified by the CSRO, [~~W~~]written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed [~~20~~]10 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed [~~ten~~]five pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than [~~ten~~]five double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests [~~more than 20 and 10 pages respectively to the CSRO for the granting of any exceptions to~~]to exceed the page limitations[~~ provision~~].

(c) The CSRO may weigh all requests to exceed the page limitations [~~provision~~]based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) A[~~n evidentiary/step~~]Level 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at [~~the jurisdictional and evidentiary/step 4 level~~]Level 4 are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at [~~the evidentiary/step~~]Level 4 proceedings.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may provide copies of legal decisions, orders, and rulings to the public upon request.

Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The [~~Evidentiary/Step~~]Level 4 Adjudicatory Procedures.

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at [~~evidentiary/step~~]Level 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) [~~Evidentiary/Step~~]Level 4 Hearing. [~~An evidentiary/step 4 hearing~~]An evidentiary Level 4 hearing shall be [~~a hearing on the record~~]recorded according to [~~Subsections~~]Section 67-19a-406[~~(1) and (2),~~] and held de novo, with both parties being granted full administrative process as follows:

(a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary[~~/step~~]Level 4 hearing support, by [~~with~~]substantial evidence, the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary[~~/step~~]Level 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. [~~Notwithstanding R137-1-21(1)(h) above, following the~~]After closing [~~of~~]the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the [~~evidentiary/step~~]Level 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the [~~evidentiary/step~~]Level 4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an [~~evidentiary/step~~]Level 4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the [~~evidentiary/step~~]Level 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within twenty days after the [~~evidentiary/step~~]Level 4 decision is issued as provided at Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the [~~evidentiary/step~~]Level 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the [~~evidentiary/step~~]Level 4 decision. The CSRO may not share any cost for a transcript or transcription of the [~~evidentiary/step~~]Level 4 hearing.

R137-1-23. Procedure for Filing a Request for Administrative Review of an Abusive Conduct Investigation.

(1) Under Section 67-19a-202(3), an employee may file a request for administrative review of the findings of an abusive conduct investigation.

(2) A Request for Administrative Review of an Abusive Conduct Investigation may be filed directly with the CSRO within 10 days after the date on which the employee receives notification of the investigative findings.

KEY: grievance procedures, reconsiderations
Date of Enactment or Last Substantive Amendment: [~~July 22, 2013~~]2018
Notice of Continuation: July 11, 2016
Authorizing, and Implemented or Interpreted Law: 34A-5-106; 67-19-16; 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63G-4 et seq.

Commerce, Occupational and Professional Licensing

R156-70a

Physician Assistant Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42807
FILED: 04/17/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Occupational and Professional Licensing (Division) and the Physician Assistant Licensing Board are proposing amendments to conform this rule to new Sections 58-70a-102 and 58-70a-501, as enacted by S.B. 162 during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: In Section R156-70a-102, the unnecessary definitions of "locum tenens" and "on-site supervision" are removed. In R156-70a-501, the physician/physician assistant working relationship and delegation of duties are changed to comply with S.B. 162 (2017), by: 1) removing the requirement for physicians to cosign all medical chart records for patients; and 2) including the requirement of quality review in place of chart review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-70a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: For Section R156-70a-102, these proposed changes remove unnecessary definitions to ensure that the rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact state government revenues or expenditures. For Section R156-70a-501, these proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. This will include certain state government entities acting as businesses. However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on state agencies over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf. No other fiscal impact to the state is expected beyond a minimal cost to the Division of approximately $75 to print and distribute the rule once the proposed amendments are made effective.

♦ LOCAL GOVERNMENTS: For Section R156-70a-102, these proposed changes remove unnecessary definitions to ensure that this rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact local government's revenues or expenditures. For Section R156-70a-501, these proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. This will include certain local government entities acting as businesses. However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on local governments over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

♦ SMALL BUSINESSES: For Section R156-70a-102, these proposed changes remove unnecessary definitions to ensure that this rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact small businesses' revenues or expenditures. For Section R156-70a-501, these proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. There are currently 1,589 physician assistant licensees in Utah; it is estimated that approximately two-thirds of these are employed by small business facilities such as private or group physician practices or medical centers (NAICS 621399). However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on any of these small businesses who employ physician assistants, over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: For Section R156-70a-102, these proposed changes remove unnecessary definitions to ensure that this rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact other persons. For Section R156-70a-501, these proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on physician assistants or any persons who may employ them over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For Section R156-70a-102, these proposed changes remove unnecessary definitions to ensure that this rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact affected persons. For Section R156-70a-501, these proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no compliance costs for affected persons over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact that thid rule may have on businesses. I direct that my comments about the rule's fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action. Amendments to Section R156-70a-102 remove unnecessary definitions in the rule. Amendments to Section R156-70a-501 change the physician/physician assistant working relationship and delegation of duties to comply with S.B. 162 (2017) by: 1) removing the requirement for physicians to cosign all medical chart records for patients; and 2) including the requirement of quality review in place of chart review. The deletion of certain definitions from Section R156-70a-102 has no fiscal impact or benefit. The Section R156-70a-502 amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. There are currently 1,589 physician assistant licensees in Utah. It is estimated that approximately two-thirds of these are employed by small business facilities, such as private or group physician practices or medical centers (NAICS 621399). However, because these proposed amendments only conform this rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on or benefit to small businesses who employ physician assistants, and no impact on physician assistants who own or operate their own offices, over and above that included in the fiscal note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Mark Steinagel, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0

Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses:
Section R156-70a-102: These proposed changes remove unnecessary definitions, to ensure that the rule only encompasses current practice in the profession. Accordingly, these amendments are not expected to impact non-small business revenues or expenditures.

Section R156-70a-501: These proposed amendments apply to persons required to be licensed as a physician assistant in Utah, and will also indirectly affect those who employ licensed physician assistants. There are currently 1,589 physician assistant licensees in Utah; it is estimated that approximately one-third of these may be employed by Utah's 91 non-small business facility hospitals or HMO (health maintenance organization) medical centers (NAICS 622110). However, because these proposed amendments only conform the rule to practices already required by S.B. 162 (2017), the Division estimates that there will be no impact on non-small businesses who employ physician assistants, over and above that included in the Fiscal Note for S.B. 162 (2017), available online at https://le.utah.gov/lfa/fnotes/2017/SB0162.fn.pdf.

The head of the Department of Commerce, Francine A. Giani, has reviewed and approved this fiscal analysis.

R156. Commerce, Occupational and Professional Licensing.
R156-70a. Physician Assistant Practice Act Rule.
R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.[

~~(2) "Locum tenens" means a medical practice situation in which one physician assistant acts as a temporary substitute for the physician assistant who regularly will or does practice in that particular setting.~~

~~(3) "On-site supervision", as used in Section R156-70a-501, means the physician assistant will be working in the same location as the supervising physician.~~]

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. [~~The degree of on-site supervision shall be outlined in the Delegation of Services Agreement maintained at the site of practice.~~]Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The [~~supervising~~]physician and physician assistant shall review [~~and co-sign~~]sufficient [~~numbers of~~]practice information which may include patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for quality review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

KEY: licensing, physician assistants
Date of Enactment or Last Substantive Amendment: [~~December 22, 2016~~]2018
Notice of Continuation: November 3, 2016
Authorizing, and Implemented or Interpreted Law: 58-70a-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Real Estate
R162-2c
Utah Residential Mortgage Practices and Licensing Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42809
FILED: 04/17/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule amendment is to provide optional experience equivalency for licensed mortgage loan originators who have been working as a junior loan officer or an assistant loan officer.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment would change Sections R162-2c-501a and R162-2c-501b to provide up to 15 optional experience points to licensed mortgage loan originators. The optional experience would be 0.5 points for each month of full-time employment as a junior loan officer or an assistant loan officer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2c-103 and Section 61-2c-203 and Section 61-2c-206

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division of Real Estate (Division) has the staff and budget in place to administer this proposed amendment. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to those resources or result in any additional cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce this rule. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to local governments.
♦ SMALL BUSINESSES: This proposed amendment does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule amendment does not create new obligations for affected persons subject to the administrative rules nor does it increase the costs associated with any existing obligation. Rather, this proposed rule amendment would recognize optional experience of certain mortgage loan originators, thereby allowing these affected persons to qualify for lending manager status more quickly than would otherwise be possible. After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Section R162-2c-501a amendment provides optional experience equivalency to a licensed mortgage loan originator working as a junior loan officer or an assistant loan officer. The Section R162-2c-501b amendment provides the experience equivalency for a licensed mortgage loan originator working as a junior loan officer or an assistant loan officer is calculated at one-half point per month. These proposed amendments do not create new obligations for small businesses nor do they have any fiscal impact on small businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Jonathan Stewart, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
There are a total of 597 mortgage companies licensed to do residential mortgage business in the state of Utah. Approximately one-fourth of these companies are large businesses in the mortgage industry (NAICS 522292) in Utah. These large businesses may experience a fiscal benefit associated with the proposed optional experience equivalency calculation for licensed mortgage loan originators applying to become licensed lending managers. The full impact to these non-small businesses cannot be estimated because the data necessary to determine how increased revenue or lower costs is not available.

This Fiscal Analysis reviewed and approved by Francine A. Giani, Executive Director, Commerce Department.

R162. Commerce, Real Estate.
R162-2c. Utah Residential Mortgage Practices and Licensing Rules.
R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage prelicensing instructor;[~~and~~]

(e) second-lien residential loan originator[.]; and

(f) a licensed mortgage loan originator working as a junior loan officer or assistant loan officer.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month
(2) Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month
(6) Licensed mortgage loan originator working as a junior loan officer or as an assistant loan officer	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement
Date of Enactment or Last Substantive Amendment: [~~July 11, 2017~~]2018
Notice of Continuation: March 31, 2015
Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)(a)

Education, Administration
R277-113
LEA Fiscal and Auditing Policies

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 42857
FILED: 04/30/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being reinstated because the five-year review was not done by the deadline and the rule expired. The purpose of this new rule is to require local education agencies (LEA) to formally adopt and implement policies regarding the management and use of public funds; provide minimum standards, procedures, and definitions for LEA policies; direct that LEAs make policies, procedures, and

training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; require LEAs to train employees in: appropriate financial practices, necessary accounting procedures, ethical financial practices; and specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP and GAAS.

SUMMARY OF THE RULE OR CHANGE: This proposed rule is to require LEAs to formally adopt and implement policies regarding the management and use of public funds; and to provide minimum standards, procedures and definitions for LEA policies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53E-3-501 and Section 53E-3-602 and Section 53E-3-603 and Subsection 53E-3-401(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule is being reinstated because the five-year review was not done by the deadline and the rule expired. This new rule provides no changes anticipated to generate costs. As such, this rule is not estimated to have aggregate anticipated cost or savings to state budget.
♦ LOCAL GOVERNMENTS: This rule is being reinstated because the five-year review was not done by the deadline and the rule expired. This new rule provides no changes anticipated to generate costs. As such, this rule is not estimated to have aggregate anticipated cost or savings to local governments.
♦ SMALL BUSINESSES: This rule is being reinstated because the five-year review was not done by the deadline and the rule expired. This new rule provides no changes anticipated to generate costs. As such, this rule is not estimated to have aggregate anticipated cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is being reinstated because the five-year review was not done by the deadline and the rule expired. This new rule provides no changes anticipated to generate costs. As such, this rule is not estimated to have aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities.

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

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed Rule R277-113 is not estimated to have a fiscal impact. There are 1,241 entities with a NAICS code 611110 operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are public entities e.g. Alpine Board of Education, Canyons School District, Cache High School, etc. This proposed rule is not expected to have any fiscal impact on large businesses' revenues or expenditures because it deals with fiscal and auditing policies for local education agencies and does not require any expenditures of or generate any revenues for large businesses. This rule also provides technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7550, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Angela Stallings, Deputy Superintendent of Policy

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Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0

Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This change to Rule R277-113 is not estimated to have a fiscal impact. There are 1,241 entities with a NAICS code 611110 operating in Utah according to a "Firm Find Data" search through Utah's Department of Workforce Services. Most of the entities in the list are public entities e.g. Alpine Board of Education, Canyons School District, Cache High School, etc. This proposed rule change is not expected to have any fiscal impact on large businesses' revenues or expenditures because it deals with fiscal and auditing policies for local education agencies and does not require any expenditures of or generate any revenues for large businesses.

The rule changes provide technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah and Board policies.

The Assistant Superintendent of Financial Operations at the Utah State Board of Education, Natalie Grange, has reviewed and approved this fiscal analysis.

R277. Education, Administration.
R277-113. LEA Fiscal and Auditing Policies.
R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for school boards; and

(f) Section 53E-3-603, which requires the Board to verify accounting procedures of school board for the purpose of determining the allocation of Uniform School Funds.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures and definitions for LEA policies;

(c) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices; and

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP and GAAS.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

(3) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

(4) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.

(5) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by either FASB or GASB, as applicable to the reporting entity.

(6) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(7) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

(8) "Internal controls" means a process, implemented by an entity's governing body, management, or other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Management" means:

(a) an LEA superintendent or director;

(b) a deputy or associate;

(c) a business administrator or manager; or

(d) other educational administrator or designated staff.

(11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

(13) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

(14) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).

(15) "School sponsored" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific LEA or public school, according to local board policy, and satisfies at least one of the following conditions:

(a) the activity is managed or supervised by an LEA or public school, or LEA or public school employee;

(b) the activity uses the LEA or public school's facilities, equipment, or other school resources; or

(c) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or minimum school program dollars.

(16) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

(17) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds.

(3) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(4) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Fiscal Responsibilities.

(1)(a) An LEA shall develop and implement written fiscal policies, subject to approval by the LEA's board, as required by R277-113-5.

(b) An LEA shall review the LEA's fiscal policies annually.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies enacted by the LEA specific to job function.

(3) LEA policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(4) LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this R277-113.

(6) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) An LEA governing board shall have the following responsibilities:

(a) ensure that LEA management properly develops and adheres to a sound system of documented internal controls consistent with R277-113-6.

(b) develop a process to regularly review:

(i) LEA management's budget and financial reporting practices;

(ii) financial statements;

(iii) LEA financial position; and

(iv) LEA and individuals school records;

(c) make monthly reports on the fiscal position of the LEA to the LEA board;

(d) monitor LEA contract services by:

(i) determining the appropriate scope of contracts with management companies that provide business services and student services;

(ii) managing the procurement process in compliance with Title 63G, Chapter 6a;

(iii) making recommendations to the LEA board on the results of the procurement process;

(iv) assessing the performance of management companies; and

(v) ensuring management implements sufficient internal controls over the functions of management companies;

(e) monitor procurement and use of systems and software applications for compliance with financial and student privacy laws; and

(f) monitor LEA expenditure of restricted funds to ensure compliance with applicable laws and grant terms and conditions.

(8) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

R277-113-5. LEA Audit Responsibilities.

(1) An LEA governing board shall designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1).

(2) An LEA audit committee shall:

(a) if required by Section 53G-7-402, establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) receive a report of the risk assessment process undertaken by the LEA management in collaboration with the internal audit department;

(c) monitor the internal and external audit process by:

(i) determining the appropriate scope of the independent external audit;

(ii) determining the appropriate scope of non-audit services to be performed by the independent auditor;

(iii) managing the audit procurement process in compliance with Title 63G, Chapter 6a, State Procurement Code;

(iv) making recommendations to the LEA board on the results of the procurement process;
(v) facilitating regular direct communication with independent external auditors;
(vi) receiving independent external audit report and financial statements;
(vii) ensuring management implements corrective actions;
(viii) assessing performance of the independent auditors;
(ix) reviewing disagreements between independent auditors and management;
(x) prioritizing the internal audit plan based on risk;
(xi) receiving audit reports from internal auditors, contractors providing internal audit services, and other regulatory bodies; and
(xii) providing an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if management is involved;
(d) conduct or advise the LEA board in an annual evaluation of internal audit personnel or contractors providing internal audit services;
(e) ensure that issues and exceptions reported by internal auditors, or other regulatory bodies are resolved in a timely manner;
(f) present the audit reports of external auditors, internal auditors or other regulatory bodies to the LEA board;
(g) receive reports of reviews or audits conducted by the Superintendent and ensure appropriate corrective actions is taken in a timely manner; and
(h) advise the local LEA board in the appointment of an audit director or in contracting services for internal audit services in accordance with Subsection 53G-7-402(3).
(3)(a) An LEA shall follow the internal auditing requirements of Title 53G, Chapter 7, Part 4, Internal Audits.
(b) An LEA internal audit director may not have responsibilities for management or operations of the LEA.
(c) If an LEA internal audit director contracts with a consultant, any contractual agreement with the consultant shall comply with the LEA's procurement policy.
(4) An LEA shall obtain all audits and financial reports required by Section 51-2a-201.

R277-113-6. Required LEA Fiscal Policies.
(1)(a) An LEA shall ensure that the LEA's fiscal policies address all applicable Utah Code references or Board Rules.
(b) The requirements set forth in this Section R277-113-6 are minimum requirements.
(c) An LEA may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by Board rule.
(2) LEA fiscal policies shall include the following:
(a) a cash handling policy, which shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools and shall include:
(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and
(ii) compliance with Utah Code 51-4-2(2) regarding deposits.
(b) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:
(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:
(A) credit, debit, or purchase card transactions;
(B) employee reimbursements;
(C) travel; and
(D) payroll;
(ii) establishment of internal controls and procedures to record transactions when they occur in the proper program utilizing the following codes as established by the Board approved chart of accounts:
(A) fund;
(B) function;
(C) location;
(D) program; and
(E) object or revenue code as applicable;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number;
(iv) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;
(v) compliance with:
(A) Title 63G, Chapter 6a;
(B) Board rule regarding construction and improvements; and
(C) Title IX;
(vi) requirements for LEA contracts, including:
(A) inclusion of specific scope of work language;
(B) inclusion of federal requirements;
(C) inclusion of language regarding data privacy and use, where appropriate; and
(D) legal review prior to LEA approval; and
(vii) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.
(c) a fundraising policy that:
(i) establishes procedures for LEA and public school fundraising in general;
(ii) establishes an approval process for fundraising activities for school sponsored activities;
(iii) provides for compliance with school fee and fee waiver provisions; and
(iv) includes:
(A) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;
(B) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;
(C) directives regarding the appropriate use of the LEA's tax exempt status number and issuance of charitable donation receipts;

(D) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

(E) disclosure requirements for LEA and public school employees approving, managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company;

(F) Provisions establishing compliance with:

(I) Utah Constitution, Article X, Section 2, establishing a free public education system;

(II) R277-407; and

(III) Title IX;

(v) An LEA may include procedures governing:

(A) student participation and incentives offered to students;

(B) allowable types of fundraising activities; and

(C) participation in school sponsored activities by volunteer or outside organizations;

(d) an LEA donation and gift policy that includes:

(i) an acceptance and approval process for:

(A) monetary donations;

(B) donations and gifts with donor restrictions;

(C) donations of gifts, goods, materials, or equipment; and

(D) donation of funds or items designated for construction or improvements of facilities;

(ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation receipts;

(iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;

(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(viii) compliance with:

(A) Title 63G, Chapter 6a;

(B) state law and Board rule regarding construction and improvements;

(C) IRS regulations and tax deductible directives; and

(D) Title IX;

(ix) procedures for:

(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;

(B) recognition of donors; or

(C) granting naming rights; and

(e) an LEA Financial Reporting policy, which shall include the following:

(i) a requirement that the LEA shall ensure financial reporting in accordance with GAAP and audits of LEA financial reporting in accordance with GAAS;

(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and

(B) if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and

(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.

(3) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:

(a) budgeting;

(b) financial accounting, including a chart of accounts required for an LEA;

(c) student membership and attendance accounting;

(d) indirect costs and proration;

(e) financial audits;

(f) statistical audits; and

(g) compliance and performance audits.

R277-113-7. School Sponsored Activities.

(1)(a) If an activity, fundraising event, clinic, club, camp, or activity does not meet the definition of school sponsored and is organized by a third party, then the requirements of Subsection R277-113-4(11) do not apply.

(b) All transactions pertaining to nonschool sponsored events shall be conducted at arm's length.

(c) Revenues and expenditures from nonschool sponsored events may not be commingled with public funds.

(2) For nonschool sponsored events, funds may only be managed or held by a public school employee consistent with Rule R277-107.

(3) The definition of school sponsored and requirements of Subsection R277-113-4(11) do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53G-7-704 through 53G-7-707.

(4) An LEA or individual public school shall comply with the following regarding school and nonschool sponsored activities:

(a) An LEA may establish LEA specific rules or polices designating categories of school sponsored activities or groups and establishing LEA policy regarding use of facilities or LEA resources.

(b) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(i) An agreement under Subsection (4)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds.

(ii) An LEA should consult with the LEA's insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(c) An LEA shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs,

activities, sports, classes or programs to determine if the activities are school sponsored;

(d) An LEA shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are classified and processed as public funds;

(e) An LEA shall maintain adequate records to verify that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by Section R277-113-5;

(f) An LEA shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by Section R277-113-5; and

(g) An LEA shall:

(i) make records of activities available to parents, students, and donors;

(ii) maintain records in sufficient detail to track individual contributions and expenditures, as well as overall financial outcome.

(iii) restrict access to records as required by state or federal law.

R277-113-8. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following state laws and Board Rules:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53G, Chapter 7, Fees and Textbooks;

(h) Section 53A-4-205, Public Education Foundations;

(i) Title 53G, Chapter 7, Part 7, Student Clubs Act;

(j) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(k) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(l) Subsection 51-7-3(26), Definition of Public Funds;

(m) Title 53G, Chapter 7, Part 4, Internal Audits;

(n) Rule R277-407, School Fees;

(o) Rule R277-107, Educational Services Outside of Educator's Regular Employment;

(p) Rule R277-515, Utah Educator Standards;

(q) Rule R277-605, Coaching Standards and Athletic Clinics.

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee
Date of Enactment or Last Substantive Amendment: 2018
Authorizing, and Implemented, or Interpreted Law: Art X, Sec 3; 53E-3-401(4); 53E-3-501(1)(e)

Health, Administration
R380-40
Local Health Department Minimum Performance Standards

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42863
FILED: 04/30/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment makes changes in the local health department (LHD) administration portion. Also, adds additional standards/requirements to be followed.

SUMMARY OF THE RULE OR CHANGE: These changes update requirements for counties that withdraw from a multi-district LHD. The new Subsection R380-40-6(10) includes the authorizing statutes (Sections 26A-1-122 and 26A-1-115, and Rule R380-50) and the requirement of the withdrawing county to demonstrate to the Department of Health (Department) that it can meet the minimum performance standards set out in this rule. Subsection R380-40-6(10)(a) addresses the funding requirements of the withdrawing LHD which must have enough revenue in the county's budget at the time of the withdrawal to employ specific full-time employees. In Subsection R380-40-6(10)(a)(i), the specific employees to be employed full time within the LHD are: in Subsection R380-40-6(10)(a)(i)(A), a health officer who meets qualifications in Section R380-40-5; in Subsection R380-40-6(10)(a)(i)(B), a registered nurse who meets the qualifications in Subsection R380-40-6(4); in Subsection R380-40-6(10)(a)(i)(C), an environmental health scientist who meets the qualifications Subsection R380-40-6(6); and in Subsection R380-40-6(10)(a)(i)(D), a business manager who has experience in budget preparation and tracking, accounts receivable, accounts payable, purchasing, and if not provided to the new LHD by the county, human resources, including recruitment, hiring, and termination within a merit system. The new Subsection R380-40-6(10)(a)(ii) assures that physician oversight under Subsection R380-40-5(1)(c) can be met. The new Subsection R380-40-6(10)(a)(iii) provides the following staff on either a part-time or full-time basis: in Subsection R380-40-6(10)(a)(iii)(A), a health education specialist who meets the qualifications in Subsection R380-40-6(5); and in Subsection R380-40-6(10)(a)(iii)(B), an individual with epidemiology experience who meets the qualifications in Subsection R380-40-6(7). The new

Subsection R380-40-6(10)(b) assures business operations support to include at a minimum budget/finance and human resources. The new Subsection R380-40-6(10)(c) provides, equip, and maintain suitable offices, facilities, and infrastructure as required in Subsection 26A-1-115(2). The new Subsection R380-40-6(10)(d) adds commitment and ability to continue funding the LHD with revenue from county and local funding sources at an amount not less than the amount needed for Subsection R380-40-6(10)(a). The new Subsection R380-40-6(10)(e) adopts a county ordinance to create and maintain a local board of health and a LHD charged with the responsibilities and duties outlined in Sections 26A-1-101 through 26A-1-127. The new Subsection R380-40-6(10)(f) adds a commitment from the county attorney to serve as the legal advisor to the LHD as derived in Section 26A-1-120. The new Subsection R380-40-6(10)(g) adds commitment from emergency response entities to work with the county health department as outlined in Subsections R380-40-9(1)(a), (b), (c), (d), and (e). The new Subsection R380-40-6(10)(h), adds the availability of laboratory services as outlined in Section R380-40-10.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26A-1-114 and Section 26A-1-115 and Sections 26A-1-120 through 26A-1-127 and Subsection 26A-1-106(1)(c)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes in the rule are not expected to result in new costs or savings to the state budget.
♦ LOCAL GOVERNMENTS: These changes in the rule are not expected to result in new costs or savings to local governments, with the exception of any county withdrawing from a multi-district LHD.
♦ SMALL BUSINESSES: These changes are not expected to result in any costs or savings to small businesses because this rule does not contain provisions that apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes are not expected to result in costs or savings to persons other than businesses or local governments other than as described above for LHDs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes should not result in compliance costs for any persons with the possible exception of a LHD or a county that operates a LHD. The Department believes that any costs for a LHD to comply should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These proposed amendments update requirements for counties withdrawing from multi-district LHDs. Withdrawing counties must show that they can meet LHD minimum performance standards, including employment of key personnel through county revenue. There is no fiscal impact on existing business of LHDs except for those counties withdrawing from multi-county LHDs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tamara Hampton by phone at 801-538-6622, by FAX at 801-538-6306, or by Internet E-mail at thampton@utah.gov or mail at PO Box 141000, Salt Lake City, UT 84114-1000

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**

Net Fiscal Benefits:	$0	$0	$0

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

The regulatory impact for this rule amendment cannot be estimated, as the funding is contingent on the state budget and allocation from the state legislature and Executive Appropriations Committee.

Appendix 2: Regulatory Impact to Non-Small Businesses
There is no regulatory impact to non-small business because this rule does not apply to them. The only impact would be to the counties, and local health departments in Utah.

The director of the Utah Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis

R380. Health, Administration.
R380-40. Local Health Department Minimum Performance Standards.
R380-40-1. Authority.

This rule is promulgated as required by Section 26A-1-106(1)(c). The minimum performance standards apply to all local health department services, regardless of funding sources.

R380-40-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "District" means the area and population served by a local health department.

(3) "Evidence-based services" are based on evidence-based practices. Evidence-based practices include interventions, programs, strategies, policies, procedures, processes or activities that have been chosen based on evidence that they improve health outcomes. Evidence-based practices indicate a continuum of practices and can include emerging, promising and best practices.

(4) "Minimum performance standards" means the minimum duties performed by local health departments for public health administration, personal and population health, environmental health, and emergency preparedness in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Section 26A-1-106(1)(c).

(5) "primary care specialty" means pediatrics, internal medicine, family medicine, or obstetrics and gynecology.

R380-40-3. Compliance.

The local health department and the department shall monitor compliance with minimum performance standards.

R380-40-4. Corrective Action.

(1) Except as provided in Subsection (3), if the department has cause to believe that a local health department is out of compliance with minimum performance standards the department shall provide a preliminary assessment to the local health officer that identifies the suspected areas of noncompliance. The local health officer shall respond to each of the areas identified in the preliminary assessment within 30 days of receipt.

(2) After review of the local health officer's response, if the department determines that the local health department is out of compliance with the minimum performance standards and has not provided a satisfactory response, the department shall notify the local board of health and the local health officer in writing of its findings and establish a specific time frame for the correction of each area of noncompliance.

(3) The department shall notify the local board of health and the local health officer if the department has cause to believe that noncompliance with minimum performance standards represents an imminent danger to the safety or health of the people of the State or the district.

(4) The local board of health shall submit a written corrective action plan that is satisfactory to the department. At a minimum, the corrective action plan must include the following: date of report, areas of noncompliance, corrective actions, responsible individual, and dates of plan implementation and completion.

R380-40-5. Local Health Officers.

(1)(a) A local health officer who is a physician shall:

(i) be a graduate of a regularly chartered and legally constituted school of medicine or osteopathy;

(ii) be licensed to practice medicine in the state of Utah; and

(iii) be board certified in preventive medicine or in a primary care specialty.

(b) A local health officer who is not a physician shall:

(i) have successfully completed a master's degree in public health, nursing or other health discipline related to public health, public administration, or business administration from an accredited school; and

(ii) have at least five years of professional full-time experience in the practice of public health, of which at least three years were in a senior administrative capacity.

(c) If the local health officer is not a physician, the local health department shall contract with or employ a physician that is:

(i) residing in Utah and licensed to practice medicine in the state;

(ii) competent and experienced in a primary care specialty medical care field;

(iii) board certified in preventive medicine or in a primary care specialty;

(iv) able to supervise and oversee clinical services delivered within the local health department, including the approval of all clinical protocols, standing orders, and prescriptions issued within the public health system as described in Section 58-17b-620; and

(v) able to review policies and procedures addressing human disease outbreaks of public health importance including emergency procedures authorized under 58-1-307(6), (7), and (8).

(d) The Executive Director may grant an exception to the requirements for a local health officer who was in the position before February 1, 2016.

(2) The local health officer shall promote and protect the health and wellness of the people within the district to include the following activities;

(a) function as the executive and administrative officer;

(b) report to and receive policy direction from the local board of health;

(c) coordinate public health services in the district;

(d) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;

(e) direct the investigation and control of diseases and conditions affecting public health;

(f) be responsible for hiring, terminating, supervising, and evaluating all local health department employees;

(g) oversee proposed budget preparation;

(h) present the budget to the board of health for review and approval;

(i) develop and propose policies for board consideration;

(j) implement policies of the local board of health;

(k) advise the department with regard to policy development as those policies impact the mission, purpose, and capacity of the local health department;

(l) ensure that available data on health status and health problems of the district are reviewed regularly including

(i) a report to the board of health at least annually, and

(ii) an assessment that includes community input at least every five years;

(m) ensure that information about health and health hazards is disseminated as appropriate to protect the health of people in the district; and

(n) perform other duties as assigned by the local board of health.

(3) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals, outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.

(4) The local health officer shall ensure that fiscal management procedures are developed, implemented and maintained in accordance with federal, state, and local government requirements.

(5) Consistent with federal and state laws and local ordinances and policies, the local health officer shall ensure:

(a) that employees are recruited, hired, terminated, classified, trained, and compensated in accordance with relevant merit principles, federal civil rights requirements, and laws of general applicability, and that their qualifications are commensurate with job responsibilities;

(b) the orientation of all new employees to the local health department and its personnel policies;

(c) the maintenance of a personnel system that includes an accurate, current, and complete personnel record for each local health department employee;

(d) the verification of all current licensure and certification requirements;

(e) continued education and training for all employees commensurate with job responsibilities;

(f) that each employee receives an annual performance evaluation, based upon a job description and written performance expectations for each employee.

(6) A local health officer or designee who is a physician or osteopath licensed to practice medicine in Utah shall supervise and be accountable for medical practice conducted by local health department employees. If the local health officer is not a physician or osteopath licensed in Utah, he shall appoint a medical director licensed to practice medicine or osteopathy in Utah to supervise and be accountable for medical practice conducted by local health department employees.

R380-40-6. Local Health Department Administration.

(1) Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

(2) In addition to the duties outlined in 26A-1-109 and 26A-1-110, the local board of health shall:

(a) establish local health department policies;

(b) adopt an annual budget;

(c) monitor revenue and expenditures;

(d) oversee compliance with minimum performance standards;

(e) provide for planning as defined in R380-40-5(3);

(f) periodically, but at least annually, evaluate the performance of the local health officer; and

(g) report at least annually to the county governing body or bodies of the district served by the local health department regarding health issues and the health status of residents of the district.

(3) Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit or accept responsibility for findings in the audit that apply to the local health department.

(4) Each local health department shall employ a registered nurse with education, experience, and Utah licensure consistent with the position requirements to supervise, evaluate, and be accountable for nursing practice conducted by local health department nurses in order to provide quality public health nursing service.

(5) Each local health department shall employ a certified health education specialist or other qualified person with education, experience, or a combination of education and experience resulting in comparable expertise to direct health education and promotion activities.

(6) Each local health department shall employ an environmental health scientist registered in Utah with education and experience consistent with the position requirements to supervise, evaluate, and be accountable for environmental health activities in order to protect and promote public health and safety and protect the environment.

(7) Each local health department shall employ an individual with training and experience in epidemiology to conduct and oversee epidemiology activities conducted by the local health department.

(8)[~~(a)~~] Programs provided by local health departments shall be developed, directed, and organized in response to community needs; delivered and controlled in accordance with approved budget; and evaluated for effectiveness and impact.

(9)[~~(b)~~] Each local health department shall provide all public health services in compliance with federal, state, and local laws, regulations, rules, policies and procedures; and accepted standards of public health, medical and nursing practice.

(10) If a county withdraws from a multi-district local health department in accordance with Section 26A-1-122, the withdrawing county must demonstrate to the department that it can meet the minimum performance standards set out in this rule through the use of county and local funding sources in order to enter into a contract with the department for allocation state funds pursuant to Section 26A-1-

115 and R380-50. Specifically, the county shall demonstrate to the department it:

(a) has the revenue within the county budget at the time the local health department begins operation to:

(i) employ the following full time employees:

(A) a health officer who meets the qualifications in R380-40-5;

(B) a registered nurse who meets the qualifications in subsection (4);

(c) an environmental health scientist who meets the qualifications in subsection (6); and

(D) a business manager who has experience in budget preparation and tracking, accounts receivable, accounts payable, purchasing, and if not provided to the new local health department by a county, human resources, including recruitment, hiring, and termination within a merit system.

(ii) assure the requirement for physician oversight in R380-40-5(1)(c) can be met;

(iii) employ the following additional staff on either a part-time or full-time basis:

(A) a health education on specialist who meets the qualifications in subsection (5);

(B) an individual with epidemiology experience who meets the qualifications in subsection (7);

(b) assure business operations support to include a minimum budget/finance and human resources;

(c) provide, equip, and maintain suitable offices, facilities, and infrastructure as required in Section 26A-1-115(2);

(d) has the commitment and ability to continue funding the health department with revenue from county and local funding sources at an amount not less than the amount needed for (a) above;

(e) has adopted a county ordinance to create and maintain a local board of health and health department charged with the responsibilities and duties outlined in Section 26A-1-101 through 26A-1-127;

(f) has a commitment from the county attorney to serve as the legal advisor to the health department as derived in 26A-1-120;

(g) has a commitment from emergency response entities to work with the local health department as outlined in R380-40-9(1)(a), (b), (c), (d), and (e); and

(h) has the availability of laboratory services as outlined in R380-40-10.

R380-40-7. Local Health Department Personal and Population Health Services.

(1) Each local health department shall provide health education and health promotion services to include: conducting community health assessments, identifying leading causes of disease, death, disability and poor health; and implementing evidence-based services to address the identified priorities.

(2) Each local health department shall provide evidence-based communicable disease prevention and control services to include: reporting, surveillance, assessment, epidemiological investigation, and appropriate control measures as defined in State disease plans for reportable communicable diseases and other communicable diseases of public health concern.

(3) Each local health department shall ensure health services by assessing the availability of health-related services and health providers in local communities; identifying gaps and barriers in services; convening or participating with community partners to improve community health systems; and providing services identified as priorities by the local assessment and planning process if approved by the local board of health.

(4) Each local health department shall provide epidemiology services including surveillance for reportable conditions, tracking occurrence of conditions affecting the health of communities, and obtaining or preparing epidemiologic data to guide prioritization of problems, and development and evaluation of prevention and control programs.

(5) Each local health department designated as a local registrar of vital statistics shall ensure the registration of appropriate certificates for all live births, deaths, and fetal deaths that occur in the registration area, as required by Utah Code Annotated Section 26-2.

(6) Each local health department shall provide evidence-based services as guided by local community assessment and planning to include:

(a) maternal and child health services,

(b) injury control services; and

(c) chronic disease control services.

R380-40-8. Local Health Department Environmental Health Programs.

(1) Each local health department shall ensure that there is a program including the maintenance of an inventory of regulated entities or complaints for:

(a) food safety consistent with R392-100, R392-101, R392-103, R392-104, and R392-110; and;

(b) schools consistent with R392-200;

(c) recreation camps consistent with R392-300;

(d) recreational vehicle parks consistent with R392-301;

(e) public pools consistent with R392-302 and R392-303;

(f) temporary mass gatherings consistent with R392-400;

(g) roadway rest stops consistent with R392-401;

(h) mobile home parks consistent with R392-402;

(i) labor camps consistent with R392-501;

(j) hotels, motels and resorts consistent with R392-502;

(k) indoor clean air consistent with Section 26-38 and R392-510;

(l) illegal drug operations decontamination consistent with R392-600;

(m) indoor tanning beds consistent with R392-700; and

(n) investigation of complaints about public health hazards, including vector control, to include inspections including corrective actions and an information system that documents the process of receiving, investigating and the final disposition of complaints.

(2) Each local health department shall develop, implement, and maintain environmental health programs to meet the special or unique needs of its community as determined by local or state needs assessment and the local board of health.

R380-40-9. Local Health Department Public Health Emergency Preparedness.

(1) Each local health department shall conduct public health emergency preparedness efforts.

(a) conduct, or coordinate with emergency management agencies in the district to conduct, a community public health, medical, mental, and behavioral health hazard and risk assessment that

considers populations with special needs to influence prioritization of public health emergency preparedness efforts;

(b) establish partnerships with volunteers, emergency response agencies, and other community organizations involved in emergency response;

(c) establish Memorandums of Agreement with response partners for assistance in emergency response;

(d) identify public health roles and responsibilities in local emergency response;

(e) function as the lead agency for Emergency Support Function #8---Public Health and Medical Services;

(f) maintain an all-hazards public health emergency operations plan that shall include priorities from hazard and risk assessment in R380-40-9(1)(a); hazard-specific response information for an infectious disease outbreak; and protocols or guidelines for dispensing of medical countermeasures, public health emergency messaging, non-pharmaceutical interventions, mass fatality response and requesting additional resources;

(g) maintain a continuity of operations plan that shall include employee notification, lines of authority and succession, and prioritized local health department functions;

(h) annually test public health preparedness through an emergency response drill or exercise;

(i) ensure access to and annually test emergency response communications equipment and systems that will be used in public health emergency response;

(j) the local health officer and at least one other employee shall complete FEMA ICS-100, ICS-200, ICS-300, ICS-400, IS-700, and IS-800 courses.

R380-40-10. General Performance Standards for Local Health Department Laboratory Services.

Each local health department shall ensure the availability of laboratory capacity to support public health programs by maintaining an on-site laboratory, through agreements with the Utah Public Health Laboratory, or by agreements or contracts with private laboratories to conduct needed tests in a timely manner.

KEY: local health departments, performance standards
Date of Enactment or Last Substantive Amendment: [~~March 2, 2016~~]2018
Notice of Continuation: March 6, 2015
Authorizing, and Implemented or Interpreted Law: 26A-1-106(1)(c)

Health, Administration
R380-50
Local Health Department Funding Allocation Formula

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42852
FILED: 04/26/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments change the funding allocation formula used to distribute funds to the state local health departments (LHD).

SUMMARY OF THE RULE OR CHANGE: Definitions were updated to include "Multi-County Factor"; further define "Funds"; include "Multi-County Health department"; and "Participating local health department". These changes also removed "Contract"; "Rural Community"; and "Total Poverty Population" definitions. Section R380-50-3-2 was changed to no longer provide a specified dollar amount for each LHD. The Department of Health (Department) adopts a formula pursuant to Section 26A-1-116 for reallocating any increases or decreases to LHDs. In Subsection R380-50-3-2(a), there will be a minimum share divided into equal parts. In Subsection R380-50-3-2(b), a population factor will be utilized according to the most current estimate from the Governor's Office of Management and Budget. In Subsection R380-50-3-2(c), Multi-County Factor is expanded upon. In Subsection R380-50-3-2(d), the Department requirements if the formula needs to be altered; and in Subsection R380-50-3-2(e), Governance Committee right in the cases where total program funding exceeds $500,000.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26A-1-116 and Subsection 26A-1-122(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes in the rule are not expected to result in any new costs or savings to the state budget.
♦ LOCAL GOVERNMENTS: These changes in the rule are not expected to result in any new costs or savings to local governments, with the exception if any county withdraws from a multi-district LHD.
♦ SMALL BUSINESSES: These changes are not expected to result in any costs or savings to small businesses because this rule does not contain provisions that apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes are not expected to result in any costs or savings to businesses, individuals, or local governments other than as described above for LHDs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule changes should not result in compliance costs for any persons with the possible exception of a LHD or a county that operates a LHD. The Department believes that any costs for a LHD to comply should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments propose a significant change to the procedures for the allocation of funds to LHDs including a

provision addressing instances when a county withdraws from a multi-county LHD. There is no fiscal impact on businesses. The regulatory impact for this rule cannot be estimated, as the funding is contingent on the state budget and allocation from the state legislature and Executive Appropriations Committee.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tamara Hampton by phone at 801-538-6622, by FAX at 801-538-6306, or by Internet E-mail at thampton@utah.gov or mail at PO Box 141000, Salt Lake City, UT 84114-1000

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

There is no regulatory impact to non-small business because the rule does not apply to them. The only impact would be to the counties, and local health departments in Utah.

The Executive Director of the Utah Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

R380. Health, Administration.
R380-50. Local Health Department Funding Allocation Formula.
R380-50-1. Authority and Purpose.

(1) This rule is being promulgated under the authority of Section 26A-1-116, which directs the Utah Department of Health to establish by rule a formula for allocating funds by contract to local health departments.

(2) This rule specifies the formula for allocating state-appropriated funds to local health departments by contract.

R380-50-2. Definitions.

[~~(1) "Contract" means the Public Health Services Contract between the Utah Department of Health and the local health departments through which state block grant funds are distributed.~~

~~]~~([~~2~~]1) [~~"District Incentive"~~]"Multi-county Factor" means funds allocated to local health departments to encourage them to form and maintain multi-county health departments.

([~~3~~]2) "Funds" means the State General Block Funds Maternal and Child Health Block grant funds, Preventive Block grant funds, immunization funds, bioterrorism/emergency preparedness and response funds, and tobacco funds, allocated by the Legislature to the Utah Department of Health for distribution to all participating local health departments by contract.

([~~4~~]3) "Local Health Department" means a local health department established under Section 26A-1-102(5).

(4) "Multi-county Health Department" means a local health department that is comprised of two or more contiguous counties as defined in Section 26A-1-102(7).

(5) "Participating local health department" means a local health department that accepts funds by contract from the Department.

[~~(5) "Rural County" means a county with a population of less than 100 persons per square mile.~~

~~(6) "Total Poverty Population" means the population in a county that is living below the poverty level established by the United States Government Census Bureau reported by Utah Job Service.~~]

([~~7~~]6) "Total State Population" means the population figures by county as provided by the State Office of Planning and Budget.

R380-50-3. Allocation Procedures.

(1) The amount of funds to be allocated between the department and local health departments shall be determined by the Governance Committee as described in Section 26-1-4(3).

([~~1~~]2) By a three-fourths vote of its members, the Utah Association of Local Health Officers may, in cooperation with and subject to the approval of the Department of Health, allocate a portion of the funds as necessary to support [~~basic~~]public health programs within every participating local health department [~~that benefit~~]and are available to all eligible residents of the state. The Department finds that population is not the sole relevant factor in determining need.

[~~(2) As of July 1, 2008 each local health department is receiving the following base line funding, which shall remain the same unless new funding is received or cuts are implemented:~~

~~Bear River -- $227,277.00~~
~~Central -- $294,638.00~~
~~Davis -- $132,480.00~~
~~Salt Lake -- $451,388.00~~
~~Southeast -- $271,595.00~~
~~Southwest -- $288,966.00~~
~~Summit -- $60,002.00~~
~~Tooele -- $95,180.00~~
~~Tri-County -- $202,128.00~~
~~Utah -- $227,128.00~~
~~Wasatch -- $57,552.00~~
~~Weber/Morgan -- $188,754.00~~

~~]~~](3) The Department adopts the following formula pursuant to Section 26A-1-116 for reallocating to local health departments any increases or decreases in funds[~~ing beyond the amounts reflected in the base line figures in R380-5-3(2)~~].

(a) Minimum share. Thirty-two[~~Twenty~~] percent of the funds is divided into [~~twelve~~]equal shares for each participating local health department.

[~~(b) Rural county and District Incentive Factor. Twenty percent divided among the local health departments with at least one rural county according to the following percentages, however if the number of rural counties within the local health department's boundary changes, the formula will be renegotiated:~~

~~(i) rural single county local health department, currently Summit, Tooele and Wasatch counties -- 1.45%~~
~~(ii) Multi county local health department with one rural county, currently Weber/Morgan -- 4.35%~~
~~(iii) Multi county local health department with three rural counties, currently Bear River and Tri-County -- 13.04%~~
~~(iv) Multi county local health department with four rural counties, currently Southeast -- 17.39%~~
~~(v) Multi county local health department with five rural counties, currently Southwest -- 21.74%~~
~~(vi) Multi county local health department with six rural counties, currently Central -- 26.09%~~

~~]~~](b) Population Factor: Fifty[~~Forty~~] percent of the funds are divided among the local health departments based on the percentage of the total state population living within the geographical boundaries of the local health department according to the most current estimate from the Governor's Office of Management[~~Planning~~] and Budget. At a minimum this factor will be evaluated after the official Census of the Population is released and four years after the official census is released.

[~~(c). Square Mile Factor: Twenty percent divided among the local health departments according to the percentage of the total square miles in the state lying within the geographical jurisdiction of each local health department.~~](c) Multi-county Factor: Eighteen percent of the funds are divided among multi-county health departments as follows:

(i) the multi-county factor is made up of two equal parts:

(aa) Number of counties: half of the multi-county dollar amount, divided by the total number of counties that make up all the multi-county health departments. The number is multiplied by the number of counties in each multi-county health department.

(bb) Population: each multi-county health department's population (based upon population figures provided by the Governor's Office of Management and Budget), divided by the total population of all the counties that make up all the multicounty health departments. The number (percent) is multiplied by half of the multi-county dollar amount.

(d) The department may, after consulting with the Governance Committee, alter the formula to address documented need established by valid and accepted data in one or more local health department jurisdictions.

(i) At no time can a local health department receive more than ten times the per capita amount calculated under this formula than any other local health department.

(e) The Governance Committee may include future funds in the funding formula in cases where the total program funding exceeds $500,000.

R380-50-4. Exceptions.

(1) If one or more counties of a multi-county health department withdraw from the multi-county health department pursuant to Section 26A-1-122(2), the funds allocated to the original multi-county health department under the formula specified in Section 26A-1-116, will be reallocated among the counties that made up that original multi-county health department. Funds allocated to other local health departments will not be considered for reallocation unless the entire formula is reconsidered.

(2) The Department shall assist in this effort to assure an appropriate reallocation of funds.

(3) The funding formula will be reconsidered at an appropriate time that assures the integrity of the statewide public health system with no additional interruption to statewide public health efforts.

KEY: health, local governments, funding formula
Date of Enactment or Last Substantive Amendment: [~~October 30, 2008~~]2018
Notice of Continuation: November 2, 2017
Authorizing, and Implemented or Interpreted Law: 26A-1-116; 26A-1-122(A)

Health, Disease Control and Prevention, Health Promotion
R384-324
Tobacco Retailer Permit Process

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 42870
FILED: 05/01/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to create a permitting process by which local health departments will issue permits to general tobacco retailers, and retail tobacco specialty businesses for the sale, marketing, or distribution of tobacco products.

SUMMARY OF THE RULE OR CHANGE: This proposed rule creates the process local health departments (LHDs) will use to issue permits to general tobacco retailers, as well as retail tobacco specialty businesses that wish to sell, market, or distribute tobacco products in the state of Utah. This process includes submitting an application with all pertinent business information and paying a permitting fee. Permits must be renewed every two years for general tobacco retailers and yearly for retail tobacco specialty businesses. Any retail tobacco specialty business that is applying for a permit for the first time, or a general tobacco retailer that has changed their business model to be a retail tobacco specialty business, must complete a plan review to accompany their application certifying that they meet the zoning requirements in place for a retail tobacco specialty business.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Subsection 26-1-30(4) and Subsection 26-62-202(6)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no costs or savings to the state budget associated with this rule.

♦ LOCAL GOVERNMENTS: There will be costs to local governments associated with this rule. Currently, LHDs do not permit general tobacco retailers or retail tobacco specialty businesses. There will be costs to LHDs to create the infrastructure necessary to issues permits and process payments. There will also be staff time associated with issuing permits, as well as review plan reviews submitted by retail tobacco specialty businesses. LHDs will collect nominal fees associated with the permit and the plan review which will help offset some of their costs. The state Department of Health (Department) does not expect that there will be a cost savings to local governments as a result of this rule as revenue generated from the permit fee will not offset the costs of enforcing the permit. It is estimated that LHDs will collect approximately $92,940 in fees in FY19 and approximately $3,060 in fees in FY20. FY19: These numbers are approximates based off of the following math: 1,630 General Tobacco Retailers x $30 permit fee in FY19 = $50,100. 153 Retail Tobacco Specialty Stores x $30 permit fee + a $250 plan review fee (153 x 250 = $38,250) = $42,840. Together it totals: $50,100 + $42,840 = $92,940. FY20: It is estimated that in FY20 LHDs will collect approximately $3,060 in fees. These numbers are approximates and based off of the following math: 1,603 General Tobacco Retailers x $0 = $0. 153 Retail Tobacco Specialty Stores x $20= $3,060. Together it totals: $0 + $3,060= $3,060. Because the LHDs vary so widely in their staffing resources, current infrastructure to issue permits and collect payments, etc., the cost to local governments from this rule is inestimable. It is unknown what infrastructure will need to be in place for each LHD to carry out their permitting processes. It is also unknown how much staff time and which staff will be overseeing this process, so the data to calculate exact costs is not available. The Department estimates there will be a cost savings to local municipalities that no longer have to issue permits to retail tobacco specialty businesses and municipalities that are no longer required to enforce zoning laws for retail tobacco specialty businesses.

♦ SMALL BUSINESSES: The Department anticipates that there will be a cost to small businesses that are classified as retail tobacco specialty businesses. Currently, retail tobacco specialty businesses pay a $30 license renewal fee to the Utah State Tax Commission every 3 years for a license that allows them to sell tobacco in the state of Utah. They will still be required to obtain that license but it will no longer have a fee associated with it so this number ($1,020) has been subtracted from their total cost increase. Instead, they will be required to pay a one-time $250 plan review fee, a $30 permit fee for their original permit, and a $20 renewal fee to the LHD in which their business is located. The Department estimates the increase in costs to be approximately $41,820 for the first year and $3,060 per year every year after that. The Department anticipates that there will be a cost to general tobacco retailers of approximately $38,966 the first year and $33,400 every other year after that. Currently, every 3 years general tobacco retailers are required to pay a $30 license renewal fee to the Utah State Tax Commission for a license that allows them to sell tobacco in the state of Utah. They will still be required to obtain a license from the Tax Commission but it will no longer have a fee associated with it so this number ($11,133.33) has been subtracted from their total cost increase. Instead, they will be required to pay a $30 permit fee for their original permit and a $20 renewal fee every 2 years to the LHD in which their business is located. The Department estimates the increase in costs to be approximately $38,966.67 for the first year and $0 the year after that because they only renew their permit every other year.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated fiscal impact to persons other than small businesses, businesses, or local government entities resulting from this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department anticipates that the cost of compliance for a general tobacco retailer will be $30 for their initial permit and then $20 every 2 years to renew their permit. There are 1,670 general tobacco retailers for a total compliance cost of $33,400 every other year. The cost of compliance for a retail tobacco specialty business will be $30 annually for their permit, plus $250 for a one-time plan review fee. There are 153 retail tobacco specialty businesses for a total compliance cost of $3,060 every year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule establishes the permitting process by which LHDs will issue permits to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing, and distribution of tobacco products. A general tobacco retailer will renew its permit every two years and a retail tobacco specialty business will renew its permit every year. Depending on the type of small business, the Department anticipates costs to small businesses ranging from $38,966 and $41,820 for the first year and between $3,060 and $33,400 for the second year. There will be a cost to small businesses classified as retail tobacco specialty business. The renewal fee for the current license, which is paid to the State Tax Commission, is $30 every 3 years. Permit holders will be required to maintain this license which will have no fee but also will be required to pay a one-time $250 plan review fee, a $30 permit fee for the original permit, and a $30 renewal fee to the LHD. General tobacco retailers currently pay $30 for a license renewal to the State Tax Commission. They will be required to maintain the license, without cost, but will be required to pay a $30 permit fee for the original permit, and $20 renewal fee every two years to the LHD.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Karlee Adams by phone at 801-538-6992, or by Internet E-mail at karleeadams@utah.gov or mail at PO Box 142107, Salt Lake City, UT 84114-2107

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$80,786.67	$3,060
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$80,786.67**	**$3,060**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$80,786.67	$3,060
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$80,786.67**	**$3,060**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule is not expected to have any fiscal impacts on large businesses revenues or expenditures because none of the businesses impacted by this rule are considered large businesses.

The Executive Director, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.

R384. Health, Disease Control and Prevention, Health Promotion.
R384-324. Tobacco Retailer Permit Process.
R384-324-1. Authority and Purpose.

(1) This rule is authorized by Section 26-1-5 and Subsections 26-1-30(4) and 26-62-202(6).

(2) This rule establishes the process by which local health departments issue, suspend and revoke a tobacco retail permit.

R384-324-2. Definitions.

As used in this rule:

(1) "Community location" means the same as the term is defined in Section 17-50-333 and in Section 10-8-41.6.

(2) "Department" means the Utah Department of Health, created in Section 26-1-4.

(3) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

(4) "Local health department" means the same as the term is defined in Section 26A-1-102.

(5) "Plan review" means the process by which the local health department will verify the accuracy of the information provided by retail tobacco specialty businesses through the permit application process.

(6) "Proprietor" means the owner of a retail establishment, or any other place of business which sells, markets, or distributes tobacco products.

(7) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including all areas behind the purchase counter, and including appurtenant areas used for storage.

(8) "Retail tobacco specialty business" means a commercial establishment in which:

(a) The sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or

(d) The retail space features a self-service display for tobacco products.

(9) "Self-service display" means the same as that term defined in Section 76-10-105.1.

(10) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

(11) "Tobacco product" means the same as that term defined In Section 59-14-102.

(a) Tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

(12) "Tobacco retailer" means a proprietor that is required to obtain a tax commission license and a local health department permit for the sale of tobacco.

(13) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products.

R384-324-3. Permit Process.

This permitting process is separate from and in addition to the requirement to have and maintain a valid tobacco license with the Utah State Tax Commission.

(1) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail permit issued by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

(a) A tobacco retailer that holds a tax commission license that was valid on July 1, 2018:

(i) May operate without a permit under this chapter until December 31, 2018; and

(ii) Shall obtain a permit from a local health department under this chapter before January 1, 2019.

(iii) Shall maintain a valid tax commission license.

(2) To receive a tobacco retail permit, an applicant shall:

(a) Submit an application provided by the local health department with jurisdiction over the physical location where the tobacco retailer operates or will operate;

(b) Pay all applicable fees.

(3) To submit an application for a tobacco retail permit, an applicant shall:

(a) Complete all required sections of the application and submit either online or a hard copy to the local health department.

(i) Provide information for each individual listed as a proprietor.

(1) If the proprietor is a corporation, corporate information suffices.

(a) A local individual to contact concerning the application and business must be included under business information on the application.

(ii) Provide information concerning the business, including business name, street address, mailing address, and telephone number.

(iii) Provide a copy of a valid tax commission license.

(iv) The individual completing the application must certify that the proposed retail tobacco location meets the requirements as defined in the application for a:

(1) General tobacco retailer; or

(2) Retail tobacco specialty business.

(v) Applications for a retail tobacco specialty business must include a map that demonstrates that the business is not located within:

(1) 1,000 feet of a community location; and,

(2) 600 feet of another retail tobacco specialty business; and,

(3) 600 feet of property used or zoned for agricultural or residential use.

(a) For purposes of subsection a.v., the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts.

(vi) Application for a retail tobacco specialty business must include a $250.00 plan review fee.

(1) Proprietor is responsible to notify the local health department if there is a change in their business operation requiring a

change in their business license between tobacco retail specialty business and general tobacco retailer.

(2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

(a) may not renew the permit; and

(b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.

(vii) Notwithstanding subsection a.v., a tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, before December 31, 2015, is exempt from the proximity requirements.

(viii) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, may continue to operate until December 31, 2018 so long as the business maintains a current and valid business license and tobacco tax license.

(ix) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, that desires to continue to sell tobacco products on December 31, 2018, and beyond;

(1) Must complete the application described in this section and demonstrate that the location:

(a) Meets the proximity requirements for a tobacco specialty business in subsection a.v; or,

(b) Has a business model and business layout that meets the requirements for a general tobacco retailer.

(4) Local health departments will have 30 days to issue the permit beginning on the date the local health department receives the application and payment.

(a) Local health department will provide online or hard copy receipt of payment and application submission to the proprietor at the time the local health department receives the application and payment.

(i) The receipt provided by the local health department to the proprietor will serve as a temporary operating permit, which will be valid for 30 days.

(5) General tobacco retailers and retailer tobacco specialty businesses that hold a valid tax commission license may begin applying for a local health department tobacco permit on November 1, 2018.

(a) Permit length and terms

(i) A general tobacco retailer permit is valid for two years.

(ii) A retail tobacco specialty business permit is valid for one year.

(iii) A tobacco retailer may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.

(iv) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:

(1) An application for either a general tobacco retailer or a retail tobacco specialty business as outlined above;

(2) The fee for the reinstatement of a permit; and

(3) A signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b).

(a) Until an expired permit is reinstated, a tobacco retailer with an expired permit may not:

(i) Place tobacco in public view;

(ii) Display any advertisement related to tobacco products that promotes the sale, distribution, or use of those products; or

(iii) Sell, offer for sale, or offer to exchange for any form of consideration, tobacco or tobacco products.

(iv) The permit is non-transferrable.

R384-324-4. Permit Violations.

(1) A proprietor is in violation of the permit issued under this rule if the proprietor violates:

(a) any provision of Title 26,Chapter 62;

(b) any provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

(c) any provision of Title 76, Chapter 10, Part 1;

(d) any provision of Title 76,Chapter 10, Part 16;

(e) any regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

(f) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of tobacco products.

R384-324-5. Enforcement.

In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-62-301, the Department and local health departments shall comply with the enforcement provisions found in Title 26, Chapter 62, Part 3.

KEY: tobacco, permits, tobacco retailers
Date of Last Substantive Amendment: 2018
Authorizing, and Implemented and Interpreted Law: 26-1-5; 26-1-30(4); 26-62-202(6)

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-42

Telemedicine

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42871
FILED: 05/01/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139, passed during the 2018 General Session, directs the Medicaid program to provide coverage and reimbursement for telepsychiatric consultations between a physician and a board-certified psychiatrist.

SUMMARY OF THE RULE OR CHANGE: These amendments include telepsychiatric consultations as a covered Medicaid service. It also includes a definition of "telepsychiatric consultation", and clarifies the authority under which patient records are to remain confidential.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is a total annual cost of about $12,500 to the state budget to implement telepsychiatric consultations.
♦ LOCAL GOVERNMENTS: There is no impact on local governments because they neither fund nor provide telemedicine services to Medicaid members.
♦ SMALL BUSINESSES: About 10 psychiatric providers may see a portion of $12,500 in annual revenue with the implementation of telepsychiatric consultations.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Some providers of telepsychiatric consultations may see a portion of $12,500 in revenue with the implementation of telepsychiatric consultations. Medicaid members may also see a portion of $12,500 in out-of-pocket savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because these changes can only create individual savings or business revenue.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small businesses and individual providers may see a portion of $12,500 in annual revenue as a result of these changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$12,500	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	$0	$12,500	$0
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$6,250	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$6,250	$0
Total Fiscal Benefits:	$0	$12,500	$0
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule is not expected to impact non-small businesses as it only affects individual providers and small businesses.

The Executive Director of the Department of Health, Joseph K. Miner, M.D., has reviewed and approved this fiscal analysis.

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-42. Telemedicine.
R414-42-2. Definitions.

(1) "Telemedicine" is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(2) "Authorized provider" means a provider in compliance with requirements as specified in Section I: General

Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.

(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.

(5) "Telepsychiatric consultation" means a consultation between a physician and a board-certified psychiatrist that utilizes:

(a) the health records of the patient, provided from the patient or the referring physician; and

(b) a written, evidence-based patient questionnaire.

R414-42-3. Covered Services.

Covered services may be delivered by means of telemedicine, as clinically appropriate. Services include consultation services, evaluation and management services, mental health services, [~~and~~]substance use disorder services[~~.~~], and telepsychiatric consultations.

R414-42-4. Limitations.

(1) Telemedicine encounters must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, to ensure that all patient communications and records, including recordings of telemedicine encounters, are secure and remain confidential. The provider is responsible [~~for determining whether~~]to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) Compliance with the Utah Health Information Network (UHIN) standards for telehealth must be maintained. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telemedicine.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~January 1~~], 2018
Notice of Continuation: September 17, 2013
Authorizing, and Implemented or Interpreted Law: 26-18-13

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-401-3
Assessment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42851
FILED: 04/25/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the annual assessment amounts for nursing care facilities and Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/ID) for State Fiscal Year (SFY) 2019.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of $23.04 per patient day, which is an increase from the previous $20.98 per patient day assessment, based upon projected days. In Subsection R414-401-3(2), ICFs/ID are assessed at the uniform rate of $9.71 per patient day, which is an increase from the previous $8.36 per patient day assessment, based upon projected days. These updates are based on estimates of patient days for SFY 2019 and the appropriation amounts.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These updates to the assessment rates are anticipated to be budget neutral for state general funds as it updates the collection rate based on projected days in SFY 2019 and the appropriation amount.
♦ LOCAL GOVERNMENTS: Inasmuch as swing beds are variable, it is not possible to determine the cost or savings to local hospital and swing bed facilities because there are neither sufficient nor cost effective data to make this type of determination.
♦ SMALL BUSINESSES: Small business nursing facilities will be charged an assessment of $2,251,500 in SFY 2019, and will receive a portion of $5,216,200 in federal matching funds to elevate services, upgrade facilities, and improve overall living conditions for Medicaid patients. In conjunction with a capital improvement incentive, ICFs/ID will be charged a one-time assessment of $291,000 in SFY 2019, and will receive a portion of $1,475,200 in federal funds to improve facility conditions that support an individual's right to privacy and autonomy. Both nursing facilities and ICFs/ID will see ongoing revenue, but there are neither sufficient nor cost effective data to estimate an amount.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Nursing facilities will be charged an assessment of $2,251,500 in SFY 2019, and will receive a portion of $5,216,200 in federal matching funds to elevate services, upgrade facilities, and improve overall living conditions for Medicaid patients. In conjunction with a capital improvement incentive, ICFs/ID will be charged a one-time assessment of about $291,000 in SFY 2019, and will receive a portion of $1,475,200 in federal funds to improve facility conditions that support an individual's right to privacy and autonomy. Both nursing facilities and ICFs/ID will see ongoing revenue, but there are neither sufficient nor cost effective data to estimate an amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single nursing facility will be charged an assessment based on a total charge of $2,251,500 in SFY 2019, and will receive a portion of $5,216,200 in federal matching funds to elevate services, upgrade facilities, and improve overall living conditions for Medicaid patients. In conjunction with a capital improvement incentive, a single ICF/ID will be charged a one-time assessment based on a total charge of $291,000 in SFY 2019, and will receive a portion of $1,475,200 in federal funds to improve facility conditions that support an individual's right to privacy and autonomy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Nursing facilities and ICFs/ID will be charged assessments that total about $2,542,500. These charges, however, will be matched by federal funds that total about $6,691,400 to improve the overall living conditions of Medicaid patients in these facilities.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$2,542,500	$0
Non-Small Businesses	$0	$2,542,500	$0
Other Person	$0	$2,542,500	$0
Total Fiscal Costs:	**$0**	**$2,542,500**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$6,691,400	$0
Non-Small Businesses	$0	$6,691,400	$0
Other Persons	$0	$6,691,400	$0
Total Fiscal Benefits:	**$0**	**$6,691,400**	**$0**
Net Fiscal Benefits:	$0	$6,691,400	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

88 nursing facilities will incur annual assessment costs up to $2,251,500. These facilities, however, will receive a portion of $5,216,200 in federal matching funds to improve facility services. As part of a capital improvement incentive (CII), 17 Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/ID) will see a one-time assessment cost of $291,000 to upgrade facilities and living conditions. This cost, however, will be offset by a portion of $1,475,200 in federal matching funds. Both nursing facilities and ICFs/ID will see ongoing revenue, but there are neither sufficient nor cost effective data to estimate an amount.

The Executive Director of the Department of Health, Joseph K. Miner, M.D., has reviewed and approved this fiscal analysis.

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 $[~~20.98~~]23.04 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 $[~~8.36~~]9.71 per patient day. Swing bed facilities shall be assessed the uniform rate for

nursing facilities. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

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

KEY: Medicaid, nursing facility
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~|2018]
Notice of Continuation: April 7, 2014
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

Health, Family Health and Preparedness, Emergency Medical Services
R426-8
Emergency Medical Services Ground Ambulance Rates and Charges

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42826
FILED: 04/19/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Health (Department) is required to adjust ambulance maximum rates based on licensed ambulance provider fiscal data. The data is evaluated by the Department to determine if financial trends are causing the licensed ambulance providers to be fiscally viable. Current data was used to amend ambulance rates. Rule R426-8 is amended to update ambulance rates.

SUMMARY OF THE RULE OR CHANGE: Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all EMS agencies statewide. The data collected showed emergency medical services (EMS) rates need to be increased at 3.5% so agencies statewide will have closer revenues matching expenses. Rule R426-8 needs to be amended to reflect these ground ambulance transport rate changes. Rates should be made effective on 07/01/2018 to coincide with Medicaid payment adjustments for the fiscal year.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-403

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: State budget will not be impacted as this is a user fee.
♦ LOCAL GOVERNMENTS: Local governments will be slightly impacted. The rates listed in this rule change are increased 3.5%. The licensed ambulance provider billing will increase base rates in order to offset lost collections, wages increases, and the increased equipment costs. A total benefit of $1,667,930 is anticipated for 2018.
♦ SMALL BUSINESSES: There is one small business that is a licensed ambulance provider. This proposed amendment will increase the fiscal benefit by an estimated $12,070 the first year.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are 6 non-small businesses that are licensed ambulance providers in Utah. These businesses account for an estimated 40% of the total billable ambulance patient transports per year based on reported patient transports. At the average price increase per patient transport of $40, these businesses are expected to receive $1,120,000 in increased revenues for 2018.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The total fiscal costs to other persons was an estimate based on anticipated billable ambulance patient transports using prior year numbers of 70,000 transports multiplied by the average increase of $40 per transport. The average increase is based on a fiscal analysis conducted by the Department. The fiscal analysis demonstrated a need for a 3.5% maximum base rate increase. Data was based on patient care reports submitted to the Department by the licensed ambulance providers. The other persons are the patients who may need an ambulance transport. Subsequent years (2019 and 2020) were projected as an estimate of growth in numbers of patient needing transports. The total anticipated cost for affected persons is $2,800,000 for 2018, $2,850,000 for 2019, and $2,900,000 for 2020.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Data collected from all state EMS agencies and reported in the FRGs indicates that EMS rates should be increased 3.5% so the agencies revenues will match expenses. This proposed amendment reflects the ground ambulance transport rate changes effective 07/01/2018. Licensed EMS businesses will see an increase in revenue in order to offset increased expenses as indicated in EMS FRGs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov or mail at PO Box 142004, Salt Lake City, UT 84114-2004

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Joseph Miner, MD, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$2,800,000	$2,850,000	$2,900,000
Total Fiscal Costs:	**$2,800,000**	**$2,850,000**	**$2,900,000**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$1,667,930	$1,697,690	$1,727,450
Small Businesses	$12,070	$12,310	$12,550
Non-Small Businesses	$1,120,000	$1,140,000	$1,160,000
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$2,800,000**	**$2,850,000**	**$2,900,000**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses
The total fiscal costs to other persons was an estimate based on anticipated billable ambulance patient transports using prior year numbers of 70,000 transports multiplied by the average increase of $40 per transport. The average increase is based on a fiscal analysis conducted by the Department. The fiscal analysis demonstrated a need for a 3.5% maximum base rate increase. Data was based on patient care reports submitted to the Department by the licensed ambulance providers. The other persons are the patients who may need an ambulance transport. Subsequent years (2019 and 2020) were projected as an estimate of growth in numbers of patient needing transports. The total anticipated cost for affected persons is $2,800,000 for 2018, $2,850,000 for 2019, and $2,900,000 for 2020. There are 6 non-small businesses that are licensed ambulance providers in Utah. These businesses account for an estimated 40% of the total billable ambulance patient transports per year based on reported patient transports. At the average price increase per patient transport of $40, these businesses are expected to receive $1,120,000 in increased revenues per year.

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers in the State of Utah.

R426-8-2. Ground Ambulance Transportation Revenues, Rates, and Charges.

(1) Licensed ground ambulance providers operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers, including subsidies of any type, shall not exceed ten percent of gross revenue.

(a) Licensed ground ambulance providers may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(b) A licensed ground ambulance provider may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the Department to be submitted as detailed under R426-8-2(10). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to a hospital or patient receiving facility are as follows:

(a) Ground Ambulance - [~~$746.00~~]$772.00 per transport;

(b) Advanced EMT Ground Ambulance - [~~$984.00~~]$1,018.00 per transport;

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - [~~$1,212.00~~]$1,254.00 per transport;

(d) Paramedic Ground Ambulance - [~~$1,440.00~~]$1,490.00 per transport;

(e) Ground Ambulance with Paramedic on-board - [~~$1,440.00~~]$1,490.00 per transport if:

(i) a designated Emergency Medical Service dispatch center dispatches a licensed paramedic provider to treat the individual;

(ii) the licensed paramedic provider has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a licensed ground ambulance provider who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider for services provided up to a maximum of [~~$456.00~~]$472.00 per transport.

(4) Mileage rates may be charged at a rate of $31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of $0.25 per mile may be added when diesel fuel prices exceed $5.10 per gallon, or gasoline prices exceed $4.25 per gallon as invoiced.

(5) A surcharge of $1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(6) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(a) Each patient will be assessed the transportation rate;

(b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(7) A round trip may be billed as two one-way trips. A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $22.05 per quarter hour or fraction thereof thereafter.

(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

(a) supplies shall be priced fairly and competitively with similar products in the local area;

(b) the individual does not refuse services; and

(c) the licensed ground ambulance personnel assess or treats the individual.

(9) In the event of a temporary escalation of costs, a licensed ground ambulance provider may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(10) The licensed ground ambulance provider shall file with the Department within 90 days of the end of each licensed provider's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.

(12) All licensed ground ambulance providers shall submit a written total number of patient transports for each calendar year to the Department for calculating Medicaid assessments.

(a) A written patient transport number shall be submitted within 90 days after the end of the calendar year.

(b) The submission shall include a written justification when patient transport numbers are not in agreement with patient care reports submitted to the Department as described in R426-7. Written justifications shall include a description of data reporting errors, and a plan to correct future data submission.

(c) The Department shall use submitted patient transport numbers to calculate ambulance service providers assessments as described in Utah Code Title 26-37a-104(5).

(d) Submitted patient transport numbers and justifications for patient transport numbers not in agreement with patient care report data may be evaluated, corrected, or audited by the Department. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department may proceed in accordance with Utah Code Title 26-8a-504.

KEY: emergency medical services, rates
Date of Enactment or Last Substantive Amendment: [~~July 10, 2017~~]2018
Notice of Continuation: November 10, 2015
Authorizing, and Implemented or Interpreted Law: 26-8a

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42810
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to correct a grammatical error in one definition and move information not appropriate for a definition.

SUMMARY OF THE RULE OR CHANGE: These changes correct a grammatical error in Subsection R477-1-1(84) and revises Subsection R477-1-1(109) to move information relating to how structure adjustments occur out of Rule R477-1 and into Sections R477-6-2 and R477-6-3. (EDITOR'S NOTE: The proposed amendment to Rule R477-6 in under Filing No. 42814 in this issue, May 15, 2018, of the Bulletin.)

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

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

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

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

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

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

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

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

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

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

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

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

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

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

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(41) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

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

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

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

(45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(46) Employee's Family Member: An employee's relative or household member as defined in Section 52-3-1 including[~~Spouse~~], [~~siblings,~~]step-siblings, [~~siblings-in-law, parents,~~]step-parents, [~~parents-in-law, children~~]and, step-children[~~, children-in-law, and any person living in the same household as the employee~~].

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

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

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

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

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

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

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

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

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

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

(a) safety sensitive functions:

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

(ii) directly related to law enforcement;

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

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

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

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

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

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(57) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

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

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

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(100) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

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

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

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

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

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

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

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

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

(109) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. [~~The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.~~]

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

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

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

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

(114) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

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

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

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

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

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

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: [~~August 30, 2017~~|2018]
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-15; 67-19-18

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42811
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to update and clarify language regarding supervision of relatives and household members in accordance with H.B. 133, passed during the 2018 General Session.

SUMMARY OF THE RULE OR CHANGE: These changes modify Section R477-2-8 to add a household member to the list of associated persons whom a state officer may not appoint, directly supervise, etc.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-5-201 and Section 67-19-15 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0

Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

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;

(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 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.

(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;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) 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.

(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) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) 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) 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) 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 record retention schedule.

(7) 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) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) 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 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.

R477-2-8. Public Officers Supervising a Relative or Household Member.

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) 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.

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 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: [~~August 30, 2017~~]2018
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

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42812
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify language and remove references to an obsolete tool.

SUMMARY OF THE RULE OR CHANGE: The changes revise Subsection R477-4-2(4), revise Subsection R477-4-2(6), revise Section R477-4-7, eliminate the first line of Section R477-4-13, clarify Subsection R477-4-13(6), create Section R477-4-15, and renumber the former Section R477-4-15 to Section R477-4-16.

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

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0

Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

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

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

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 [~~30~~]1560 hours per [~~week~~]fiscal year; or

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

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

(d) if the required work hours of the position meet or exceed [~~30~~]1560 hours per [~~week~~]fiscal year for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

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

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

R477-4-3. Career Service Positions.

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

(a) DHRM business practices;

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

(c) equal employment opportunity principles;

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

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

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

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

(a) reemployment of a veteran eligible under USERRA;

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

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

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

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

(f) reclassification; or

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

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

(a) All recruitment announcements shall include the following:

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

(ii) opening and closing dates.

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

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions

concurrently. Management may make appointments according to the following order:

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

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

R477-4-5. Transfer and Reassignment.

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

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

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

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

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

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

(f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-6. Rehire.

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

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

(a) Classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and

(b) Placed at or below the employee's wage at the time of retirement. Employees cannot be placed below the minimum of the established salary range of the job.

R477-4-7. Examinations.

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

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

(a) [~~a detailed position record (DPR) based upon a current job or position analysis;~~

~~(b)~~]an initial, impartial screening of the individual's qualifications;

([~~c~~]b) an impartial evaluation and results; and

([~~d~~]c) reasonable accommodation(s) for qualified individuals with disabilities.

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

R477-4-8. Hiring Lists.

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

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

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

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

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

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

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

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

R477-4-9. Job Sharing.

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

R477-4-10. Internships.

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

R477-4-11. Volunteer Experience Credit.

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

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

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

R477-4-12. Reorganization.

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

R477-4-13. Career Mobility Programs.

[~~Employees and agencies are encouraged to promote career mobility programs.~~

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

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

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

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

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

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

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

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

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

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

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

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

R477-4-14. Assimilation.

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

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

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

R477-4-15. Hiring of Administrative Law Judges

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

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

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

(2) The hiring panel shall consist of:

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

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

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

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

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

R477-4-16. Policy Exceptions.

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

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42813
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify provisions related to employee probation.

SUMMARY OF THE RULE OR CHANGE: These changes eliminate military leave from Subsection R477-5-2(2)(a) to comply with federal regulations and revise Subsection R477-5-2(4) for clarity regarding probation and career mobility assignments.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-15(5)(b)

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

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

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

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

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

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

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

R477-5-2. Probationary Period.

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

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

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

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

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

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, [~~military leave under USERRA,~~]or donated leave from an approved leave bank.

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

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

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

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

R477-5-3. Policy Exceptions.

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

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42814
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify language, correct grammar and numbering errors, and adjust severance pay provisions.

SUMMARY OF THE RULE OR CHANGE: These changes revise Subsections R477-6-2(2)(b) and R477-6-3(2)(b) for clarity, correct a rule language error at Subsection R477-6-2(3), correct a numbering error at Subsection R477-6-6(3), revise Subsection R477-6-6(10), revise Subsection R477-6-7(4) for clarity, and revise Section R477-6-11.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
♦ LOCAL GOVERNMENTS: These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.

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

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

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

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HUMAN RESOURCE MANAGEMENT
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♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

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

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

(a) Each job description shall include a salary range.

(b) Agency approved wage increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment [~~that has no budgetary impact on~~]when all [~~affected~~]agencies involved agree to resolve budgetary impacts prior to implementation; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges [~~cannot~~]may not be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments that require legislative funding. Adjustments that impact deputy directors or issues addressed in state code must be approved by GOMB.[~~GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.~~]

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact or all agencies involved agree to resolve budgetary impacts prior to implementation.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments [~~shall~~]may not be approved for cross agency jobs unless [~~the adjustment has no budgetary impact on~~] all [~~affected~~]agencies involved agree to resolve budgetary impacts prior to implementation.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

R477-6-6. Salary.

(1) Promotions.

(a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management, the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

([~~h~~]e) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

(a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

(b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

[~~(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.~~

~~(b)~~]If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

R477-6-7. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed $4,000 per pay period and $8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to $8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by the DHRM Executive Director or designee.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

R477-6-8. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage $24.03 or less shall receive $125,000 of term life insurance;

(ii) Hourly wage between $24.04 and $28.84 shall receive $150,000 of term life insurance;

(iii) Hourly wage $28.85 or higher shall receive $200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) salary at the rate of:

(i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch for schedule AC, AD, AE, AR, AS or AT employees; [~~and~~]or

(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB employees; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

R477-6-12. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~|2018]
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Human Resource Management, Administration
R477-7
Leave

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42815
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of These amendments are to add a provision to clarify requirements, add other clarifying language, and correct grammatical errors.

SUMMARY OF THE RULE OR CHANGE: These changes add Subsection R477-7-1(6) regarding minimum leave balances and renumber subsequent sections, add clarifying language in Subsection R477-7-3(1), revise punctuation in Subsection R477-7-4(2) to be consistent with federal regulations, revise Subsection R477-7-6(3) to clearly delineate between program II and III sick leave, revise Subsection R477-7-6(5)(vii) to comply with state code, correct a date in Subsection R477-7-6(7), correct a grammar error in Subsection R477-7-7(1)(b)(ii), add clarifying language and correct a grammatical error in Section R477-7-10, add clarifying language and correct a grammatical error in Subsection R477-7-11(1), correct grammar errors in Subsections R477-7-15(2) and R477-7-15(5), and revise Subsection R477-7-15(12) to comply with federal regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 39-3-1 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-6

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee shall be eligible for a leave benefit when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) Management may not require employees to maintain a minimum balance of accrued leave.

(7) An employee may not use any type of leave except military and jury leave to accrue excess hours.

([~~7~~]8) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

([~~8~~]9) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

([~~9~~]10) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(1[~~0~~]1) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Year's Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of benefits eligible state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions; or

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children[~~,~~]; or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006, but before January 4, 2014, shall be Program II sick leave hours.

(c) Sick leave hours accrued on or after January 4, 2014, shall be Program III sick leave hours, which shall have no benefit upon retirement.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of [~~health and dental insurance~~]additional medical coverage under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014; and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January [~~4~~]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) [~~personal~~]personnel decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Witness and Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Utah Code Section 39-3-2. Military leave for part-time employees shall be based on a prorated basis that is no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for [~~nonworking~~]non-working days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any [~~12 month~~]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.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 workweeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 workweeks of family and medical leave during a [~~12 month~~]12-month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to

the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

(a) be employed by the state for at least 12 months;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the [~~12 month~~]12-month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

(i) Program III sick leave;

(ii)(A) Compensatory time;

(B) Excess leave; or

(C) Annual leave;

(iii)(A) Converted sick leave;

(B) Program II sick leave; or

(C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken [~~for purposes of~~]after childbirth[~~, adoption,~~] or placement of a healthy child for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) Upon approval of an LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(4) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-20. Policy Exceptions.

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

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42816
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes are to remove obsolete provisions, correct grammar errors, add clarifying language, and add new language to comply with statute.

SUMMARY OF THE RULE OR CHANGE: These changes eliminate Subsection R477-8-6(1)(e), correct grammar errors in Subsections R477-8-10 and R477-8-12, add clarifying language to Section R477-8-12, correct a reference to another rule in Subsection R477-8-17(1), correct a grammatical error in Section R477-8-18, add Section R477-8-21 to enact provisions of H.B. 288 from the 2018 General Session, and renumber Section R477-8-22 due to the addition of Section R477-8-21.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 34A-2-114 and Section 67-19-6 and Section 67-19-6.7

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**

Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Week.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall

accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.[

~~(e) Schedule AB employees may not be compensated for compensatory time except with time off.~~]

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA [~~nonexempt~~]non-exempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special [~~one day~~]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 [~~nonworking~~]non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal period not required by federal law as implemented in Sections (4) and (5).

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1([~~9~~]10).

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current [~~one-way~~]one-way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Workers' Compensation Interference Prohibited.

(1) Agency management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Agency management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's noncompliance Utah Code Sections 34A-2 or 34A-3, or testifies or intends to testify in a workers' compensation proceeding.

R477-8-22. Policy Exceptions.

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

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~August 30, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 34A-2-114; 67-19-6; 67-19-6.7; 20A-3-103

Human Resource Management, Administration
R477-9
Employee Conduct

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42817
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these changes are to correct grammatical errors and enact provisions of an executive order.

SUMMARY OF THE RULE OR CHANGE: These changes correct grammatical errors in Subsections R477-9-1(3) and R477-9-4(7) and add Subsection R477-9-4(6) to enact the Governor's Executive Order of 03/05/2018 (Utah Exec Order No. 2018-1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7 and Utah Exec Order No. 2018-1

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0

Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(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, [~~nonpreseribed~~]non-prescribed controlled substances, and misuse of volatile substances, shall be subject to administrative action in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-202 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to administrative action under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

(1) An employee shall notify agency management in writing of outside employment. Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action.

(2) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment may not interfere with an employee's performance.

(b) Outside employment may not conflict with the interests of the agency nor the State of Utah.

(c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(3) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(4) The provisions of this rule do not apply when two or more government positions are held by the same individual, unless the personal interest of the individual is not shared by the general public.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities may not interfere with an employee's performance, the interests of the agency nor the State of Utah.

(b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; any influence, power, authority or confidential information received in that position; nor state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order, 1/26/2010, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) As modified by the Hatch Modernization Act of 2012, 5 U.S.C. Section 1502(a)(3), the federal Hatch Act restricts the political activity of state government employees whose salary is 100% funded by federal loans or grants.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(a) The agency head shall consult with DHRM.

(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(c) Employees in violation of section R477-9-4(1)(b) may be disciplined up to dismissal.

(3) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(a) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(4) Any career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office.

(5) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(6) This rule incorporates by reference the Governor's Executive Order of March 5, 2018, regarding communications with legislators by state employees.

(7) Decisions regarding employment, promotion, demotion, [~~or~~] dismissal, or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Reporting Protections.

(1) Under Section 67-21-3, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

(a) the waste or misuse of public property, manpower, or funds;

(b) gross mismanagement;

(c) unethical conduct;

(d) abuse of authority; or

(e) violation of law, rule, or regulations.

R477-9-6. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

(i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-7. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-8. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the State of Utah or an agency;

(b) post the seal of the State of Utah, or trademark or logo of an agency;

(c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or

(d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-9. Policy Exceptions.

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

KEY: conflict of interest, government ethics, Hatch Act, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19; 5 USC Section 1502(a)(3); Utah Exec Order No. 2018-1

Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42818
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add provisions to enact H.B. 179 from the 2018 General Session.

SUMMARY OF THE RULE OR CHANGE: The change adds Subsection R477-10-4(6) to enact provisions of H.B. 179 (2018).

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment is not expected to have any fiscal impact on state government revenues or expenditures because this change is administrative in nature and does not impact budgets.
♦ LOCAL GOVERNMENTS: This amendment is not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
♦ SMALL BUSINESSES: This amendment is not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment is not expected to have any fiscal impact on other persons because this rule only applies to the executive branch of state government.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
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Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

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 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;

(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 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 State may not include funding received from sources in Subsection R477-10-4(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42819
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify provisions and add language responsive to developing case law.

SUMMARY OF THE RULE OR CHANGE: These changes revise Subsection R477-11-1(4) to clarify provisions, revise Subsection R477-11-2(1) to clarify roles, and add factors to Section R477-11-3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

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

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

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

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

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

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

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ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
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Appendix 2: Regulatory Impact to Non-Small Businesses
These amendments are not expected to have any fiscal impact on small business revenues or expenditures, because this rule only applies to the executive branch of state government.

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion [~~of any employee,~~]in accordance with Section R477-1(32)[~~1-2~~], [~~through one of~~]reducing the [~~following actions:~~

~~(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the~~]employee's current actual wage[~~; or~~

~~(ii) An employee's current actual wage is lowered within the current salary range~~], as determined by the agency head[~~ or designee~~].

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) A[~~n agency head or appointing officer may dismiss or demote a~~] probationary employee or career service exempt employee may be dismissed or demoted for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of [~~discipline~~]agency action, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;
(c) the severity of the infraction;
(d) the repeated nature of violations;
(e) prior disciplinary/corrective actions;
(f) previous oral warnings, written warnings and discussions;
(g) the employee's past work record;
(h) the [~~effect on agency operations;~~
~~(i) the~~]potential of the violations for causing damage to persons or property;
(i) the strength of the evidence of conduct;
(j) dishonesty or failing to disclose relevant information;
(k) the effect on agency operations, including:
(i) how the wrongdoing relates to the employee's job duties;
(ii) the potential of the conduct to adversely affect public confidence in the agency;
(iii) the potential of the conduct to adversely affect morale and effectiveness of the agency;
(l) willful or intentional conduct; or
(m) likelihood of recurrence.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42820
FILED: 04/18/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify language, remove provisions, and correct language.

SUMMARY OF THE RULE OR CHANGE: The changes revise Subsection R477-12-1(1) to clarify roles, revise Subsection R477-12-3(1) to remove provisions, correct language in Subsection R477-12-3(3)(b)(i), and revise Subsection R477-12-3(5) to be more consistent with state code.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

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

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Appendix 2: Regulatory Impact to Non-Small Businesses
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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 [~~management~~]head or designee.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) Management shall send the employee notice of intent to separate to the employee's last known address.

(b) The employee shall have the right to appeal separation to the agency head within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

(c) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated[~~, including positions impacted through bumping~~];

(b) [~~a decision by agency management allowing or disallowing bumping;~~

~~(c)~~]specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;

([~~d~~]c) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

([e]d) When more than one employee is affected, employees shall be listed in order of retention points.

([~~f~~]e) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service [~~tenure~~]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 [~~separated~~]due to a RIF shall [~~be given formal~~]receive written notification of[~~ separation, allowing for a minimum of 20 working days prior to the effective date of the RIF~~]:

(a) the pending RIF; and

(b) final written notification of separation on the day of separation.

(6) An employee [~~notified of separation~~]separated due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the [~~receipt of written notification~~]date of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

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

KEY: administrative procedures, employees' rights, grievances, retirement
Date of Enactment or Last Substantive Amendment: [~~July 1, 2017~~]2018
Notice of Continuation: April 27, 2017
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18

Human Resource Management, Administration
R477-16
Abusive Conduct Prevention

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42821
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to clarify language and add provisions responsive to H.B. 383 passed during the 2018 General Session.

SUMMARY OF THE RULE OR CHANGE: These changes clarify Section R477-16-1 to be more in line with statute and add provisions to Sections R477-16-3 and R477-16-4 to enact provisions of H.B. 383 (2018).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-44 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

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

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or at the Office of Administrative Rules.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

R477. Human Resource Management, Administration.
R477-16. Abusive Conduct Prevention.
R477-16-1. Policy.

It is the policy of the State of Utah 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) [~~A single act does~~]The following actions do not constitute abusive conduct unless [~~it is~~]they are especially severe and egregious:[.]

[~~(3) Abusive conduct does not include:~~

]__(a) a single act;__

__(b) appropriate disciplinary or administrative actions;__

([~~b~~]c) __appropriate__ coaching or work-related feedback;

([e]__d__) reasonable work assignments or job reassignments; or

([~~d~~]e) reasonable differences in styles of management, communication, expression, or opinion.

([~~4~~]3) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

([~~5~~]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), 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

(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 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 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, [~~and~~]options available under rule, and grievance procedures provided by Utah Code Section 67-19a.

(b) Agencies shall ensure employees complete training [~~upon~~]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, 2017~~]2018

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-44

Human Resource Management, Administration
R477-101
Administrative Law Judge Conduct Committee

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42822
FILED: 04/18/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these amendments are to remove provisions, correct grammatical errors, clarify language, and reference hiring procedures added to Rule R477-4. (EDITOR'S NOTE: The proposed amendment to Rule R477-4 is under Filing No. 42812 in this issue, May 15, 2018, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: These changes remove a provision from Section R477-101-8, correct a grammatical error in Section R477-101-9, revise language in Sections R477-101-16 and R477-101-17, and add a reference to Section R477-4-15 in Section R477-101-19.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 67, Chapter 19e

ANTICIPATED COST OR SAVINGS TO:

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

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

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

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

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/07/2018 11:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2018

AUTHORIZED BY: Jeff Mulitalo, Acting Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
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***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

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

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 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 Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 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 R477-101-[~~401~~]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 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: examination of documents, correspondence, 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 all 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 all 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 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,

(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;

(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 Complaints on the date received. All 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.[

~~(5) The Department will give written notice to both the complainant and Respondent ALJ when a Complaint is received.~~]

R477-101-9. Investigation.

(1) Preliminary Investigation.

(a) The Department shall review all 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[~~—of~~], 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 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 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 all 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 all 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 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:

(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 [~~score~~]of [~~no less than~~]at least 65% [~~on each survey category as provided in Utah Code 67-19e-106~~]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 [~~numerical scale~~]"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) [~~Initial performance surveys shall be conducted by the department beginning January 1, 2014, based on current ALJs' assignment effective date. Current ALJ's will be divided into four approximately equal groups based on length of tenure in the ALJ position. The most tenured group will be surveyed first, with the next tenured group being surveyed beginning January 1 of the following calendar year, until the four-year survey cycle is established.~~]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 [~~may~~]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[~~, and~~].

([e]3) Additional respondents may include any[~~Any~~] other persons [~~that has~~]who have appeared on record before the administrative law judge, including, but not limited to, pro se parties and witnesses[~~, in the proceeding~~].

(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 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.

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 R477-4-15.

KEY: administrative law judges, conduct committee
Date of Enactment or Last Substantive Amendment: [~~November 7, 2016~~]2018
Authorizing, and Implemented or Interpreted Law: 67-19e-101 through 67-19e-109

Human Services, Administration, Administrative Services, Licensing
R501-12
Foster Care Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42862
FILED: 04/30/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are to clarify pieces of language regarding foster care services.

SUMMARY OF THE RULE OR CHANGE: These amendments are to implement clarifying language, particularly within Subsection R501-12-5(7)(i). These changes better clarify statutory intent for who capacity exceptions apply to. It also adds an "or" as originally intended, but omitted from the original rule filing to Subsection R501-12-4(4)(c)(i). The lack of the word "or" was causing a great deal of frustration and confusion for providers. The definition of "child" is clarified to align with the current practice that allows the Division of Child and Family Services (DCFS) initiated placements into foster homes for children no longer in custody (for example adopted children in need of respite care).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are purely for clarifying purposes. These changes will not alter the work for any state entity.
♦ LOCAL GOVERNMENTS: Local governments are not affected by the rules governing foster homes.
♦ SMALL BUSINESSES: Since these changes are centered around language clarifications, there is no impact to any small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other entities will be affected by these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person will bear a compliance cost. The compliance is within the Department of Human Services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that these rule changes will result in no or very minimal financial impact for small businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES, LICENSING
195 N 1950 W 1ST FLR
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
♦ Jonah Shaw by phone at 801-538-4225, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov
♦ Samantha Hanson by phone at 801-538-4041, or by Internet E-mail at samanthahanson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix 1: Regulatory Impact Summary Table*

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Appendix 2: Regulatory Impact to Non-Small Businesses
These rule amendments are not expected to have any impact on medium or large business because it only implements clarifying language to the existing Rule R501-12 and has no added expenditures or costs that impact anyone listed in this chart.

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Services.
R501-12-1. Authority.

This Rule is authorized by Sections 62A-2-101 et seq.

R501-12-2. Purpose Statement.

(1) This Rule establishes standards for the licensure of foster parents for children in the custody of DHS, inclusive of its Divisions.

(2) This Rule establishes standards that must be utilized by child-placing foster agencies for the certification of foster parents to provide care for foster children.

(3) This Rule establishes compliance standards for licensed and certified foster parents.

R501-12-3. Definitions.

As used in this Rule:

(1) "Agency" means a child-placing foster agency licensed by the DHS Office of Licensing to certify foster parents.

(2) "Child" means a person under 18 years of age or a person under 21 years of age who remains subject to the continuing jurisdiction of the Juvenile Court or whose placement in the home is initiated and facilitated by DCFS.

(3) "Child Care" is defined in Section 26-39-102.

(4) "DCFS" means the DHS Division of Child and Family Services.

(5) "DHS" means the Utah Department of Human Services.

(6) "Direct Access" is defined in section 62A-2-101.

(7) "DJJS" means the DHS Division of Juvenile Justice Services.

(8) "Foster Care" means the temporary provision of family based care for a foster child by a foster parent.

(9) "Foster Parent" means a substitute parent licensed by the DHS Office of Licensing or certified by a licensed child-placing foster agency, and includes the spouse of the primary applicant. Foster parents may also be referred to by other titles, including but not limited to proctor foster parents, professional foster parents, resource families, or kinship caregivers.

(10) "Hazardous Material" means any substance that if ingested, inhaled, ignited, used, or touched may cause significant injury, illness, or death. These substances include but are not limited to:

(a) pesticides;
(b) gasoline;
(c) bleach, including bleach based cleansers;
(d) compressed air
(e) ammonia, including ammonia based cleansers;
(f) chemical drain openers;
(g) hair relaxers/permanents;
(h) kerosene;
(i) spray paint;
(j) paint thinner;
(k) automotive fluids;
(l) toxic glues (excludes non-toxic glues);
(m) oven cleaners;
(n) matches/lighters/lighter fluid;
(o) cleaning aerosols;
(p) medications; and
(q) ultra and concentrated detergent capsules.

(11) "Home Study" is the same as a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to:

(a) comply with all applicable statutes and administrative rules related to providing foster care;

(b) meet the physical and emotional needs of a child in foster care; and

(c) actively engage in achieving the custodial agency's identified outcomes for foster children.

(12) "Human Services Program" is defined in Section 62A-2-101.

(13) "Incidental Care" is defined in 62A-2-120.

(a) Foster parents shall utilize reasonable and prudent judgment in selecting a provider of incidental care of a foster child;

(b) incidental care is permitted only in DHS licensed homes, not those certified by child placing agencies.

(14) "Medication" means any over-the-counter or prescription drug, vitamin, or supplement in any form.

(15) "Poverty Guidelines" means the current US Department of Health and Human Services listing of poverty levels as determined by the number of members of a family (see http://www.direct.ed.gov/RepayCalc/poverty.html).

(16) "Reside" means living in the home for any cumulative thirty days of the past 12 months.

(17) "Respite Care" means the short term provision of family based care for a foster child by a foster parent in order to provide relief to another parent.

(18) "Siblings" means children with a common parent or grandparent, regardless of whether their legal relationship has been severed, including biological siblings, half-siblings, step-siblings, adopted siblings, and cousins.

(19) "Sick" means to have a fever, to be experiencing ongoing or severe diarrhea, unexplained lethargy, respiratory distress, ongoing or severe vomiting, or pain or other symptoms that are ongoing or severe enough to impair a child's ability to participate in normal activity.

R501-12-4. Initial, Renewal, and Reapplication Process.

(1) Initial Application for Licensure or Certification: An individual or legally married couple age 21 or over may apply to be a foster parent. The applicant shall provide:

(a) Application Forms: A completed Office of Licensing or Agency foster care application that lists each member of the applicant's household must be submitted, including acknowledgment of:

(i) responsibility to maintain all current and past clients' confidentiality;

(ii) Office of Licensing Provider Code of Conduct; and

(iii) a verification that the applicant(s) have read and understand R501-12 Foster Care Services;

(b) Background Screening: a completed background screening application for each member of the household who is 18 years of age or older, including any supplemental documentation that the application requires;

(c) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms;

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(d) Training:

(i) Verification of successful completion of agency approved pre-service training by each applicant within the past 24 months, and

(ii) Verification of current CPR/first aid training for each prospective foster parent. Examples of accepted training include but are not limited to: Heart Savers, American Red Cross, and American Heart Association Friends and Family.

(2) Medical Assessment:

(a) Each applicant shall authorize their current licensed physician, physician's assistant or nurse practitioner to complete and send a signed medical reference report directly to the Office of Licensing or Agency. Medical reference reports must assess the current ability of the individual to be a foster parent.

(b) A professional mental health examination of a prospective or current foster parent may be required by the Office of Licensing or the Agency if there are concerns regarding the individual's mental status which may impair functioning as a foster parent. These concerns may be based upon any information gathered during the licensing/certifying and monitoring process.

(i) The type of professional mental health examination required shall be determined by the Office of Licensing or Agency based on the nature of the presenting concerns.

(ii) Determination of need and type of examination will be made collaboratively involving the licensor, Agency or Office of Licensing administration, and clinical staff from within the Department of Human Services or Agency.

(iii) The prospective or current foster parent shall authorize the release of examination information to the Office of Licensing or Agency, including a signed report that assesses the ability of the individual to parent vulnerable children full time as a foster parent.

(c) Medical and mental health examinations shall be paid for by the prospective or current foster parent.

(d) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny or revoke an application or license if a medical reference report or other examination reveals reasonable concerns regarding an applicant's ability to provide foster care services, or if the required examination is not completed and provided to the Agency of the Office of Licensing.

(3) References:

(a) At the time of initial application, the applicant(s) shall submit the names, mailing address, email addresses, and phone numbers of no more than four individuals who will be contacted by the agency or the Office of Licensing and asked to provide a reference letter. These individuals shall be knowledgeable regarding the ability of the applicant(s) to provide a safe environment and to nurture foster children. No more than one reference may be a relative of the applicant. Only the four original reference individuals submitted will be considered.

(b) A minimum of three out of the four individuals must submit reference letters directly to the Agency or the Office of Licensing. A minimum of three reference letters received must be acceptable to the Agency or the Office of Licensing.

(c) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny an application if a reference reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(4) Background Screening:

(a) Each applicant and all persons 18 years of age or older residing in the home shall submit a background screening application as part of the initial application. A background screening application is also required at the point any new individual over the age of 18 moves into the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(b) A background screening approval shall not be transferred from one Agency to another Agency.

(c) A foster parent shall not permit any person without an Office approved background screening clearance to have unsupervised direct access to a foster child unless:

(i) the person is a provider of "Incidental Care" as defined in 62A-2-120 and 501-12-3-15; or

(ii) the person's access is driven by child-centered normalcy needs that are guided by reasonable and prudent parenting as described in 62A-4a-211 through 212 and is not a foster parent-centered delegation of parental responsibility.

(d) A foster parent shall immediately notify the Office of Licensing or Agency if any person in the home is charged with or under investigation for any criminal offense or allegation of abuse, neglect, or exploitation of any child or vulnerable adult.

(e) Pursuant to section 62A-4a-1003(2), the Office of Licensing shall review and evaluate information from the Division of Child and Family Services Management Information System for the purpose of licensing and for the purpose of monitoring all individuals who reside in the foster parents' home. When, in the professional judgment of the Office of Licensing, a supported or substantiated finding against any individual who resides in the foster parents' home may pose a risk of harm to a foster child, the Office of Licensing may issue a safety plan or a sanction on the license of the foster parent or Agency.

(5) Home Study:

(a) The Office of Licensing or Agency is not required to perform a home study until after the background screening applications of all persons 18 years of age or older who reside in the home are approved.

(b) A narrative home study shall be completed by an adoption service provider as described in 78B-6-128(2)(c) and may be used for adoptive purposes.

(c) The home study shall include, but not be limited to:

(i) background and current information of each caregiver, including but not limited to information regarding family of origin, discipline used by parents, family history or presence of abuse or neglect, use of substances, education, employment, relationship with extended family, mental and physical health history based on doctor's examination completed within two years, stress reduction techniques, values, and interests;

(ii) marital relationship information, including but not limited to areas of conflict, communication, how problems are resolved, and how responsibilities are shared;

(iii) family demographical information, including but not limited to ages, ethnicity, languages spoken, dates of birth, gender, relationships, and history of adoption;

(iv) family characteristics including but not limited to functioning, cohesion, interests, work/life balance, family activities, ethnicity, culture, and values;

(v) child care and supervision arrangements;

(vi) written description of in-person interviews conducted with the applicants, applicants' children, and others residing in the home;

(vii) written description of the physical characteristics of the home, including neighborhood and school information, sufficient space and facilities to meet the needs of children and ensure their basic health and safety;

(viii) motivation for doing foster care, including assessment of interest in adoption vs. foster care only;

(ix) assessment of understanding and expectations of children in foster care;

(x) previous experience caring for children;

(xi) current and planned methods of discipline, use of privileges, family rules;

(xii) previous experience with children with special needs or trauma histories;

(xiii) description of the reference response regarding the character and suitability of the applicants;

(xiv) assessment of informal and formal supports;

(xv) assessment of willingness and ability to access support and resources;

(xvi) finances, including bankruptcies;

(xvii) applicant strengths and weaknesses;

(xviii) applicant history of any and all previous applications, home studies, or licenses/certifications related to providing foster care;

(xix) assessment of ability to actively engage in achieving the custodial agency's identified outcomes for foster children; and

(xx) recommendations for the applicant's suitability for placement of children, to include: child matching, capacity, training, and support needs; and

(xxi) query results of the home address on the Utah Sex Offender Registry and address how potential threats will be mitigated.

(6) Foster Parent Annual Renewal Application: A foster parent who wishes to remain authorized to provide foster care services shall submit renewal paper work at least 30 days and no longer than 90 days prior to license or certification expiration. Background screening approvals and renewal activities have to be completed prior to license expiration. Foster parent shall provide or otherwise submit to the following annually:

(a) Renewal application which addresses all updates and changes to the initial application. Requirements to include:

(i) acknowledgment responsibility to maintain confidentiality for current and past clients;

(ii) acknowledgement of Office of Licensing Provider Code of Conduct;

(iii) verification that the applicant(s) have read and understand R501-12 Foster Care Services;

(iv) health statement including new medical reference form if there has been significant health changes over the past year;

(v) proof of current CPR/first aid certification;

(vi) background screening applications for each adult 18 years of age or older residing in the home or any substitute care providers not identified as incidental caregivers. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14;

(vii) financial statement outlining changes to household income, job status, and expenses, including any foreclosures and/or bankruptcies.

(A) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(B) The Office of Licensing or [~~a~~]Agency may require supporting documentation of household income and expenses in order

to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(b) The home study shall be updated in writing annually after a home visit and safety inspection and shall be completed by an adoptions service provider as described in 78B-6-128(2)(c) as a means to assess the family's experience over the past year as a foster family and shall include:

(i) any changes to required home study information; and

(ii) interviews with any members of the home.

(7) Reapplication: A previously licensed or certified foster home is subject to the same requirements as an initial application, with the following exceptions:

(a) Each applicant shall disclose all previous foster care licenses and certifications, including those outside the State of Utah.

(b) Previously licensed homes shall request a written reference from the DCFS region, or out-of-state equivalent, where they last held a foster care license to be sent directly to the Office of Licensing or Agency. Previously certified homes shall request a written reference letter from the last agency where they were certified, and every agency they have been certified by within the past 3 years, to be sent directly to the Office of Licensing or Agency.

(c) Each applicant shall sign releases of information for any agency where they previously provided certified or licensed foster care.

(d) Reapplication of previously licensed or certified homes may utilize an update of the previous home study as long as the home study was created by the same agency currently relicensing or recertifying the home.

(e) If 12 months or less since lapse of any license or certification, non-agency references will be waived.

(f) If 12 months or less since lapse of any license or certification, physician's statement shall be waived. Personal Health statement is still required.

(g) If 24 months or less since lapse of any license or certification, initial training requirements will be waived as long as there is not a change in licensing/certifying agency. A change in agency requires new initial training.

(8) Approval or Denial:

(a) The decision to approve or deny the applicant to provide foster services shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(b) No person may be denied a foster care license or certification on the basis of the religion, race, color, or national origin of any individual.

(c) The approval of a license or certification is not a guarantee that a foster child will be placed or retained in the foster parent's home.

(d) Foster parents shall not be licensed or certified to provide foster or respite care services in the same home in which they are providing child care or another licensed or certified Department of Health or Department of Human Services program.

(e) In order to promote health and safety, the Office of Licensing or Agency may issue a license or certification that includes additional restrictions unique to the circumstances of the license.

(f) If a license or certification is denied, an applicant may not reapply for a minimum of 90 days from the date of denial.

(9) Initial license expiration dates must coincide with background screening clearance dates by:

(i) allowing the applicants to resubmit clearances in order to receive a full year's license or;

(ii) setting the initial license expiration date no more than one year from the date of the earliest initial completed background clearance.

R501-12-5. Foster Parent Requirements.

(1) Foster parents shall:

(a) be in good health and emotionally stable;

(b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;

(c) be responsible persons who are 21 years of age or older;

(d) provide documentation of legal residential status;

(e) have the ability to help the foster child thrive;

(f) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services;

(g) provide updated medical, social, financial, or other family information when requested by the Office of Licensing or Agency;

(h) follow all federal, state and local laws and ordinances; and

(i) not engage in conduct that poses a substantial risk of harm to any person or that is illegal or grounds for denying a license under 62A-2-112.

(2) DHS employees shall not be licensed or certified as foster parents for children in the custody of their respective Divisions, unless they qualify as a "relative" to the child in accordance with Utah Code Ann. Section 78A-6-307. An employee may provide foster services for children in the custody of a different Division only with the prior written approval of both Divisions' Directors in accordance with DHS conflict of interest policy.

(3) Foster parents shall cooperate with the Office of Licensing, Agency, courts, and law enforcement officials.

(4) Each foster parent shall read, acknowledge, and comply with the Office of Licensing Provider Code of Conduct.

(a) A foster parent shall not abuse, neglect, or maltreat a child through any act or omission.

(b) A foster parent shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.

(5) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.

(6) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.

(7) Except as provided by Section 62A-2-116.5 and R501-12-5-8, no more than four foster children shall reside in a licensed foster home and no more than three children shall reside in a certified foster home.

(i) The capacity limits of [~~the~~]foster homes[~~care licenses~~] may be exceeded under the conditions outlined in 62A-2-116.5. Foster homes, as defined in 62A-2-101(19), shall remain in continual compliance with all foster care rules established by the Office of Licensing.[~~as long as the Office of Licensing determines that the foster home will remain in compliance with foster care rules in regards to each child.~~]

(8) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster child(ren) exceed their licensed capacity only as follows:

(a) Respite care is limited to a maximum of 10 days within any 30 day period.

(i) For foster children who are not siblings, each day of respite for each individual child counts as one day of respite care.

(ii) For foster children who are siblings, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.

(b) The foster home must have no licensing sanctions currently imposed, including corrective action plans or conditional licenses.

(c) Total number of foster and respite children in a home at one time shall not exceed six unless all but one or two of the children are part of a single sibling group.

(9) A foster parent shall report all major changes or events to the Office of Licensing or Agency within one business day.

(a) A major change in the lives of foster parents includes, but is not limited to:

(i) the death or serious illness of a member of the foster parent's household;

(ii) change in marital status;

(iii) loss of employment;

(iv) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants;

(v) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household; or

(vi) anything defined as a "critical incident" in R501-1.

(10) The Office of Licensing or Agency may evaluate major changes to determine necessary actions which may include an update to the home study; implementation of a safety plan; amendments to the license certification; request for new references or examinations; or agency action in the form of a penalty.

(11) A foster parent shall report any potential change in address in advance to the Office or Agency.

(a) Licenses and certifications are site specific.

(b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.

(c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care except as allowed in R501-1 provisions for relocation of a license.

(d) Foster providers must reside at the license location.

(e) In the event of a separation or divorce, a provider who no longer resides at the licensed location shall be removed from the license certificate and must apply for a separate initial license and meet all licensing requirements in the new residence in order to become licensed at the new location.

(i) The provider remaining in the home shall demonstrate the ability to continue to meet the financial and all other foster care licensure requirements and an update to the home study shall be completed.

R501-12-6. Physical Aspects of Home.

(1) All indoor and outdoor areas of the home shall be maintained to ensure a safe physical environment.

(2) The home shall be free from health and fire hazards.

(3) The home shall have a working smoke detector and a working carbon monoxide detector on each separated level.

(4) The home shall have at least one approved, fully charged fire extinguisher readily accessible to the main living area. An approved fire extinguisher shall be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(5) Each bathroom shall have a lock sufficient to preserve the privacy of the occupant.

(6) The home shall have sufficient bedroom space to provide for the following:

(a) a bedroom shall not be shared by children of the opposite sex unless each child sharing the room is under two years of age;

(b) a foster parent's bedroom may only be shared with foster children who are under the age of two years;

(c) a foster parent's bedroom shall not be considered in calculating the allowable bedroom space for foster children;

(d) a foster child shall not share a bedroom with other adults in the home;

(e) each child in foster care must have an individual bed/crib, mattress, and linens that meet the child's needs and are comparable to other similarly utilized sleeping accommodations in the household;

(f) a minimum of 40 square feet per child, excluding adjoining bathrooms and storage space;

(g) no more than four children are housed in a single bedroom that houses at least one foster child;

(h) bedrooms used for foster children shall be comparable to other similarly utilized bedrooms in the home, including but not limited to access, location, space, finishings, and furnishings; and

(i) bedrooms used by foster children shall have a source of natural light and shall be equipped with a screened window that opens and provides egress to the outdoors.

(7) Closet or dresser space shall be provided within the bedroom for the foster child's personal possessions and for a reasonable degree of privacy.

(8) The home shall have space or access to common areas for recreational activities.

(9) Foster parents shall offer nutritious, balanced meals that meet each foster child's individual needs.

(10) The home shall be maintained at a reasonable temperature when occupied by a foster child. The age and needs of the child and other residents may be considered. Generally, reasonable temperatures range between 65-82 degrees Fahrenheit.

(11) The home shall have a working refrigerator, cooking appliances, and functional indoor plumbing.

(12) Hazards on the property shall be abated. These areas include but are not limited to fall hazards of 3 feet or greater (steep grades, cliffs, open pits, window wells, stairwells, elevated porches, retaining walls, etc), drowning hazards (swimming pools, hot tubs, water features, ponds or streams, etc), burn hazards (fireplaces, candles, radiators, water, etc), unstable heavy items (televisions,

bookshelves, etc), high voltage boosters, or dangerous traffic conditions. These hazards shall be mitigated through the use of protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor approved methods.

(13) The home and its contents shall be maintained in a clean and safe condition. Food, clothing, supplies, furniture, and equipment shall be of sufficient quantity, variety, and quality to meet the foster child(ren)'s needs.

(14) Exits: There shall be at least two exits on each accessible floor of the home. Each exit shall be accessible and adequately sized for emergency personnel. Multiple-level homes shall have a functional, automatic fire suppression system or an escape ladder, stairway, or other exterior egress to ground level accessible from each of the upper levels.

(15) Foster parents shall have and use child safety devices appropriate to the needs of the foster child, including but not limited to safety gates and electrical outlet covers.

(16) Home address is clearly visible and location is accessible.

(17) Water and sewage disposal systems other than public systems must be approved by the appropriate authorities.

(18) Swimming pools will be secured in order to prevent unsupervised access and comply with applicable community ordinances.

(19) Foster providers with placements made in the home shall ensure that all physical aspects of the home outlined in this section are compliant at all times.

(20) Foster providers with no placements made in the home shall demonstrate the ability to comply upon request.

R501-12-7. Safety.

(1) A foster parent shall not smoke any substance in the foster home or when a foster child is present. All smoking materials shall be inaccessible to foster children.

(2) Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety upon the initial placement of a child and annually thereafter. This includes an evacuation plan that also anticipates the evacuation of a child who is non-ambulatory or who has a disability.

(3) The home shall have a telephone on-site during all times that a foster child is present. This may be a land line or a mobile phone, but must be able to receive and make calls and be recognized by the 911 system. Telephone numbers for emergency assistance and the address of the home shall be posted next to the telephone or in a central location visible to the child.

(4) The home shall have a fully supplied first aid kit such as recommended by the American Red Cross.

(5) Foster parents shall inform the Office of Licensing or the Agency if they possess or use a firearm or other weapon.

(6) Firearms, ammunition, and other weapons shall be inaccessible to children. Foster parents shall not provide a weapon to a child or permit a child to possess a weapon except as outlined in Sections 76-10-509 through 76-10-509.7.

(a) Foster parents do not have the authority of a parent or guardian under Section 76-10-509.

(b) Firearms may be stored together with ammunition only in a locked container commercially manufactured for the secure storage of firearms.

(c) Firearms not stored in a locked container commercially manufactured for the secure storage of firearms shall be unloaded and securely locked. Ammunition for these firearms shall be kept securely locked in a separate location.

(i) The locked storage for firearms and ammunition shall not be accessible through the same keys or combinations.

(ii) Keys and combinations utilized to open locked storage for firearms and ammunition shall not be accessible to a foster child.

(d) Firearms may be stored in display cases only if unloaded and rendered inoperable through the effective use of trigger locks, bolts removed, or other disabling methods.

(e) This does not restrict an individual's rights regarding concealed weapons permits pursuant to UC 53-5-704.

(7) Foster parents who have alcoholic beverages in their home shall ensure that the beverages are closely monitored and inaccessible to children at all times.

(8) Hazardous materials shall be stored securely and remain locked when not in active use, and closely monitored while in active use.

(i) Hazardous materials shall be stored in the manufacturer's original packaging together with the manufacturer's directions and warnings; or

(ii) a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(9) Flammable substances, including but not limited to gasoline and kerosene, shall be locked in a ventilated storage area separate from living areas. This requirement does not include substances contained within the storage tanks of equipment, including but not limited to automobiles, lawnmowers, ATV's, boats and snow blowers.

(10) General, common use, household items (excluding those identified as hazardous materials) shall be stored responsibly in consideration of the age, behavior, history, and cognitive and physical ability of each foster child in the home. The foster parent is responsible for consulting with the caseworker and child and family team regarding individual restrictions. General, common use, household items include, but are not limited to the following:

(a) oral hygiene products;

(b) hair and cosmetic products;

(c) facial and skin hygiene products;

(d) cutlery;

(e) laundry and dish detergent (excluding concentrated pods);

(f) cleaning wipes;

(g) rubbing alcohol;

(h) nail polish remover;

(i) laundry stain remover;

(j) propane attached to a grill;

(k) air fresheners and deodorizers; and

(l) spray furniture polish.

(11) Foster parents shall comply with all laws regarding the care and number of animals on their property.

(12) Foster parents shall ensure that the foster child has the safety equipment, supervision, and training necessary for the child to safely participate in an activity that has an inherent risk of bodily harm, injury, or death.

(a) These activities include but are not limited to participation in rock climbing, swimming, hunting, target practice, camping, hiking, use of recreational vehicles, and sports.

(b) Every precaution must be taken to participate in the respective activity as safely as possible. This includes, but is not limited to: wearing DOT/Snell approved helmets when riding off-highway vehicles (OHV), completing OHV education, personal watercraft or boating education, wearing Coast Guard approved lifejackets, and completing hunter's education.

(c) Foster parents shall follow any applicable statute pertaining to minors operating OHV's, personal watercraft, boats, and firearms.

(d) Foster parents shall not permit a foster child any access to firearms without first obtaining the written approval of the child's caseworker.

(13) Foster parents shall comply with any written safety plan required by the Office of Licensing or Agency which establishes additional safety requirements to protect the child from hazardous conditions on the foster parent's property. A safety plan shall not waive any requirement of this R501-12.

(14) Verification of compliance with the Utah Department of Health's recommended immunization schedules shall be provided for each individual residing in the home who is not a foster child.

(a) Recommended influenza immunizations are optional unless a foster child in the home has an immunocompromised condition.

(b) If compliance of all residents in the home cannot be verified, the license shall be restricted to only placements of children who are over the age of 2 months and who are immunized in accordance with the Utah Department of Health's recommendations for their age.

(i) Foster parents must disclose if any individual residing in the home is not in compliance with the Utah Department of Health's recommended immunization schedules to the child placing agency prior to accepting a placement.

(ii) Newborn infants must reach the required age and receive their first dose of required vaccinations to be considered appropriately immunized for their age.

(15) Foster parents shall not accept the placement of a child into their home in violation of any license conditions.

R501-12-8. Emergency Plans.

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation;

(b) transportation and relocation of foster children when necessary;

(c) supervision of foster children after evacuation or relocation; and

(d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury, or death of a foster child to the appropriate Division or Agency and the Office of Licensing.

R501-12-9. Infectious Disease.

(1) In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

R501-12-10. Medication and Medical Emergencies.

(1) Foster parents shall ensure that prescribed medication is administered according to the written directions of the foster child's health provider.

(a) Foster parents shall ensure that the foster child actually consumes the medication.

(b) Foster parents shall report any severe or unexpected side effects or reactions to the foster child's health provider.

(2) Medication shall only be given to the foster child for whom it was prescribed.

(3) Medication shall not be discontinued without the approval of the foster child's health provider.

(4) Non-prescription medications may be administered by foster parents according to manufacturer's instructions unless otherwise directed by the child's health provider.

(5) Medications shall not be administered or carried by the foster child unless approved in writing by the child's health provider.

(6) Medication shall not be used for behavior management or restraint unless prescribed in writing by the foster child's health provider and after notification to the Division or Agency worker.

(7) Medication shall remain locked at all times they are not in immediate, active use.

(a) Foster parents shall not leave medications in active use unattended.

(b) If a foster child requires immediate access to the child's medication, including but not limited to a child with asthma or diabetes, foster parents may carry a single dose of medication for active use on the foster parent's person.

(8) Medications shall remain in the original pharmacy or manufacturer's packaging.

(a) Foster parents shall not repackage medications or divide doses into alternative containers.

(b) Foster parents should partner with the pharmacy regarding any needed divisions of medication.

(9) Foster parents shall promptly take a foster child who has a medical emergency, who is sick, or who is injured, for an assessment by a medical practitioner.

(10) Foster parents shall comply with the treatment orders of the foster child's health provider.

(11) When a foster child is no longer placed in the foster parent's home, all unused medications shall be transferred to the caseworker or Agency.

R501-12-11. Transportation.

(1) Drivers of vehicles carrying foster child(ren) shall have a valid, current driver's license and valid, current vehicle insurance, and comply with all traffic regulations.

(2) Transportation of foster children shall be provided in an enclosed, registered vehicle that has functional seatbelts. Foster parents shall ensure that foster children properly utilize seatbelts and other safety equipment, including age and size appropriate car/booster seats. Recreational vehicles, including motorcycles, shall not be used for transportation.

(3) Emergency contact information, including but not limited to caseworker and [~~a~~]Agency information, shall be provided and accessible in each vehicle used to transport foster children.

(4) Each vehicle shall be equipped with a first aid kit.

R501-12-12. Behavior Management.

(1) Foster parents shall provide supervision appropriate to the age and needs of each foster child.

(2) Foster parents shall not use, nor permit the use of corporal punishment including but not limited to physical, mechanical, or chemical restraint, physical force, infliction of bodily harm or pain, deprivation of meals, rest or visits with family, or humiliating or frightening methods to discipline, coerce, punish, or retaliate against a child.

(3) Foster parents shall only use behavior management techniques appropriate for the child's age, behavior, needs, developmental level, and past experiences.

(4) Foster parents shall use the least restrictive method of behavior management available to control a situation.

(5) Foster parents shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence.

(6) Foster parents shall not use physical work assignments or activities that inflict pain as behavior management techniques. A physical work assignment or activity that results in minor sore muscles does not violate this subsection.

(7) Foster parents shall not abuse, threaten, ridicule, intimidate, or degrade a child.

(8) Foster parents shall not deny a child medical care, nutrition, hydration, clothing, bedding, sleep, or toilet and bathing facilities.

(9) Passive physical restraint shall be applied only by individuals who are trained in accordance with the non-violent intervention strategies of a state, regional, or nationally recognized behavior management program. Documentation of passive physical restraint training certification shall be submitted to the Office of Licensing or Agency with the initial and each renewal application.

R501-12-13. Child's Rights in Foster Care.

(1) Foster parents shall not violate a foster child's right to:

(a) eat nutritious meals with the family;

(b) eat the same food as the family, except when the child is provided with alternative food ordered by the child's physician;

(c) participate in family and school activities;

(d) privacy, including but not limited to maintaining the confidentiality of information about the child and not retaining copies of the child's records once the child is no longer placed there;

(e) be informed of the child's responsibilities, including household tasks, privileges, and rules of conduct;

(f) be protected from discrimination based upon the child's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;

(g) be protected from harm or acts of violence, including but not limited to protection from physical, verbal, sexual, or emotional abuse, neglect, maltreatment, exploitation, or inhumane treatment;

(h) be treated with courtesy and dignity, including but not limited to reasonable personal privacy and self-expression;

(i) communicate with and visit the child's family, attorney, physician, and clergy, except as restricted by court order;

(j) have clean clothes and personal hygiene needs met;

(k) participate in their own cultural traditions; and

(l) receive prompt medical care when sick or injured.

(m) be free from media content that is likely harmful considering the child's age, behavior, needs, developmental level, and past experiences.

R501-12-14. Additional Child Placing Agency Considerations.

(1) The Agency shall comply with all Office of Licensing rules that relate to their Child Placing Foster license.

(2) The Agency shall comply with Background Screening Rules, R501-14.

(3) The Agency shall recruit, train, certify, and supervise foster parents.

(4) The Agency shall not certify a home which is licensed or certified or applying to be licensed or certified with any other Agency.

(5) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.

(6) The Agency shall verify completion of all of a foster parent's training requirements, including but not limited to CPR/First Aid training and training regarding the requirements of R501-12, prior to issuing an initial or renewal certification and prior to placing a foster child in the home.

(7) The Agency shall train each foster parent regarding the Agency's policies and procedures prior to placing a foster child in the home.

(8) The Agency shall provide the Department with identifying information of all certified foster homes via the DHS/DCFS Provider website located on the Human Services DHS/DCFS Employee website and shall report their list of homes annually and upon request.

(9) The Agency shall maintain documentation of the initial and annual home studies of the foster parent's home.

(10) The Agency must have a written agreement with the foster parent(s) which includes:

(a) the expectations and responsibilities of the Agency, staff, foster parents and limitations of authority;

(b) the services to be provided to and by the foster parent;

(c) the provision of medical, remedial, treatment, and other specialized services to the child;

(d) the financial arrangements for children placed in the home;

(e) the authority foster parents can exercise over children placed in the home; and

(f) actions which require staff or DHS authorizations.

(11) The Agency shall monitor and keep detailed documentation regarding foster parents' compliance with R501-12.

(12) The Agency shall document all announced and unannounced visits to the home, including an initial safety inspection and a minimum of one unannounced safety inspection annually in addition to any announced or unannounced visits to the home.

(a) Each safety inspection completed by the Agency shall be documented on the DHS Home Inspection Checklist, or a similar form that contains all of the DHS form contents.

(b) The Agency shall coordinate with the Office when checklist items are not compliant to determine which actions should be taken.

(c) The Agency shall maintain all completed checklists and compliance monitoring documentation in the provider files.

(13) The Agency shall investigate all complaints and alleged violations of this rule. The Agency shall provide documentation to the Office of Licensing of any investigations into complaints and alleged violations of R501-12.

(14) The Agency shall provide written notification to each foster parent that informs the foster parent of the rights and responsibilities assumed by a foster parent who signs as the responsible adult for a foster child to receive a driver license, as described in Section 53-3-211. The Agency shall maintain documentation in the foster parent's file, signed and dated by the foster parent, acknowledging receipt of a copy of this written notification.

(15) The Agency shall have and comply with written policies and procedures regarding the denial, suspension, and revocation of a foster parent's certification to provide foster care services, which must include written notification of the foster parent's appeal process.

(16) The Agency shall provide documentation to the Office of Licensing and DCFS of any denial, suspension, revocation or other agency-initiated termination of a foster parent's certification. Documentation shall be provided within two weeks of the action.

(17) The Agency shall not grant any variance to this R501-12 or any other regulation without the prior written consent of the Director of the Office of Licensing.

(18) The Agency shall certify foster parent(s) for a specific time period that does not exceed one year prior to placing any foster children in the home. Documentation of certification dates shall be made available to the Office of Licensing as requested.

(19) The Agency shall provide ongoing supervision of certified foster parents to ensure the quality of care they provide.

(20) The Agency shall participate with the child's legal guardian and the foster home to obtain, coordinate, and supervise care and services necessary to meet the needs of each child in their care.

R501-12-15. Additional DCFS Kinship and Specified Home Licensure Considerations.

(1) An applicant may be licensed for the placement of a specific foster child or sibling group.

(2) The home study shall be conducted by an approved DCFS kinship home study specialist or by the Office of Licensing.

(3) A minimum of two reference letters received must be acceptable to the Agency or the Office of Licensing.

(4) The home study safety inspection and background screening approvals shall be successfully completed prior to the placement of the child in the home.

(5) The Office shall grant a kinship/specific probationary license upon receipt and approval of a completed kinship/specific packet submitted by DCFS.

(a) The kinship/specific probationary license shall be issued for no more than five months until full compliance can be achieved in order to receive an initial license for the remainder of the licensing year.

(b) An initial license may be issued at any time that compliance with probationary terms is met.

(c) A probationary license whose terms are not met prior to the expiration of that license shall be extended in corrective or penalty status.

(d) Initial license expiration dates shall be determined per R501-12-4-9.

(6) A kinship/specific home license may not be utilized for the placement of any foster child other than the child designated on the license, and may not be utilized for respite care.

(7) If a kinship/specific home desires to provide general foster care services, they will close their specific license and submit to the requirements of a general foster care license.

(8) The Office of Licensing recognizes the importance of preserving family and cultural connections for children in foster care. In accordance with 62A-2-117.5 and the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the Office of Licensing may issue a waiver of any rule in regards to a kinship/specific home that does not impact the health and safety of the specific child or sibling group. This requires prior written approval by the Director of the Office of Licensing.

R501-12-16. Compliance.

Any active license on the effective date of this rule shall be given 30 days to achieve compliance with this rule[~~ with the exception of R501-12-7(14) which will be given 60 days to achieve compliance~~].

KEY: licensing, human services, foster care, certified foster care
Date of Enactment or Last Substantive Amendment: 2018
Notice of Continuation: October 4, 2017
Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

Human Services, Child and Family Services
R512-76
Expungement of DCFS Allegations

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 42829
FILED: 04/23/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is being implemented in response to S.B. 266 passed during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: This new rule is being implemented in accordance with S.B. 266 (2017) to define the criteria for the expungement of an allegation associated with an individual who is identified as a perpetrator or alleged perpetrator in the Management Information System (MIS) and the Licensing Information System (LIS).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-1008 and Section 62A-4a-102

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This proposed rule is not expected to have any fiscal impacts on state government revenues or expenditures. The original enactment of this statute in the 2017 General Session came with a fiscal note of $840,900 ($748,500 General Fund and $92,400 federal funds) in FY 2018, and $79,500 ($70,800 General Fund and $8,700 federal funds) annually beginning in FY 2019 to expunge alleged perpetrators from supported and unsupported reports of child abuse or neglect, based on criteria determined by the Division of Child and Family Services (DCFS). Costs in FY 2018 include computer programming to modify DCFS's two information systems and assume approximately 1,100 requests for expungement; costs in subsequent years assume approximately 550 requests for expungement annually, which represents 2.6% of the alleged perpetrators documented in reports each year. This funding was approved by the legislature and is included in the state budget. This rule does not increase any costs not already considered by the legislature in their allocation.
♦ LOCAL GOVERNMENTS: There is little to no impact on local governments due to this rule. This rule creates a method that could possibly reduce costs for local governments if they administrate an entity (school district, count, etc.) that performs background checks that include a query of DCFS' child abuse and/or neglect database. Theoretically, this expungement process will result in fewer potential employees with findings on said database, which means reduced processing time for local government staff and fewer barriers to the hiring of an individual. DCFS cannot quantify how many individuals that may be affected by this rule would also be involved in such background screenings, thus no savings are being projected. There are no anticipated increased costs.
♦ SMALL BUSINESSES: There is little to no impact on small businesses due to this rule. This rule creates a method that could possibly reduce costs for small businesses if they perform background checks through the Department of Human Services that include a query of DCFS' child abuse and/or neglect database. Theoretically, this expungement process will result in fewer potential employees with findings on said database, which means reduced processing time for small businesses and fewer barriers to the hiring of an individual. DCFS cannot quantify how many individuals, that may be affected by this rule, would also be involved in such background screenings, thus no savings are being projected. There are no anticipated increased costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is little to no impact on other persons due to this rule. This rule creates a method that could possibly reduce costs for other persons if findings on the DCFS database, that will now qualify for expungement, had previously been creating costs for individuals, such as costs related to employment barriers, custodial disputes, retaining legal counsel, etc. DCFS cannot quantify the potential savings enjoyed by such individuals, thus no savings are being projected. There are no anticipated increased costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing this rule because this rule is not fiscal in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses because this rule implements an internal procedure for sealing DCFS records that is expected to have no costs for businesses and only minimal, unquantifiable potential savings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
♦ Jonah Shaw by phone at 801-538-4225, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Diane Moore, Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**

Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

***This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described in the narrative. Inestimable impacts for Non-Small Businesses are described in Appendix 2.**

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule is not expected to have any fiscal impacts for non-small businesses because non-small businesses have no responsibility for services offered by the Division of Child and Family Services and are therefore not affected by this rule and will have no fiscal impact.

The head of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.

R512. Human Services, Child and Family Services.
R512-76. Expungement of DCFS Allegations.
R512-76-1. Purpose and Authority.
(1) The purpose of this rule is to define the criteria for the expungement of an allegation associated with an individual who is identified as a perpetrator or alleged perpetrator in the Management Information System (MIS) and the Licensing Information System (LIS).
(2) This rule is authorized by Sections 62A-4a-102 and 62A-4a-1008.

R512-76-2. Definitions.
(1) "CPS" means Child Protective Services.
(2) "DCFS" means the Division of Child and Family Services.
(3) "Expungement" means to seal an allegation associated with an individual identified as a perpetrator or alleged perpetrator that meets the criteria for expungement.
(4) "LIS" means the Licensing Information System as described in Section 62A-4a-1006.
(5) "MIS" means the Management Information System as described in Section 62A-4a-1003.

R512-76-3. Internal Process.
(1) An individual may submit a written request to expunge an allegation in which they are identified as a perpetrator or alleged perpetrator in the MIS or LIS. If the perpetrator or alleged perpetrator is a minor at the time expungement is sought, the perpetrator or alleged perpetrator's parent or guardian may submit the written request to expunge the allegation.
(2) Eligibility is based on the meeting of the criteria for expungement as outlined in the Criteria for Expungement subsection of this rule.
(3) If the individual does not meet the criteria for expungement, the request will be denied. The individual shall wait at least one year before submitting the same request.
(4) Decisions to approve or deny expungements are governed by the criteria for expungement and are not at the discretion of the division.

R512-76-4. Criteria for Expungement.
(1) Automatic Expungement after one year:
(a) All allegation types with a finding of Without Merit or Unsubstantiated by the court will be automatically expunged if:
(i) One year has passed since the case closure date with no subsequent ongoing case or removal; and
(ii) One year has passed since the case closure date with no subsequent CPS case, including unaccepted referrals.
(2) Automatic Expungement after five years:
(a) Allegations of dependency and educational neglect will be automatically expunged after five years if:
(i) The original CPS case did not result in an ongoing case or removal; and
(ii) Five years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals.
(iii) Not eligible to make the request until a minimum of five years after the case closure date.
(3) Expungement Upon Request after five years:
(a) After five years have passed since the case closure date, an individual may request an expungement on the following Unsupported General Findings:
(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Medical Neglect;
(xiii) Munchhausen Syndrome by Proxy;
(xiv) Non-Supervision;
(xv) Pediatric Condition Falsification;
(xvi) Physical Abuse;
(xvii) Physical Health;
(xviii) Physical Neglect;
(xix) Psychological Neglect;
(xx) Sibling or Child at Risk; and
(xxi) Unknown.

(b) The expungement will be approved only if:
(i) The original CPS case did not result in an ongoing case or removal;
(ii) Five years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals; and
(iii) There was no criminal conviction for the same incident.
(c) Not eligible to make the request until a minimum of five years after the case closure date.
(4) Expungement Upon Request after 10 years:
(a) After ten years have passed since the case closure date, an individual may request an expungement on the following Supported General Findings:
(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Fetal Exposure to Alcohol or other Harmful Substances;
(xiii) Medical Neglect;
(xiv) Munchhausen Syndrome by Proxy;
(xv) Non-Supervision;
(xvi) Pediatric Condition Falsification;
(xvii) Physical Abuse;
(xviii) Physical Health;
(xix) Physical Neglect;
(xx) Psychological Neglect;
(xxi) Sibling or Child at Risk; and
(xxii) Unknown.
(b) The expungement will only be approved if:
(i) The original CPS case did not result in an ongoing case or removal;
(ii) Ten years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals; and
(iii) There was no criminal conviction for the same incident.
(c) Not eligible to make the request until a minimum of ten years after the case closure date.
(5) Allegations Never Eligible for Expungement:
(a) The following Supported or Unsupported allegations designated as Chronic and/or Severe and/or there was a criminal conviction for the same incident are never eligible for expungement:
(i) Abandonment;
(ii) Baby Doe;
(iii) Child Endangerment;
(iv) Chronic Abuse;
(v) Chronic Neglect;
(vi) Court Ordered;
(vii) Dealing in Material Harmful to a Child;
(viii) Dependency;
(ix) Domestic Violence Related Child Abuse;
(x) Educational Neglect;
(xi) Emotional Abuse;
(xii) Environmental Neglect;
(xiii) Failure to Protect;
(xiv) Failure to Thrive;
(xv) Fetal Addiction to alcohol or other substance;
(xvi) Fetal Exposure to Alcohol or other Harmful Substances;
(xvii) Juvenile Perpetrator- significant or non-significant risk of Sexual and/or Severe Physical Abuse;
(xviii) Labor Trafficking;
(xix) Lewdness;
(xx) Medical Neglect;
(xxi) Medical neglect resulting in death/disability/serious illness;
(xxii) Non-Supervision;
(xxiii) Pediatric Condition Falsification;
(xxiv) Physical Abuse;
(xxv) Physical Neglect;
(xxvi) Ritual Abuse;
(xxvii) Safe Relinquishment of a Newborn;
(xxviii) Severe Abuse;
(xxix) Severe Neglect;
(xxx) Sexual Abuse;
(xxxi) Sexual Exploitation;
(xxxii) Sexual Trafficking; and
(xxxiii) Sibling or Child at Risk.
(b) Any allegations with the following findings are never eligible for expungement:
(i) False Report;
(ii) Unable to Locate;
(iii) Unable to Complete; and
(iv) Substantiated by the Juvenile Court.

KEY: child abuse, expungement of records
Date of Enactment or Last Substantive Amendment: 2018
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-1008

Public Safety, Criminal Investigations and Technical Services, Criminal Identification
R722-310
Regulation of Bail Bond Recovery and Enforcement Agents

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42808
FILED: 04/17/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The requirements for the mandatory training for

the continuing classroom instruction for renewals has changed. The Bureau of Criminal Investigations (BCI) will no longer provide four hours of the eight hours mandatory continuing classroom instruction training for first time renewals. Other entities/sources will provide the full eight hours of the mandatory training for all license renewals. A "bail bond agency" does not receive a license from BCI to exist; therefore, the language that identifies this license type has been removed. The requirement that an application packet be submitted to BCI more than seven days prior to a scheduled board meeting has been removed.

SUMMARY OF THE RULE OR CHANGE: BCI will no longer provide four of the eight hours of required training to a first time license renewal applicant. The training will be provided by outside entities that are currently providing the additional four hours of training for a first time renewal and the full eight hours of training for a subsequent renewal. A "bail bond agency" does not receive a license from BCI to exist, thus the reference to licensure of a "bail bond agency" will be removed from this rule. The requirement for an application packet to be submitted seven days prior to a regularly scheduled board meeting has been removed, so an application packet may be submitted to BCI up until the day prior to a regularly scheduled board meeting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-11-103(5)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: BCI was required to provide four of the eight hours of continuing education for a first time license renewal, and charged an applicant a $10 fee to attend the training. There were four first time renewal applicants who attended the training in 2017. All subsequent renewal applicants obtain the full eight hours of continuing education from an outside source, not from BCI. This change will result in an anticipated loss of $40 in revenue per year. (4 first time renewal applicants x $10 = $40 per year.)
♦ LOCAL GOVERNMENTS: This rule applies to the four hour portion of continuing classroom instruction for license renewals, which was previously provided by BCI and will now be provided in its entirety by other outside sources, which are private businesses; therefore, there is no aggregate anticipated cost or savings to local governments.
♦ SMALL BUSINESSES: This rule applies to the four hour portion of continuing classroom instruction for license renewals, which was previously provided by BCI and will now be provided in its entirety by other outside sources, which are private businesses. It is estimated that 70% of businesses that provide training are small businesses. There were four first time renewal applicants who attended the training in 2017. All subsequent renewal applicants currently obtain the full eight hours of continuing education from an outside source, not from BCI. It is estimated that a small business that will provide training for these purposes may charge an individual up to $400 to attend the training. This change could potentially result in an anticipated increase in revenue of $1,120 per year. (4 first time renewal applicants x $400 = $4,000 x 70% = $1,120 per year.)
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule addresses licensing requirements for the purpose of obtaining a "bounty hunter" license in order to recover or enforce a bond. Applicants for a first time license renewal were previously required to attend four of the eight hours of required continuing education directly from BCI at a cost of $10. Due to the fact that BCI will no longer be offering this training, a first time applicant will now be required to take the full eight hours of training from an outside source, as they are currently required for subsequent renewals. It is estimated that a business that will provide training for these purposes may charge an individual up to $400 to attend the training, which is an increase of $390. Aggregate cost impact is estimated to be approximately $1,560. (4 first time applicants x $390 = $1,560)

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by this rule change will be required to pay up to an additional $390 for continuing education for a first time license renewal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that both small and non-small businesses may experience and increase in revenue as a result of the rule change. Approximately four first time applicants per year will now be required to attend an additional four hours of training from a training business rather than directly from BCI. It is anticipated that training businesses may charge an individual up to $400 to attend the additional training hours. It is estimated that 70% of the businesses that may provide training are small businesses, and 30% are non-small businesses. It is anticipated that a small business may see an increase in revenue of approximately $1,120 per year, and a non-small business may see an increase in revenue of approximately $480 per year. The above analysis and summary reflects the Department of Public Safety's best estimate regarding the impact the rule change will have on businesses.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Alice Moffat, Bureau Chief

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	($40)	($40)	($40)
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	($1,560)	($1,560)	($1,560)
Total Fiscal Costs:	**($1,600)**	**($1,600)**	**($1,600)**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$1,120	$1,120	$1,120
Non-Small Businesses	$480	$480	$480
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$1,600**	**$1,600**	**$1,600**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses

There are 12 large businesses in the industry in question (NAICS 6115, 6116, and 6117) in Utah. These businesses account for an estimated 30 percent of training services offered per year. At the average price of $400 per training session, these businesses are expected to receive an estimated $480 in increased revenues per year.

The head of Department of Public Safety, Keith D. Squires, has reviewed and approved this fiscal analysis.

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.

R722-310-1. Purpose.

The purpose of the rule is to establish procedures for the licensing of bail enforcement agents, [~~bail bond recovery agencies,~~] bail recovery agents, and bail recovery apprentices.

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "licensee" means an individual who has received a bail enforcement agent license, [~~bail bond recovery agency license,~~]bail recovery agent license or bail recovery apprentice license;

(e) "revocation" means the permanent deprivation of a bail bond recovery license, however revocation does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and

(f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.

R722-310-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license as a [~~bail bond agency,~~]bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a state-issued driver license or identification card;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(vi) documentation from an approved provider indicating that the applicant has completed the 16-hour training program, described in Subsection 53-11-108(4); and

(vii) documentation showing the licensee has a surety bond in amount of $10,000 which meets the requirements described in Subsection 53-11-113(3).

(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.

(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant shall also provide:

(a) the name under which the bail bond recovery agency will operate; and

(b) a certificate of workers' compensation insurance, if applicable.

(4) If the applicant is applying for license as a bail recovery agent, the applicant shall also provide:

(a) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement; and

(b) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(5) If the applicant is applying for license as a bail recovery apprentice, the applicant shall also provide verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(6) If the applicant is seeking to carry a firearm as a licensee, the applicant shall comply with all of the requirements found in R722-300 and provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the 16-hour firearms training course required in Subsection 53-11-108(5).

(7)[~~(a)~~] Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.[

~~(b) Application packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.~~]

R722-310-5. Training Program Requirements.

(1) The 16-hour training program described in Subsection 53-11-108(4), which is required for licensure, shall be provided by a training program provider approved by the board.

(2) Training program providers seeking to become approved by the board shall provide a detailed course curriculum for the board's review.

(3)(a) Training programs which are approved by the board shall be open to anyone who wishes to attend.

(b) If a training provider charges a fee for the training program, the same fee shall apply to all participants in the training program.

(4) Training program providers shall notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.

(5)(a) Bureau investigators shall periodically monitor approved training programs to ensure that the training program is providing instruction as required by Subsection 53-11-108(4).

(b) The training program may not charge an investigator a fee for monitoring the program.

(6) If the board receives information that a training program is not providing instruction as required by Subsection 53-11-108(4), the board may terminate its approval of the training program after notice and an opportunity for a hearing before the board.

R722-310-6. Verification of Experience.

(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, an applicant shall provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.

(2) The verification of experience shall be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work performed.

(3) The bail bond recovery work shall have been performed within ten years from the date of the application.

R722-310-7. Credit for Specified Training.

(1) An applicant who wishes to receive credit towards the experience requirement for licensure, shall provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Subsections 53-11-114(1)(b) or 53-11-114(1)(c).

(2) An applicant may receive up to 1,000 hours of credit towards the experience requirement for licensure under Section 53-11-114.

(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the 16-hour training course required by Subsection 53-11-108(4).

R722-310-8. Renewal of a License.

(1)(a) A licensee seeking to renew a license as a [~~bail bond agency,~~]bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(iv) evidence that the licensee has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and

(v) documentation showing the licensee has a $10,000 surety bond which meets the requirements described in Subsection 53-11-113(3).

(2)(a) Once the renewal packet is complete, the bureau shall review it to determine if the licensee meets the requirements for renewal.

(b) If the bureau determines the licensee does not meet the requirements for renewal, the bureau shall submit the renewal packet to the board for their review at the next regularly scheduled meeting.[

~~(c) Renewal packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.~~]

(3) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-310-4.

R722-310-9. Requirements for Continuing Classroom Instruction.

(1) A licensee who renews his or her license [~~for the first time~~]shall attend [~~four~~]eight hours of continuing classroom instruction [~~provided by the bureau, which shall count towards the eight hours of continuing classroom instruction~~]required by Subsections 53-11-111(2) and 53-11-109(2).[

~~(2) The course provided by the bureau shall:~~

~~(a) provide updates on Utah law, administrative changes, and other pertinent information designed to enhance the licensee's knowledge of bail recovery; and~~

~~(b) be taught by the bureau twice yearly, with the dates posted on the bureau's website.~~]

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The 16-hour firearms training program described in Subsection 53-11-108(5), shall be provided by a bail enforcement firearms instructor approved by the bureau.

(2) A bail enforcement firearms instructor approved by the bureau shall be a certified Utah concealed firearm permit instructor under Subsection 53-5-704(9) and be in good standing with the bureau.

(3)(a) Each approved bail enforcement firearms instructor shall adhere to the curriculum adopted by the bureau.

(b) An instructor may supplement, but may not detract from the set curriculum.

R722-310-11. Notice to Commissioner.

A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency, or any change of employees or contract employees, to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.

R722-310-12. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

(2)(a) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(b) The bureau may deny a license renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.

(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.

(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within 30 days from the date that the written decision is issued.

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee, and may affirm, adopt, modify, supplement, reverse, or reject the board's findings, or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within 60 days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies the licensee as a bail enforcement agent, [~~bail bond recovery agency,~~]bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may possess and display a badge that is identical to the badge depicted on the bureau's website in accordance with Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge shall be 2.55 inches high and 2.66 inches wide;

(ii) the badge shall be in the shape of a five-point star on a circle;

(iii) the star shall be gold in color and the circle must be silver in color;

(iv) the center of the star shall be black in color and contain a seal with the phrase "Liberty and Justice For All";

(v) the text of the badge shall be written in block lettering and must be black;

(vi) the silver circle shall contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge shall contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3) The design approved by the board under Subsection 53-11-121(5) shall contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back in writing which is:

(a) at least two inches in height on the back;

(b) at least one half of an inch in height on the front; and

(c) in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agents, bail bond recovery agents, bail bond recovery apprentices, licenses
Date of Enactment or Last Substantive Amendment: [~~December 22, 2015~~]2018
Notice of Continuation: January 7, 2015
Authorizing, and Implemented or Interpreted Law: 53-11-103(5)

Public Service Commission, Administration
R746-8
Utah Universal Public Telecommunications Service Support Fund (UUSF)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42850
FILED: 04/24/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment streamlines the collection of the Utah Universal Service Fund (UUSF) surcharge for access lines that receive a federal Lifeline subsidy.

SUMMARY OF THE RULE OR CHANGE: This amendment streamlines the compliance process for some telecommunications providers by enacting provisions that exempt a provider who provides an access line that receives a federal Lifeline subsidy from collecting and remitting a state UUSF surcharge for that line, and allowing that if the access line also receives a state Lifeline subsidy, the surcharge will be deducted from the state Lifeline subsidy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-1 and Section 54-8b-10 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment will require some additional work on the part of the Public Service Commission and the Division of Public Utilities to calculate the appropriate state Lifeline subsidy for affected providers, but these calculations should be able to be accomplished within existing budgets and workloads.
♦ LOCAL GOVERNMENTS: Local governments do not provide any telecommunications service that is impacted by this amendment, and do not play any role in administering the amendment. Therefore, the amendment will have no impact on local governments.
♦ SMALL BUSINESSES: This amendment may streamline compliance obligations for any small business that provides a telephone service that is eligible for both federal and state Lifeline subsidies. Any anticipated savings due to that streamlined obligation is not measurable.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment may streamline compliance obligations for a person who provides a telephone service that is eligible for both federal and state Lifeline subsidies. Any anticipated savings due to that streamlined obligation is not measurable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment may streamline compliance obligations for a person who provides a telephone service that is eligible for both federal and state Lifeline subsidies. Any anticipated savings due to that streamlined obligation is not measurable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment streamlines compliance obligations for any provider of a telecommunications service who is eligible for both state and federal Lifeline subsidies. The amendment should provide marginal but unmeasurable compliance cost savings to those providers. For those reasons, there will be no compliance cost to affected persons.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Michael Hammer by phone at 801-530-6729, or by Internet E-mail at michaelhammer@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Michael Hammer, Administrative Law Judge

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**

Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This minor change to the collection method of the Utah Universal Service Fund surcharge from federal Lifeline subsidy recipients should streamline compliance for those telephone service providers. The compliance obligation remains the same, but allows for instances in which the provider may have no billing arrangement with the customer. Because the surcharge will be deducted from any state Lifeline subsidy for those who qualify for the exemption, the provider will be able to avoid the obligation to collect and remit the surcharge. Because this change only streamlines the existing obligations, there will be no measurable regulatory impact.

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

R746. Public Service Commission, Administration.
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).
R746-8-100. Authority, Purpose, and Organization.

(1) This rule is adopted under:
(a) Utah Code Section 54-8b-10; and
(b) Utah Code Section 54-8b-15.
(2) This rule:
(a) governs the methods, practices, and procedures by which:
(b) the UUSF is created, maintained, and funded; and
(c) funds are disbursed from the UUSF to qualifying access line providers.
(3) This rule is organized into the following Parts:
(a) Part 100: Authority, Purpose and Organization;
(b) Part 200: Definitions;
(c) Part 300: UUSF Funding; and
(d) Part 400: UUSF Distributions.

R746-8-200. Definitions.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.
(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.
(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."
(ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."
(2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
(b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:
(i) the applicable UUSF surcharge;
(ii) mandatory extended area service fees; or
(iii) state subscriber line fees.
(c) "Affordable base rate" does not include:
(i) municipal franchise fee(s);
(ii) tax(es); or
(iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
(A) included in a Commission-approved tariff; or
(B) authorized under these rules.
(3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
(4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
(5) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:
(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or
(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).
(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.
(7) The acronym "FCC" means the Federal Communications Commission.
(8) "Facilities-based provider" means a provider that uses:
(a) its own facilities;
(b) essential facilities or unbundled network elements obtained from another provider; or
(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.
(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.
(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.
(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.

(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).

(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

R746-8-300. UUSF Funding.

The following sections in the 300 series address UUSF Funding.

R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:

(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission $0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.

(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.

(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:

(A) the customer's residential street address or primary business street address; or

(B) the customer's registered location for 911 purposes.

(c) A provider may collect the surcharge:

(i) as an explicit charge to each end-user; or

(ii) through inclusion of the surcharge within the end-user's rate plan.

(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.

(e)(i) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission $0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.

(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).

(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(B) $0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge; [~~or~~]

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services[~~.~~]; or

(iii) subject to R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

R746-8-302. UUSF Surcharge Remittances.

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total $1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than $1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

R746-8-400. UUSF Distributions.

The following sections in the 400 series address UUSF Distributions.

R746-8-401. Rate-of-Return Regulated Providers.

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) is in compliance with Commission orders and rules;

(c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, $18 per access line;

(d) offers Lifeline service on terms and conditions prescribed by the Commission;

(e) operates as a facilities-based provider, not a reseller; and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

(i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:

([~~A~~]i) beginning July 1, 2016: 11.0%

([~~B~~]ii) beginning July 1, 2017: 10.75%;

([~~C~~]iii) beginning July 1, 2018: 10.5%;

([~~D~~]iv) beginning July 1, 2019, 10.25%;

([~~E~~]v) beginning July 1, 2020, 10.0%; and

([~~F~~]vi) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

R746-8-402. Non-rate-of-return Regulated Providers.

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

R746-8-403. Lifeline Support.

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed $3.50 per Lifeline subscriber per month of subscription to a service that:

(i) provides service over landlines; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

(i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(ii) within any 12-month period, the first nonrecurring service charge for:

(A) changing local exchange usage service to Lifeline service; and

(B) changing from flat rate service to message rate service; and

(d)(i) _add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

(5) For an access line for which the UUSF surcharge is omitted pursuant to R746-8-301(3)(a)(iii), the UUSF surcharge amount that otherwise would have been remitted pursuant to R746-8-301 shall be deducted from the state Lifeline support paid to the provider.

R746-8-404. One-time UUSF Distribution.

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d). "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "Speech language pathologist" means a person who:

(i) has a master's or doctoral degree in Speech Language Pathology; and

(ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.

(h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a key board;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, applicants shall demonstrate that they:

(i) live within the State of Utah;

(ii) are

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii) are eligible for assistance under a low-income public assistance program; and

(iv) are able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

(i) a person who is licensed to practice medicine;

(ii) an audiologist;

(iii) an otolaryngologist;

(iv) a speech/language pathologist; or

(v) qualified personnel within a state agency.

(4) Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:

(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and

(ii) report, as instructed by the Commission, for training and receipt of the approved device.

(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

(5) Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.

(ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.

(b) A recipient shall be solely responsible for the costs of:

(i) repair of an assistive device, other than for normal wear and tear;

(ii) replacement of an assistive device;

(iii) paper required by an assistive device;

(iv) telephone and internet service; and

(v) light bulbs required by an assistive device.

(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the Commission if the recipient:

(a) no longer intends to reside in Utah;

(b) becomes ineligible pursuant to R746-8-405(3); or

(c) is notified by the Commission to return the device.

R746-8-405a. New Technology Equipment Distribution Program (NTEDP).

(1) Authority and Purpose.

(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).

(b) The purposes of the NTEDP are:

(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;

(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and

(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.

(2) Duration. The NTEDP shall terminate no later than December 31, 2018.

(3) Participation.

(a) An individual who wishes to participate in the NTEDP shall:

(i) submit a completed application form to the Relay Utah office;

(ii) provide medical documentation of:

(A) deafness;

(B) hardness of hearing; or

(C) severe speech impairment;

(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;

(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or

(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and

(v) certify that the individual is able and willing to comply with Subsection (4).

(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.

(c) An applicant who is not selected to participate may request to be placed on a waiting list.

(d) Participation shall be limited as follows:

(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:

(A) no more than 8 deaf individuals who are at least 13 years old;

(B) no more than 8 hard of hearing individuals who are at least 13 years old;

(C) no more than 8 severely speech impaired individuals who are at least 13 years old; and

(D) at least one deaf, hard of hearing, or severely speech impaired individual who is under 13 years of age.

(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.

(4) Participant obligations.

(a) An individual who is chosen to participate in the NTEDP shall:

(i) participate in an entrance interview with the Relay Utah office;

(ii) complete online surveys as instructed by the Relay Utah office;

(iii) promptly comply with all instructions from the Relay Utah office to download apps;

(iv) promptly respond to requests from the Relay Utah office for information and feedback;

(v) maintain the device in the storage case provided;

(vi) retain all original device packaging, instructions, and information;

(vii) contact the manufacturer's customer service department for assistance with technical support;

(viii) promptly report to the Relay Utah office:

(A) software and hardware failures; and

(B) damage to the device;

(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and

(x) immediately return the device to the Relay Utah office if the individual:

(A) moves from the State of Utah;

(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or

(C) chooses to terminate the individual's participation in the NTEDP.

(b) An individual who is chosen to participate in the NTEDP may not:

(i) reformat or attempt to reformat the device;

(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or

(iii) install software, apps, or other programs not authorized by the Relay Utah office.

(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.

(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology
Date of Enactment or Last Substantive Amendment: [~~February 21,~~]2018
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15; 54-8b-10

Regents (Board of), Administration
R765-611
Veterans Tuition Gap Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42860
FILED: 04/30/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments are necessary to incorporate changes to the Veterans Tuition Gap Program (VeT Gap) enacted by S.B. 35 in the 2017 General Session, Session Law 143.

SUMMARY OF THE RULE OR CHANGE: S.B. 35 (2017) permits the VeT Gap Program to be available for any veteran as defined by Section 68-3-12.5, not just those identified as Chapter 33 - Post 9/11 veterans for the Veterans Administration educational benefit program, and who is a Utah resident. VeT Gap funds may also be available for students who may not have had any eligibility for federal educational benefits. Furthermore, S.B. 35 (2017) limits program funds to be utilized at public or a private, nonprofit, postsecondary institution located in Utah that is accredited by a recognized accrediting organization recognized by the United States Department of Education.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 68-3-12.5 and Title 53B, Chapter 13b

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget sets an annual funding level of $125,000 for this program. These rule changes do not require adjustments to the state budget, nor is there anticipated savings or additional costs to the state budget.

♦ LOCAL GOVERNMENTS: There are no associated costs nor savings to local governments due to these proposed changes.
♦ SMALL BUSINESSES: There are no costs nor savings to any small businesses as a result of these proposed changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs to any individual as a result of these rule changes. These changes do enlarge the potential pool of individuals who may benefit from the Veterans Tuition Gap Program as this change opens the program to all veterans regardless of the specific Veterans Administration educational benefit program for which they may qualify. Therefore, a potential savings in the form of tuition assistance may apply to qualifying veterans.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no comments from the department head on the fiscal aspect this rule may have on businesses since this program is limited to tuition assistance for students attending a private nonprofit or public institutions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2. Regulatory Impact to Non-Small Businesses
These rule changes may increase the number of applicants for assistance to pay tuition charges at eleven eligible institutions of higher education (NAICS 6113). The number of such applicants is inestimable for any given year. Any increase in the number of applicants may create additional workloads for one or more employees of institutions but the impact of such work is inestimable due to future unknown demand for VeT Gap funds by veterans who may qualify for assistance.

The head of the Office of the Commissioner of Higher Education has reviewed and approved this fiscal analysis.

R765. Regents (Board of), Administration.
R765-611. Veterans Tuition Gap Program.
R765-611-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Veterans Tuition Gap Program, Utah Code Title 53B, Chapter 13b, enacted in S.B. 16 by the 2014 General Session of the Utah Legislature and amended by S.B. 35 of the 2017 General Session of the Utah Legislature.

R765-611-2. References.

2.1. [~~Post 9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252.~~]Utah Code Section 68-3-12.5 (Definition of Veteran)

2.2. Utah Code Section 53B-8-106 (Resident tuition - Requirements - Rules)

2.3. Utah Code Section 53B-8-102 (Definition of Resident Student)

2.4. Utah Code Section 53B-13b-101 to 104 (Veterans Tuition Gap Program Act)

2.5. Policy and Procedures R512, Determination of Resident Status

R765-611-3. Effective Date.

These policies and procedures are effective July 1, [~~2014~~]2017.

R765-611-4. Policy.

4.1. Program Description: The Veterans Tuition Gap Program (VeT Gap) is a State supplement grant to provide tuition assistance for veterans [~~who are recipients of Federal Post-9/11 Veterans Educational Assistance Act (Federal program) benefits~~]who are attending institutions of higher education in Utah and whose benefits under the Federal program have been exhausted or are not available. This program is only available to higher education institutions that grant baccalaureate degrees.

4.2. Award Year: The award year for VeT Gap is the twelve-month period coinciding with the State fiscal year beginning July 1 and ending June 30.

4.3. Institutions Eligible to Participate: Eligible institutions include those located within the State of Utah which are accredited by a regional or national accrediting organization recognized by the Board.

4.4. Students Eligible to Participate: To be eligible for assistance from VeT Gap funds, a student must:

4.4.1. be a resident student of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106; and

4.4.2. be a veteran [~~using the post 9/11 Veterans Assistance Program funds~~]as defined by Utah Code Section 68-3-12.5; and

4.4.3. be unconditionally admitted and currently enrolled in an eligible program leading to a bachelor's degree at an eligible institution[~~, on at least a half-time basis as defined by the institution~~]; and

4.4.4. be maintaining satisfactory academic progress, as defined by the institution, toward the degree in which enrolled; and

4.4.5. has exhausted the Federal benefit under [~~the post 9/11 Veterans Assistance Program~~]any veterans educational assistance program or such benefits are unavailable; and

4.4.6. has not completed a bachelor's degree; and

4.4.7. be in the final year of his or her academic baccalaureate program.

4.5. Length of Award Period. A qualifying military veteran may receive a program grant until the earlier of the following occurs:

4.5.1. the qualifying military veteran completes the requirements for a bachelor's degree; or

4.5.2. 12 months from the beginning of the initial academic term for which the qualifying military veteran receives an initial program grant.

4.[~~5~~]6. Program Administrator: The program administrator for the VeT Gap is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.[~~6~~]7. Availability of Funds for the Program: Funds available for VeT Gap allocations to institutions may come from specifically earmarked State appropriations, or from other sources such as private contributions. Amounts available for allocations each year shall be allocated as follows:

4.[~~7~~]8. Allocation of Program Funds to Institutions

4.[~~7~~]8.1. Annually, the participating institution will provide the following required data, for the most recently completed academic year, by March 1st. The director of financial aid of an eligible institution, in consultation with the institution's veterans affairs officer, will demonstrate intention to continue participation in VeT Gap by submitting to the program administrator a certification, subject to audit, of [~~(a)~~]the total number of veterans [~~using Post 9/11 Veterans Assistance Program funds attending the institution~~]who were resident students of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 [~~and (b) the total number of such students~~]who have graduated from the institution with a baccalaureate degree in the most recently completed academic year.

4.[~~7~~]8.2. Failure to submit the certification required in 4.[~~7~~]8.1 by the requested date constitutes an automatic decision by an eligible institution not to participate in the program for the next fiscal year.

4.[~~7~~]8.3. Allocation of program funds to participating institutions will be based on the total number of an institution's Utah resident students who are veterans who graduated with a baccalaureate degree in the most recently completed academic year [~~and used their Post 9/11 Veterans Assistance Program funds in the State of Utah~~]and the proportion of each participating institution's number of those students to the total population of such students. For example:

4.[~~7~~]8.3.1. A participating institution's number of Utah resident students who are veterans and graduated with a baccalaureate degree during the most recently completed academic year [~~using Post 9/11 Veterans Assistance Program funds~~]/ Total number of Utah resident students who are veterans and graduated from all participating institutions with a baccalaureate degree during the most recently completed academic year [~~using Post 9/11 Veterans Assistance Program funds~~]= % of VeT Gap funds allocated to the participating institution

4.[~~7~~]8.4. The program administrator will send official notification of each participating institution's allocation to the director of financial aid each fiscal year.

4.[~~7~~]8.5. The program administrator will send a blank copy of the format for the institutional VeT Gap performance report, to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.

4.[~~8~~]9. Institutional Participation Agreement: Each participating institution will enter into a written agreement with the program administrator or assigned designee agreeing to abide by the

program policies, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the awards and actions taken. By accepting the funds, the participating institution agrees to the following terms and conditions:

4.[~~8~~]9.1. Use of Program Funds Received by the Institution

4.[~~8~~]9.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allocated to it for the award year in a budget for student financial aid administrative expenses of the institution.

4.[~~8~~]9.1.2. The institution may not carry forward or carry back from one fiscal year to another any of its VeT Gap allocation for a fiscal year. Any unused funds will be returned to the program administrator as directed. Returned funds will be re-distributed to eligible institutions as regular VeT Gap allocations for disbursement the next award year.

4.[~~8~~]9.1.3. The institution may establish processes to determine the distribution of funds to students so long as it does so in accordance with provisions established in this policy.

4.[~~8~~]9.2. Determination of Awards to Eligible Students

4.[~~8~~]9.2.1. Student cost of attendance budgets will be established by the institution, in accordance with [~~Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act~~]20 U.S.C 108711 [~~as amended~~](2010), for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.[~~8~~]9.2.2. The total amount of any VeT Gap funds awarded to an eligible student in an academic year will not exceed the amount of tuition (not fees) for that academic year and may be impacted by the following:

(a) An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded an amount in proportion to the normally-expected period of enrollment represented by the term, or terms, e.g. semester or quarter) for which the student is enrolled; or

(b) The minimum student award amount may be the balance of funds remaining in the institution's allocation for the award year in the case that the previous eligible student receiving a VeT Gap award for the year reduced the total available funds to an amount less than that for which an individual qualified.

4.[~~8~~]9.2.3. VeT Gap funds will be awarded and packaged on an annual award year basis unless the remaining period of enrollment until completion of the academic program is less than one award year. Funds will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules.

4.[~~8~~]9.2.4. All awards under the program will be made in accordance with [~~current Federal Title IV~~]the non-discrimination requirements of 34 C.F.R. Part 100 (2000).

4.[~~8~~]9.2.5. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

(a) The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

(b) If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used VeT Gap funds for other purposes, the institution will disqualify the student from VeT Gap eligibility beginning with the quarter, semester or other defined enrollment period after the one in which the determination is made.

4.[~~8~~]9.2.6. In no case will the institution initially award program funds in amounts which, with Federal Direct, Federal Direct PLUS and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.[~~8~~]9.2.7. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later over-award of more than $300, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.[~~8~~]9.3. Reports: The institution will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the Board may reasonably require.

4.[~~8~~]9.4. Records Retention and Cooperation in Program Reviews: The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three-year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

KEY: financial aid, higher education, veterans benefits
Date of Enactment or Last Substantive Amendment: [~~February 25, 2015~~]2018
Authorizing, and Implemented or Interpreted Law: 53B-13b; 53B-8-102; 53B-8-106; Pub. L. No. 110-252

Tax Commission, Administration
R861-1A-31
Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42823
FILED: 04/18/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment deletes unnecessary language.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment deletes language that indicated when a party

with standing may petition for a declaratory order since Section 63G-4-503 provides the criteria for petitioning a declaratory order.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-503

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This proposed amendment deletes language that may be construed to narrow the statutory criteria for petitioning for a declaratory order.
♦ LOCAL GOVERNMENTS: None--This proposed amendment deletes language that may be construed to narrow the statutory criteria for petitioning for a declaratory order.
♦ SMALL BUSINESSES: None--This proposed amendment deletes language that may be construed to narrow the statutory criteria for petitioning for a declaratory order.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This proposed amendment deletes language that may be construed to narrow the statutory criteria for petitioning for a declaratory order.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This proposed amendment deletes language that may be construed to narrow the statutory criteria for petitioning for a declaratory order.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule change will not result in a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennifer Franklin by phone at 801-297-3901, or by Internet E-mail at jenniferfranklin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Rebecca Rockwell, Commissioner

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule change is not expected to have any fiscal impacts on non-small business revenues or expenditures, because it only deletes language that may be interpreted to narrow the statutory criteria for petitioning the commission for a declaratory order.

Commissioner of the Utah State Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) [~~A party with standing may petition for a declaratory order to challenge:~~

~~(a) the commission's interpretation of statutory language as stated in an administrative rule; or~~

~~(b) the commission's grant of authority under a statute.~~

~~(3)~~]The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

[~~(4)~~](3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

[~~(5)~~](4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~June 8, 2017~~]2018
Notice of Continuation: November 10, 2016
Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

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Workforce Services, Employment Development
R986-200-236
Earned Income

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42853
FILED: 04/27/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule change is to modify the standards for counting income earned by dependent children for the purposes of Family Employment Program (FEP) assistance in order to incentivize dependent children, in appropriate situations, to find employment without concern for whether their families' public assistance case will be closed as a result.

SUMMARY OF THE RULE OR CHANGE: The Department of Workforce Services (Department) is authorized by statute (Section 35A-3-301 et seq.) to administer the Family Employment Program (FEP), a cash assistance program for needy families that is funded via the federal Temporary Assistance for Needy Families (TANF) Block Grant, see 42 U.S.C. 601 et seq. The purposes of the TANF Block Grant include to "provide assistance to needy families" and to "end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage", see 42 U.S.C. 601. The Utah Legislature has likewise authorized FEP to "assist a parent recipient to obtain employment that is sufficient to sustain a family", "ensure the dignity of those receiving assistance", and "strengthen families", see Section 35A-3-301. The Department is specifically authorized to make rules governing eligibility for FEP assistance under Section 35A-3-302. Eligibility for FEP assistance is determined by, among other factors, the amount of earned income a household receives; if the household's earned income exceeds a certain amount, the household loses its eligibility for FEP assistance. Currently, income earned by dependent children is always counted as earned income for the household. The Department has found that, in some cases, this facet of FEP has created a perverse incentive for dependent children who are able to work and earn income to refrain from doing so lest they cause their family income to exceed the eligibility threshold. Because it is contrary to the purposes of the TANF Block Grant and FEP to disincentivize work by persons who are able to work, the Department has determined it is necessary to modify the standards for how income earned by dependent children is counted. The proposed rule creates an exception for the counting of a dependent child's earned income against the household if the child is participating in the employment or training activities required by the Department as a condition of receiving FEP funds. "Training activities" is a broad term that includes full-time schooling as well as other educational and training activities. This proposed rule change is expected to encourage dependent children who wish to work while attending school to do so without fear of affecting their families' assistance case. In addition, numerous studies have shown the value of holding a job for teenagers in terms of teaching important life skills like workplace norms and expectations, effective time management, motivation to pursue long-term employment goals, and persistence. The Department believes this proposed rule change will contribute to helping dependent children learn these skills and ultimately progress toward the Department's and state's goal of ending the cycle of intergenerational poverty.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C. 601 et seq. and Section 35A-3-301 et seq. and Section 35A-3-302

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: At the outset it should be noted that the costs and savings described in this section are applied to the TANF funds the Department receives from the federal government and do not require any independent appropriations from the Legislature. The Department has analyzed FEP case closures from fiscal years 2015, 2016, and 2017 and identified 73 cases in which a dependent child in the household reported earned income and the case closed due to the household's earned income exceeding the eligibility threshold. It is likely that not all of these closures can be attributed the earned income of a dependent child specifically; however, for the purpose of this analysis the Department assumes that the dependent child's earned income was a factor that caused the household's earned income to exceed the eligibility threshold. Based on this analysis, the Department expects that this proposed rule

change will affect approximately 25 households per year by allowing them to receive FEP assistance they would not have received previously. Although monthly benefit amounts vary from one household to the next, the average monthly benefit amount for the 73 cases identified by the Department is approximately $523. Based on this information, the Department anticipates paying out approximately $12,700 in additional FEP assistance per month once this proposed rule change goes into effect. The annual cost is expected to be approximately $153,000 per year.

♦ LOCAL GOVERNMENTS: This proposed rule change is not expected to impact local governments because FEP is a state-level program that does not rely on local governments for its funding, administration, or enforcement.

♦ SMALL BUSINESSES: The Department anticipates that this proposed rule change will create a savings for small businesses by allowing them to retain employees who might otherwise be forced to choose between quitting their employment or causing their households to become ineligible for FEP assistance. Thus, this proposed rule change is expected to reduce the indirect fiscal costs to small businesses, although this savings is inestimable in light of the attenuated nature of the impact on small businesses. The Department has considered whether this proposed rule change will have a measurable negative fiscal impact on small businesses and has determined that this proposed rule change will not have a negative fiscal impact.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This proposed rule change is anticipated to create a savings for FEP-eligible households by allowing them to maintain their eligibility even if a dependent child is employed under certain circumstances. The Department has analyzed FEP case closures from fiscal years 2015, 2016, and 2017, and identified 73 cases in which a dependent child in the household reported earned income and the case closed due to the household's earned income exceeding the eligibility threshold. It is likely that not all of these closures can be attributed the earned income of a dependent child specifically; however, for the purpose of this analysis, the Department assumes that the dependent child's earned income was a factor that caused the household's earned income to exceed the eligibility threshold. Based on this analysis, the Department expects that this proposed rule change will affect approximately 25 households per year by allowing them to receive FEP assistance they would not have received previously. Although monthly benefit amounts vary from one household to the next, the average monthly benefit amount for the 73 cases identified by the Department is approximately $523. Based on this information, the Department expects approximately 25 affected households to receive approximately $6,300 each per year in additional FEP assistance, making an aggregate disbursement of approximately $153,000 per year. These amounts constitute savings to the affected households under this proposed rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are expected for any affected persons because this proposed rule change does not change any compliance or reporting requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule change is expected to have a positive fiscal impact on businesses by allowing them to retain employees who might otherwise be forced to choose between quitting their employment or causing their households to become ineligible for FEP assistance. The number of businesses receiving this benefit is inestimable at this time because the Department does not have information regarding the specific employers that may be affected.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Nathan White by phone at 801-526-9647, or by Internet E-mail at nwhite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/25/2018

THIS RULE MAY BECOME EFFECTIVE ON: 08/01/2018

AUTHORIZED BY: Jon Pierpont, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	$153,000	$153,000	$153,000
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0

Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$153,000	$153,000	$153,000
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This proposed rule change may have an indirect fiscal benefit to non-small businesses that hire as employees dependent children whose households are affected by this rule. These businesses would experience a benefit from being able to hire and retain these employees without concern over whether the employee will be forced to quit in order to keep his or her household eligible for FEP assistance. This indirect fiscal benefit is inestimable because the Department lacks information regarding the specific employers that may be affected.

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children, unless the child is participating in required employment or training activities.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

KEY: family employment program, SNAP
Date of Enactment or Last Substantive Amendment: [~~September 14, 2016~~]2018
Notice of Continuation: September 2, 2015
Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

Workforce Services, Employment Development
R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42855
FILED: 04/27/2018

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these proposed rule changes is to bring the policies and procedures for administering child care subsidies into line with new federal requirements, to streamline and improve enforcement of child care subsidy administration, to correct ambiguities promulgated in previous versions of this rule, and to make technical changes.

SUMMARY OF THE RULE OR CHANGE: The federal government provides funding for child care assistance under the Child Care and Development Block Grant Act, 42 U.S.C. 9801 et seq. These funds are held by the Child Care and Development Fund (CCDF), and access to those funds by the states is controlled by federal CCDF regulations found in 45 CFR Part 98. Recent amendments to those regulations became effective in November 2016 and required a variety of changes to the state rules and procedures promulgated by the Department of Workforce Services (DWS), Office of Child Care, which administers the state child care subsidy program under the authority of Sections 35A-3-310 and 35A-3-310.5, see Child Care and Development Fund (CCDF) Program, 81 FR 67438 (09/30/2016). Specifically, the CCDF changes

provide that a parent receiving a child care subsidy payment is subject to a periodic review of the household's eligibility once initial eligibility has been determined. An increase in household income prior to the end of the review period will no longer reduce or eliminate the household's eligibility for subsidy unless the income change pushes the household over the specified gross monthly income threshold, which is set by the federal government at 85% of the state median income. The Department will continue to act immediately on changes that increase the amount of a parent's subsidy, as well as changes based on the amounts being charged for child care by a provider (including a change in providers). In connection with these changes, certain previously reportable events, such as a parent leaving an approved training or educational program, and no longer meeting minimum work requirements, are no longer reportable except at the time of the review. Similar changes are made to the temporary change child care reporting requirements, clarifying that only persons who experience a temporary loss of employment are required to report that event to the Department in order for their child care subsidy to continue at the same level. These proposed rule changes also add a new category of temporary change, namely a child turning 13 years old during the eligibility review period. In addition, these proposed rule changes alter the job search child care requirements to bring them in line with the CCDF guidance. Specifically, these proposed rule changes delete the bar on receiving job search child care more than once in a 12-month period. The CCDF changes also put in place stringent new requirements regarding background checks for child care providers and their employees. Per the CCDF regulations, these changes are intended to apply to all providers who are or could become eligible to receive CCDF funds; therefore, these proposed rule changes clarify that it is intended to apply to all such providers, and to assess a consequence of exclusion from the approved provider list for any provider that does not comply with the background-check requirements. CCDF regulations also require background checks to be partially complete before a provider or employee may work with children while being supervised by another employee, and require the checks to be totally complete before such persons can work unsupervised. In addition, CCDF regulations require background checks to be regularly renewed and also require fingerprints for at least the initial check. In conjunction with these requirements, these proposed rule changes harmonize the Department's handling of background checks with the policies and procedures set out in the CCDF regulations, as well as those set forth by the Child Care Licensing Program within the state Department of Health, which is the entity that has statutory authority under Utah law to view, handle, and process the actual background checks. These proposed rule changes also provide that, in addition to the categorical exceptions for certain offenses that are already in rule, the Department's designee may issue a case-by-case exemption for persons who would otherwise be deemed to have failed a background check under certain circumstances, consistent with Section 35A-3-310.5. This discretion is granted as a matter of sound policy and also in connection with the equal employment opportunity guidance provided in the Federal Register in conjunction with the new CCDF regulations. These proposed rule changes also clarify the appeals process related to background checks for providers and their employees as required by the CCDF regulations and consistent with the Utah Administrative Procedures Act, Section 63G-4-101 et seq. Other aspects of these proposed rule changes are intended to streamline enforcement procedures and correct errors or ambiguities in prior versions of the rule. For example, these proposed rule amendments change the handling of provider disqualifications by making clear that a disqualification follows the facility where the incriminating conduct occurred and the principal(s) of that facility, not necessarily any other facilities that may be affiliated with the same provider. These changes are expected to alleviate the potential burden of a disqualification on parents receiving subsidy, as well as innocent facilities and their workers. These proposed rule changes also clarify that licensees are persons for whom child care subsidy will not be provided if they are caring for their own children. Similarly, these proposed rule changes clarify that a provider living in the same home as the parent is ineligible for subsidy only if the provider is providing care in the home where they live (as opposed to at a dedicated child-care facility). This standard would also apply to providers living in the same home as a non-custodial parent and providing child care for a child of that parent. These clarifications resolve ambiguities in the wording of the existing rule. These proposed rule changes also resolve an ambiguity that previously could have resulted in exceptions to the minimum work requirements being made available for two-parent households but not single-parent households. In addition, these proposed rule changes resolve ambiguities in the job search child care requirements to bring them in line with Department policy. Specifically, these proposed rule changes delete references to hours of previous employment in favor of referencing the general minimum work requirements, delete references to the three-month temporary change time frame, and clarify that the copayment for job search child care disregards only the income earned during the job search period. In addition, these proposed rule changes make a technical correction to the eight-hour reporting requirement for the absence of a child from child care to bring it in line with the intent of the rule and Department policy. Further, these proposed rule changes delete the bar on receiving job search child care if a person is separated from one of multiple jobs they hold. These proposed rule changes also remove the maximum hours requirement for child care services provided when a parent works graveyard shifts and needs time during the day to sleep. The revised standard is that the hours of care provided must not exceed the number of hours the parent worked. The remainder of the changes are technical and nonsubstantive. The Department has specific authority to make rules to implement these changes under Sections 35A-1-104, 35A-1-303, 35A-3-102, 35A-3-310, and 35A-3-310.5.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 U.S.C. 9801 et seq. and 45 CFR Part 98 and 81 FR 67438 and Section 35A-3-310 and Section 35A-3-310.5

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: At the outset it should be noted that the costs and savings described in this section are applied to the CCDF funds the Department receives from the federal government and do not require any independent appropriations from the Legislature. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period if the client's household income increases prior to that point will cause a cost to the state budget because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department has determined an annual cost of approximately $1,100,000 per year for this change. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period if a child in the household reaches age 13 before the end of the review period will cause a cost to the state budget because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department has determined an annual cost of approximately $294,000 per year for this change. The additional portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the review period -- specifically, those dealing with changes that are no longer required to be reported -- will cause a cost to the state budget because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department has determined an annual cost of approximately $871,000 per year for this change. The portions of these proposed rule changes dealing with the extension of temporary change child care beyond three months will cause a cost to the state budget because clients who previously would have had their cases closed at the end of the three-month period may now remain eligible. The Department has determined an annual cost of approximately $102,000 per year for this change. The portions of the proposed rule dealing with the elimination of the 12-month limit on requests for job search child care will cause a cost to the state budget because clients who previously would have had their cases closed due to lack of eligibility for job search child care may now remain eligible. The Department has determined an annual cost of approximately $51,000 per year for this change. All of the above costs are mandated by federal CCDF requirements and must be incurred as conditions of continuing to receive CCDF monies for the State. The portions of these proposed rule changes dealing with the elimination of subsidies for providers living with a child's non-custodial parent will cause a savings to the state budget because clients who previously received subsidies in these situations will no longer be eligible. The Department has determined an annual savings of approximately $14,000 per year for this change. The portions of these proposed rule changes dealing with payment of subsidies to licensees caring for their own children, providers living with a parent client but providing child care elsewhere, eligibility of single parents who can prove the existence of a disability preventing them from meeting the minimum work requirements, eligibility of parents who work graveyard shifts, application of the minimum work requirements for two-parent households, job search child care in relation to permanent separations from employment, annual background checks and associated waiting periods, and clarification of appeals procedures are not expected to cause costs or savings to the state budget. This is the case because these portions of these proposed rule changes are intended to correct ambiguities in the existing rule and ensure this rule is in place with currently existing Department policy and practice; in other words, they do not constitute substantive changes that will affect the state budget. The portions of these proposed rule changes dealing with the effect of a provider disqualification are not expected to cause costs or savings to the state budget because provider disqualifications are exceedingly rare (the state has not had one since 2015) and because any effect of a provider disqualification is caused by the provider's own bad acts that led to the disqualification, not by the Department. The portions of these proposed rule changes dealing with requiring all CCDF-eligible child care providers to undergo background checks and requiring re-fingerprinting under certain circumstances are not expected to cause costs or savings to the state budget because the costs associated with this requirement are borne by child care providers, not the state. The portions of these proposed rule changes dealing with the expansion of potential opportunities for exceptions due to adverse background check findings are not expected to cause costs or savings to the state budget because the granting or denying of an exception does not impose any specific costs on the state.

♦ LOCAL GOVERNMENTS: No costs or savings are anticipated to local governments because the child care subsidy program is a state-level program that generally does not rely on local governments for its funding, administration, or enforcement, and because any costs incurred by local governments in processing background checks are passed on to the child care provider or employee in the form of a background check fee that covers the entire cost of the background check.

♦ SMALL BUSINESSES: Portions of these proposed rule changes are expected to affect small businesses that serve as child care providers (NAICS 624410, Child Care Services) and receive or are eligible for CCDF monies. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period if the client's household income increases prior to that point will cause a benefit to small businesses because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. There are approximately 1,100 providers affected by this change. Although the amount of the effect for each provider may vary greatly depending on the size of the provider and the makeup of the clients the

provider serves, the average provider is expected to see a benefit of approximately $1,000 per year. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period, if a child in the household reaches age 13 before the end of the review period, will cause a benefit to small businesses because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. There are approximately 1,100 providers affected by this change. Although the amount of the effect for each provider may vary greatly depending on the size of the provider and the makeup of the clients the provider serves, the average provider is expected to see a benefit of approximately $270 per year. The additional portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the review period -- specifically, those dealing with changes that are no longer required to be reported -- will cause a benefit to small businesses because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. There are approximately 1,100 providers affected by this change. Although the amount of the effect for each provider may vary greatly depending on the size of the provider and the makeup of the clients the provider serves, the average provider is expected to see a benefit of approximately $790 per year. The portions of the proposed rule dealing with the extension of temporary change child care beyond three months will cause a benefit to small businesses because clients who previously would have had their cases closed at the end of the three-month period may now remain eligible. There are approximately 1,100 providers affected by this change. Although the amount of the effect for each provider may vary greatly depending on the size of the provider and the makeup of the clients the provider serves, the average provider is expected to see a benefit of approximately $90 per year. The portions of these proposed rule changes dealing with the elimination of the 12-month limit on requests for job search child care will cause a benefit to small businesses because clients who previously would have had their cases closed due to lack of eligibility for job search child care may now remain eligible. Although the amount of the effect for each provider may vary greatly depending on the size of the provider and the makeup of the clients the provider serves, the average provider is expected to see a benefit of approximately $50 per year. The portions of the proposed rule dealing with the expansion of potential opportunities for exceptions due to adverse background check findings will cause a benefit to small businesses because providers that would previously have had to forego hiring or retaining an employee with an adverse background check finding may now have the possibility of receiving an exception to the finding. The amount of this benefit is inestimable because very few exceptions (less than five per year) are expected to be granted by Child Care Licensing, and because the Department does not have and cannot reasonably obtain the information necessary to calculate the monetary value to a provider of not having to discharge an employee due to an adverse background check finding. The portions of these proposed rule changes dealing with requiring all CCDF-eligible child care providers to undergo background checks and requiring re-fingerprinting under certain circumstances will cause a cost to small businesses because some providers who were not previously in compliance with these provisions will have to come into compliance. There is a one-time cost of $37 for fingerprints for each background check, as well as an annual cost of $18 for the background check itself. The Department estimates that there are 22 licensed programs that need to be brought into compliance, with an average of 14 employees per program that will need background checks. The Department estimates that there are 47 licensed family providers that need to be brought into compliance, with an average of one employee per provider that will need a background check. The Department expects there are additional providers that could be subject to these requirements, but those providers do not and have never received CCDF monies, are unknown to the Department, and are not listed in NAICS. The Department estimates one-time costs of $518 per licensed program and $37 per family provider, and annual costs of $252 per licensed program and $18 per family provider. The portions of these proposed rule changes dealing with the elimination of subsidies for providers living with a child's non-custodial parent will cause a cost to small businesses because clients who previously received subsidies in these situations will no longer be eligible. The payment of subsidy in this situation appears to be exceedingly rare, with the Department expecting 1-3 cases per year to be affected. Further, most of the affected providers are Family, Friend, and Neighbor (FFN) providers that consist of individuals providing child care on an informal basis within their home or the child's home rather than on a commercial or business basis. On average, the Department expects an annual cost of $7,000 per year to two providers, for a total cost of $14,000 per year. The portions of these proposed rule changes dealing with payment of subsidies to licensees caring for their own children, providers living with a parent client but providing child care elsewhere, eligibility of single parents who can prove the existence of a disability preventing them from meeting the minimum work requirements, eligibility of parents who work graveyard shifts, application of the minimum work requirements for two-parent households, job search child care in relation to permanent separations from employment, annual background checks and associated waiting periods, and clarification of appeals procedures are not expected to cause costs or savings to small businesses. This is the case because these portions of these proposed rule changes are intended to correct ambiguities in the existing rule and ensure the rule is in place with currently existing Department policy and practice; in other words, they do not constitute substantive changes that will affect small businesses. The portions of the proposed rule dealing with the effect of a provider disqualification are not expected to cause costs or savings to small businesses because provider disqualifications are exceedingly rare (the state has not had one since 2015) and because any effect of a provider disqualification is caused by the provider's own bad acts that led to the disqualification, not by the Department. The

portions of these proposed rule changes identified above as having a measurable negative fiscal impact on small businesses have been analyzed by the Department to determine whether the negative fiscal impact could be reduced via less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting, consolidated or simplified compliance or reporting requirements, performance standards in lieu of design or operational standards, and exemptions from portions of the proposed rule for small businesses. The Department has determined none of these options are feasible in this case because the background check requirements that impose a negative fiscal impact are federal CCDF requirements that the Department is required to impose as a condition of continuing to operate the CCDF program and receive CCDF monies, and because it would be impossible to meaningfully address the practice of providers who live with a non-custodial parent without applying the proposed rule to some small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Portions of these proposed rule changes are expected to affect parent clients that receive or are eligible for CCDF child care subsidies because the changes will affect eligibility criteria for those subsidies. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period if the client's household income increases prior to that point will cause a benefit to parent clients because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department estimates an average of 258 clients will be affected per year. Although the amount of the effect for each parent client may vary greatly depending on household composition and other factors, the average affected client is expected to see a benefit of approximately $4,300 per year. The portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the 12-month review period, if a child in the household reaches age 13 before the end of the review period, will cause a benefit to parent clients because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department estimates an average of 69 clients will be affected per year. Although the amount of the effect for each parent client may vary greatly depending on household composition and other factors, the average affected client is expected to see a benefit of approximately $4,300 per year. The additional portions of these proposed rule changes dealing with maintaining a client's eligibility until the end of the review period -- specifically, those dealing with changes that are no longer required to be reported -- will cause a benefit to parent clients because clients who previously would have had their cases closed mid-review period will now remain eligible and receive subsidies until the end of the review period. The Department estimates an average of 204 clients will be affected per year. Although the amount of the effect for each parent client may vary greatly depending on household composition and other factors, the average affected client is expected to see a benefit of approximately $4,300 per year. The portions of these proposed rule changes dealing with the extension of temporary change child care beyond three months will cause a benefit to parent clients because clients who previously would have had their cases closed at the end of the three-month period may now remain eligible. The Department estimates an average of 26 clients will be affected per year. Although the amount of the effect for each parent client may vary greatly depending on household composition and other factors, the average affected client is expected to see a benefit of approximately $3,900 per year. The portions of these proposed rule changes dealing with the elimination of the 12-month limit on requests for job search child care will cause a benefit to parent clients because clients who previously would have had their cases closed due to lack of eligibility for job search child care may now remain eligible. The Department estimates an average of 18 clients will be affected per year. Although the amount of the effect for each parent client may vary greatly depending on household composition and other factors, the average affected client is expected to see a benefit of approximately $2,900 per year. The portions of these proposed rule changes dealing with the expansion of potential opportunities for exceptions due to adverse background check findings will cause an indirect benefit to parent clients because providers that would previously have had to forego hiring or retaining an employee with an adverse background check finding may now have the possibility of receiving an exception to the finding, making child care more available for parent clients. The amount of this benefit is inestimable because very few exceptions (less than five per year) are expected to be granted by Child Care Licensing, and because the Department does not have and cannot reasonably obtain the information necessary to calculate the monetary value to a parent client of a provider not having to discharge an employee due to an adverse background check finding. The portions of these proposed rule changes dealing with the elimination of subsidies for providers living with a child's non-custodial parent will cause a cost to parent clients because clients who previously received subsidies in these situations will no longer be eligible. The payment of subsidy in this situation appears to be exceedingly rare, with the Department expecting 1-3 cases per year to be affected. On average, the Department expects an annual cost of $7,000 per year to two clients, for a total cost of $14,000 per year. The portions of these proposed rule changes dealing with requiring all CCDF-eligible child care providers to undergo background checks and requiring re-fingerprinting under certain circumstances are not expected to cause costs or savings to parent clients because the costs associated with these provisions are imposed on providers, not parent clients. The portions of the proposed rule dealing with payment of subsidies to licensees caring for their own children, providers living with a parent client but providing child care elsewhere, eligibility of single parents who can prove the existence of a disability preventing them from meeting the minimum work requirements, eligibility of parents who work graveyard shifts, application of the minimum work requirements for two-parent households, job search child

care in relation to permanent separations from employment, annual background checks and associated waiting periods, and clarification of appeals procedures are not expected to cause costs or savings to parent clients. This is the case because these portions of these proposed rule changes are intended to correct ambiguities in the existing rule and ensure the rule is in place with currently existing Department policy and practice; in other words, they do not constitute substantive changes that will affect parent clients. The portions of these proposed rule changes dealing with the effect of a provider disqualification are not expected to cause costs or savings to parent clients because provider disqualifications are exceedingly rare (the state has not had one since 2015) and because any effect on parent clients of a provider disqualification is caused by the provider's own bad acts that led to the disqualification, not by the Department. In the event a disqualification does occur, the changes are expected to provide an indirect benefit to parent clients because the effect of a disqualification will not be as far-reaching and will not cause as much disruption to parent clients who were obtaining child care through a now-disqualified provider.

COMPLIANCE COSTS FOR AFFECTED PERSONS: For child care providers not already in compliance with CCDF requirements, there is a one-time cost of $37 for fingerprints for each background check, as well as an annual cost of $18 for the background check itself. The Department estimates that there are 22 licensed programs that need to be brought into compliance, with an average of 14 employees per program that will need background checks. The Department estimates that there are 47 licensed family providers that need to be brought into compliance, with an average of one employee per provider that will need a background check. The Department expects there are additional providers that could be subject to these requirements, but those providers do not and have never received CCDF monies, are unknown to the Department, and are not listed in NAICS. The Department estimates one-time costs of $518 per licensed program and $37 per family provider, and annual costs of $252 per licensed program and $18 per family provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department believes these proposed rule changes will constitute a net benefit to the approximately 1,100 small businesses that serve as child care providers and receive or may receive CCDF funds. Those businesses will be able to gain more parent clients with CCDF eligibility and associated subsidy, as well as experience greater continuity of clientele because the eligibility of parent clients for subsidies will be more consistent. The background check portions of these proposed rule changes constitute a relatively small cost that must be imposed as a requirement of keeping the state's CCDF program in compliance with federal law. These portions of the proposed rule will not affect the 13 non-small business child care providers in the state as all of them are already required to comply with CCDF requirements. The Department expects 22 child care centers and 47 licensed family providers will need to be brought into compliance with the background check provisions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Nathan White by phone at 801-526-9647, or by Internet E-mail at nwhite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/22/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/29/2018

AUTHORIZED BY: Jon Pierpont, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2019	FY 2020	FY 2021
State Government	$2,418,000	$2,418,000	$2,418,000
Local Government	$0	$0	$0
Small Businesses	$19,500	$6,400	$6,400
Non-Small Businesses	$14,000	$14,000	$14,000
Other Persons	$14,000	$14,000	$14,000
Total Fiscal Costs:	**$2,465,500**	**$2,452,000**	**$2,452,000**
Fiscal Benefits			
State Government	$14,000	$14,000	$14,000
Local Government	$0	$0	$0
Small Businesses	$2,418,000	$2,418,000	$2,418,000
Non-Small Businesses	$0	$0	$0
Other Persons	$2,418,000	$2,418,000	$2,418,000
Total Fiscal Benefits:	**$4,850,000**	**$4,850,000**	**$4,850,000**

Net Fiscal Benefits:	$2,384,500	$2,398,000	$2,398,000

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

Appendix 2: Regulatory Impact to Non-Small Businesses
There are 13 large businesses in the industry in question (NAICS 624410) in Utah. The Department does not expect these proposed rule changes to have a fiscal impact on these large businesses because the large businesses at issue are already required to be in compliance with CCDF requirements, so these proposed rule changes do not affect their status.

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines[~~has reason to believe~~] the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3)[~~client's circumstances have changed, affecting either eligibility or payment amount~~], the Department may[~~reduce or~~] terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);[

~~(b) that the client is no longer in an approved training or educational program;~~]

(b[e]) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;[

~~(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;~~]

(c[e]) the client is separated from his or her employment;

(d[f]) a change of address;

(e[g]) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married;

(f[~~h~~]) a change in the child care provider, including when care is provided at no cost;

(g[~~i~~]) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized;

(h[~~j~~]) a change in child custody, visitation, or parent-time, including any regular periods of extended change in visitation or parent-time such as extended holidays or vacations with a non-custodial parent;

(i[~~k~~]) a change in the total cost of care for a client that is based on a change in a person(s) paying some or all of the total cost of care; and

(j[~~l~~]) any other changes that would affect a client's eligibility for ESCC as described in rule R986-700-709.

(6)[~~Certain reportable changes are considered allowable temporary changes when the circumstances are expected to last three months or less.~~

]

(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule;[~~.~~]

(iv) An eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care.

(b) A client who experiences an allowable temporary change and has been approved for ongoing employment support child care (ESCC) may continue to receive child care payments at the same level for the remainder of the certification period. If the allowable temporary change is a temporary loss of employment, the client must comply with Department procedures regarding eligibility verification, including but not limited to reporting the temporary loss of employment to the Department within ten days and requesting the child care continue.[~~A client must have received an ESCC payment in the month prior to or the month of the temporary change before receiving a temporary change payment or a subsequent temporary change payment. The Department shall inform a client whose eligibility for ESCC ends due to a change in circumstances of the client's possible eligibility for temporary change child care. To receive temporary change child care, the client must request such child care within ten days of receiving a notification of possible eligibility from the Department, comply with Department procedures regarding eligibility verification, and continue to use child care during the temporary change period. Temporary change child care may not be received for more than three consecutive months.~~]

(7) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:

(a) The Department may act on reported changes that result in a subsidy increase or copayment decrease, and

(b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider[~~If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change~~].

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; ~~or~~

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment[-]; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained [~~in the Provider Guide and~~]in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.

(11[~~0~~]) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.

(12[~~+~~]) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week. An exception may be made to the minimum work requirements with Department approval when a parent with a disability is employed at his or her full capacity and provides requested documentation and/or verification.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are

employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2)(i) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718.

(ii) A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month.

(iii) If the client does not use at least eight hours of child care by the 25th of the month but the child returns after the 25th of the month and attends for at least eight hours total in the month[~~uses at least eight hours of child care after the 25th of the month~~], it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child returns after the 25th of the month and attends for at least eight hours total in the month[~~the child then attends for eight hours that month after the change has been reported~~].

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. Hours of need cannot exceed actual work hours[~~A maximum of seven hours per day will be approved for sleep time~~].

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider[~~, including a child care center,~~] under this subsection will follow [~~both~~]the facility[~~provider~~], any successor facilities[~~the principal provider~~], and [~~any~~]the principal(s) of the facility[~~successor center or provider~~].

(a) A "successor facility" [~~provider, including a child care center,~~]is any facility that acquires the business or acquires substantially all of the assets of a facility that has been disqualified[~~the provider or child care center~~]. This includes a facility whose provider [~~who~~]changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" [~~are commonly defined to~~]include any property, tangible or intangible, which has value. Assets may [~~also~~] include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of three additional months provided the client:

(a) met the minimum work requirement for a single or two-parent household,[~~was employed at least 15 hours per week~~] and was permanently separated from his or her job or was receiving child care for an allowable temporary change [~~that did not exceed three months~~] when permanently separated from his or her job;

(b) was receiving ES CC in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.[

~~(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.~~

~~(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.~~]

(4[~~6~~]) The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income during the JS CC period.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements[~~that wish to receive CCDF funds~~].

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-753. Criminal Background Checks[~~Screening~~].

(1) The Department will contract with the CCL to perform a criminal background check[~~screening~~], which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a[~~waiver and~~] certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and

(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older[~~including caregivers and covered individuals~~] are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks[~~screening~~] annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check[~~screening~~], CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the

background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

(6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.

(b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.

(c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:

(i) Any offense specifically not excluded under Subsection (2) above;

(ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;

(iii) Any felony against a child, including child pornography;

(iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;

(v) Any felony involving rape or sexual assault;

(vi) Any felony involving kidnapping;
(vii) Any felony involving arson;
(viii) Any felony involving physical assault or battery;
(ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or
(x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-757. Consequences for Failure to Comply; Appeals.

(1) A child care provider that fails to comply with Sections R986-700-751 through -756 will be removed from approved provider status until the provider complies. The child care provider may also be held liable for additional penalties under Section R986-700-718 if the requirements for liability under that section are met.

(2) A child care provider or covered individual may appeal an adverse action related to the background check requirements by following the procedure for appeals set forth in Section R986-700-705(7).

KEY: child care
Date of Enactment or Last Substantive Amendment: [~~September 21, 2017~~]2018
Notice of Continuation: September 3, 2015
Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110

Workforce Services, Unemployment Insurance
R994-405
Ineligibility for Benefits

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 42861
FILED: 04/30/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of these proposed rule amendments are to formally clarify the Department of Workforce Services' (Department) position regarding when an employee of an educational institution has a reasonable assurance of returning to work for purposes of determining the employee's eligibility for unemployment insurance benefits.

SUMMARY OF THE RULE OR CHANGE: Under the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301 et seq., the United States Department of Labor (DOL) establishes an unemployment trust fund out of which states may operate unemployment insurance programs and provides certain mandates as conditions of operating a state unemployment insurance program. Section 3304(a)(6) of FUTA generally mandates that states refrain from paying unemployment compensation to educational employees during the periods between successive semesters or terms (i.e., during summer vacation or holiday breaks). FUTA contains an exception for employees who do not have "a contract or reasonable assurance" that they will continue to work for an educational institution during the subsequent semester or term. On 12/22/2016, DOL issued Unemployment Insurance Program Letter (UIPL) No. 5-17. This UIPL clarifies DOL's interpretation of Section 3304(a)(6) of FUTA as it relates to educational employees who are, or have been, employed by more than one educational employer. DOL's guidance states that a reasonable assurance of future employment does not exist for purposes of FUTA if the future employment "will not earn at least 90% of the amount that the claimant earned in the first academic year or term, or in a corresponding term." The UIPL also addresses situations in which an employee works for multiple educational employers and may have a reasonable assurance of return to one employer but not another. In these situations, states are required to determine eligibility for unemployment insurance benefits based either on: 1) only the services performed for the employer(s) that will not bring the employee back for another semester or term, or 2) the totality of the work and earnings to which the employee can return in the new semester or term. The Department has brought its policies and procedures into

compliance with this UIPL. These proposed rule changes make technical changes to the unemployment rule relating to educational employees so as to reflect the Department's continued compliance with the UIPL. As these proposed rule changes reflect, "reasonable assurance" for educational employment purposes is determined by reference to the totality of the work and earnings to which the employee can return in the new semester or term. The Department has specific authority to enact these proposed rule changes pursuant to Sections 35A-1-104, 35A-4-207, 35A-4-406, and 35A-4-502.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 26 U.S.C. 3301 et seq. and Section 35A-4-405

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget are anticipated from these proposed rule changes because these proposed rule changes merely formalize existing Department policy and procedure, and will not affect the amount of unemployment insurance benefits paid out or otherwise affect the Department's budget.
♦ LOCAL GOVERNMENTS: No costs or savings to local governments are anticipated from these proposed rule changes because the unemployment insurance program is a state-level program that does not rely on local governments for its funding, administration, or enforcement.
♦ SMALL BUSINESSES: No costs or savings to small businesses are anticipated from these proposed rule changes because these proposed rule changes merely formalize existing Department policy and procedure, and will not affect the amount of unemployment insurance benefits paid out or the amount of benefit costs charged to employers. The Department has considered whether these proposed rule changes will have a measurable negative fiscal impact on small businesses and has determined that these proposed rule changes will not have a negative fiscal impact.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to persons other than small businesses, businesses, or local government entities are anticipated from these proposed rule changes because these proposed rule changes merely formalize existing Department policy and procedure, and will not affect the amount of unemployment insurance benefits paid out to claimants or the amount of benefit costs charged to employers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are expected for any affected persons because these proposed rule changes do not change any compliance or reporting requirements for either claimants or employers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Nathan White by phone at 801-526-9647, or by Internet E-mail at nwhite@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2018

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2018

AUTHORIZED BY: Jon Pierpont, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**

Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
After a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

R994. Workforce Services, Unemployment Insurance.
R994-405. Ineligibility for Benefits.
R994-405-802. Elements Required for Denial.

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for [~~an~~]one or more educational institutions at the next regular year or term as set forth in Rule R994-405-805.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8) unless the claimant otherwise has a reasonable assurance of returning to work that is not substantially less suitable under Subsection (4) below.

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work[~~, but includes any bona fide offer of suitable work at any educational institution~~]. Reasonable assurance exists if the terms and conditions of [~~any~~]the new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. For purposes of this section, new work in the educational field is considered to be substantially less suitable if the claimant will not earn from all educational employers at least 90% of the amount earned from all educational employers during the previous academic year or term at issue. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance (as defined in Rule R994-405-805) of working in any capacity for [~~an~~]one or more educational institutions in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered [~~an opportunity for a~~]reasonable assurance of employment, as defined in Rule R994-405-805, for [~~an~~]one or more educational institutions for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

KEY: unemployment compensation, employment, employee's rights, employee terminations
Date of Enactment or Last Substantive Amendment: [~~March 1, 2017~~]2018
Notice of Continuation: March 29, 2018
Authorizing, and Implemented or Interpreted Law: 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405

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.

Human Services, Administration
R495-885
Employee Background Screenings

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 42845
FILED: 04/23/2018

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule filing is to align our processes with current background screening Rule R501-14 and Section 62A-2-120. The language within the active Rule R495-885 violates Section 62A-2-120, this emergency filing will bring the agency back into compliance until an amendment is processed.

SUMMARY OF THE RULE OR CHANGE: This change will realign our process with current background screening statute and rule. Within Section 62A-1-118, the agency is given permission to use criteria set forth in Section 62A-2-120 for running checks upon employees; although Section 62A-2-120 is statute, the rule is specific to licensees, not employees, these changes will clarify that the agency is not applying Section 62A-2-120 to employees, rather the agency is just using the criteria and process set forth.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-118 and Section 62A-2-120

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: As the current rule is written, it violates the scope of Sections 62A-2-120 and 62A-1-118, which govern portions of this rule. Within Section 62A-1-118, the agency is given permission to use criteria set forth in Section 62A-2-120 for running checks upon employees; although Section 62A-2-120 is statute, the rule is specific to licensees, not employees, these changes will clarify that the agency is not applying Section 62A-2-120 to employees, rather the agency is just using the criteria and process set forth. These changes will align the agency's current process with statute until the agency can process an amendment.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This emergency rule will not change the ongoing costs to the Department of Human Services (DHS) or any state entity. These rule changes will only implement compliance regarding the background screening process and have no added expenditures.
♦ LOCAL GOVERNMENTS: Local governments are not affected by these rule changes. There is no impact to local governments.

♦ SMALL BUSINESSES: Small businesses are not affected by these rule changes. This rule only impacts DHS.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons are not affected by these rule changes. This rule only impacts DHS.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person will bear a compliance cost. This rule only impacts DHS.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this emergency amendment will not result in a fiscal impact to small or large businesses. This rule only impacts DHS.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION
ROOM DHS ADMINISTRATIVE OFFICE MULTI
STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jonah Shaw by phone at 801-538-4225, by FAX at 801-538-3942, or by Internet E-mail at jshaw@utah.gov

EFFECTIVE: 04/23/2018

AUTHORIZED BY: Ann Williamson, Executive Director

Appendix 1: Regulatory Impact Summary Table*

Fiscal Costs	FY 2018	FY 2019	FY 2020
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Person	$0	$0	$0
Total Fiscal Costs:	**$0**	**$0**	**$0**
Fiscal Benefits			
State Government	$0	$0	$0
Local Government	$0	$0	$0
Small Businesses	$0	$0	$0
Non-Small Businesses	$0	$0	$0
Other Persons	$0	$0	$0
Total Fiscal Benefits:	**$0**	**$0**	**$0**
Net Fiscal Benefits:	$0	$0	$0

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

Appendix 2: Regulatory Impact to Non-Small Businesses
This rule amendment is not expected to have any impact on medium or large business because it only implements necessary changes to align with preexisting background screening Rule R501-14 and Section 62A-2-120 and has no added expenditures or costs that impact anyone listed in this chart.

R495. Human Services, Administration.
R495-885. Employee Background Screenings.
R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

(4) This rule does not apply to Department of Human Services Employees and Volunteers whose clearances are performed and maintained by the Department of Health for the Utah State Hospital and the Utah State Developmental Center.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI [~~r~~]Rap [~~b~~]Back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable [~~a~~]Adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who [~~may~~]are not [~~be~~]directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI [~~r~~]Rap [~~b~~]Back.

(3) Department employees and volunteers who may have direct access and may not be directly supervised at all times shall:

(a) Submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) Submit fingerprints to the Department via a DHS-operated live-scan machine or[~~;~~]

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention

(i) [~~to~~]BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code[~~,~~]; or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI [~~r~~]Rap [~~b~~]Back.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120.

(a) The DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3).

(b) The fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885.

(5) Screening results shall be reviewed in accordance with both the standards required by Section 62A-2-120 and this R495-885.

([~~5~~]6) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

([~~6~~]7) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

[~~(7) Each Division and Office shall develop and implement a protocol to ensure renewal background screening applications are submitted to the DHS Office of Licensing annually for all database systems that are not included in the FBI rap back fingerprint process.~~]

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the [~~background screening results~~]employment eligibility status of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer[~~,~~] when there are any offenses present as outlined in 62A-2-120.

(3) Review [~~criteria~~]process for prospective or probationary employees and volunteers:

[~~(a) Automatic denial offenses outlined in 62A-2-120(5)(a) are not eligible for review by the DHS Employee and Volunteer Comprehensive Review Committee:~~](a) Following a review of the background screening results for a prospective or probationary employee or volunteer, the Director may deny or terminate the employment of the prospective or probationary employee or refuse acceptance of the volunteer; or

(b) the Director may request further review of the background screening results by the Comprehensive Review Committee established under 62A-2-120. Review of background screening results for prospective or probationary employees or volunteers by the Comprehensive Review Committee is strictly related to the employment or volunteer eligibility of that person with DHS and

is not related to the licensure of that individual by DHS, nor does it entitle any party to any of the rights granted to an applicant for licensure as defined in 62A-2-120.

(i) the Director shall notify the prospective or probationary employee that further review by the Comprehensive Review Committee has been requested.

(ii) the review for prospective employees and volunteers by the Comprehensive Review Committee shall follow the criteria outlined in 62A-2-120 and 501-14as it relates to the process for review, the items or methods of consideration and the process and criteria used in making determinations.

(iii) Following the review, the Comprehensive Review Committee shall make one of the following findings:

(A) A determination to deny the background screening which will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse the acceptance of the volunteer; or

(B) A determination of employment eligibility or to permit acceptance of the volunteer.

(iv) the determination of the Comprehensive Review Committee to deny the background screening will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse acceptance of the volunteer and is final.

(v) Upon receiving the Comprehensive Review Committee determination of employment eligibility or to accept a volunteer A Director, in their sole discretion may;

(A) approve the employment or continued employment of the prospective or probationary employee or approve the acceptance of the volunteer; or

(B) deny or terminate the employment of the prospective or probationary employee or refuse the acceptance of the volunteer.

[~~(b) The Director has sole discretion to determine whether to deny employment or refer a prospective or probationary employee or volunteer with the following background screening findings to the DHS Employee and Volunteer Comprehensive Review Committee:~~

~~(i) All other circumstances outlined in 62A-2-120(6)(a), or~~

~~(ii) any MIS supported or substantiated findings (for individuals with direct access only)~~

~~(c)~~](vi) [~~T~~]the determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) [~~T~~]the following background screening findings shall be submitted to the Director:

(i) [~~A~~]automatic denial offenses outlined in 62A-2-120(5)(a),

(ii) [~~A~~]all other circumstances outlined in 62A-2-120(6)(a), or

(iii) any MIS supported or substantiated findings.

(b) [~~T~~]the Director may consult with the Office of Licensing and shall consult with the Executive Director [~~and/or the Office of Licensing, and shall~~]to evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult or does not meet DHS high standards of conduct or promote public trust[~~-~~]; the Director, Executive Director and Office of Licensing, if consulted, shall consider the factors and information outlined in 62A-2-120(6)(b).

(c) [~~T~~]the Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

[~~R495-885-6. DHS Employee and Volunteer Comprehensive Review Committee.~~

~~(1) The Director of the following Department divisions and offices shall appoint one member and one alternate to serve on the DHS Employee and Volunteer Comprehensive Review Committee:~~

~~(a) the Executive Director's Office;~~

~~(b) the Division of Aging and Adult Services;~~

~~(c) the Division of Child and Family Services;~~

~~(d) the Division of Juvenile Justice Services;~~

~~(e) the Division of Services for People with Disabilities;~~

~~(f) the Division of Substance Abuse and Mental Health;~~

~~(g) the Office of the Public Guardian; and~~

~~(i) the Office of Licensing.~~

~~(2) DHS Employee and Volunteer Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.~~

~~(3) The appointed Office of Licensing member shall chair the DHS Employee and Volunteer Comprehensive Review Committee as a non-voting member.~~

~~(4) Four voting members shall constitute a quorum.~~

~~(5) The DHS Employee and Volunteer Comprehensive Review Committee shall conduct a comprehensive review of a prospective or probationary employee or volunteer's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).~~

~~R495-885-7. DHS Employee and Volunteer Comprehensive Review Process.~~

~~(1) The Office or Division may inform the prospective or probationary employee or volunteer that the results of a background screening indicate they have a criminal history or supported or substantiated findings of abuse or neglect, and the employee or volunteer may:~~

~~(a) voluntarily withdraw a pending employment or volunteer application;~~

~~(b) voluntarily terminate probationary employment; or~~

~~(c) request further review and submit any written statements or records that the employee or volunteer wants the DHS Employee and Volunteer Comprehensive Review Committee to consider, including but not limited to non-redacted documents relating to the results, the nature and seriousness of the offense or incident; the circumstances under which the offense or incident occurred; the age of the employee or volunteer when the offense or incident occurred; whether the offense or incident was an isolated or repeated incident; whether the offense or incident directly relates to abuse of a child or vulnerable adult, evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed.~~

~~(i) an employee or volunteer who wants the DHS Employee and Volunteer Comprehensive Review Committee to consider documents relating to the screening results shall submit the documents~~

~~to the Office or Division within 15 calendar days of notification by the Office of Division.~~

~~(2) The Office or Division shall gather information from a prospective or probationary employee or volunteer who requests review and submit it to the DHS Employee and Volunteer Comprehensive Review Committee.~~

~~(a) The Division may redact any personally identifying information of the prospective or probationary employee or volunteer that does not compromise the content of the review.~~

~~(3) The DHS Employee and Volunteer Comprehensive Review Committee shall evaluate the information provided by the Office or Division and any information provided by the prospective or probationary employee or volunteer. The DHS Employee and Volunteer Comprehensive Review Committee shall consider:~~

~~the date of the offense or incident;~~

~~(a) the nature and seriousness of the offense or incident;~~

~~(b) the circumstances under which the offense or incident occurred;~~

~~(c) the age of prospective or probationary employee or volunteer when the offense or incident occurred;~~

~~(d) whether the offense or incident was an isolated or repeated incident;~~

~~(e) whether the offense or incident directly relates to abuse of a child or vulnerable adult,~~

~~(f) whether approval would likely create a risk of harm to a child or a vulnerable adult;~~

~~(g) whether the information may be relevant to the employment or volunteer activities of that person;~~

~~(h) whether the relevant information should be relied upon to deny employment or volunteer activities, and~~

~~(i) that the background screening approval may be transferred to other DHS Offices or Divisions.~~

~~(4) The DHS Employee and Volunteer Comprehensive Review Committee may approve the background screening of a prospective or probationary employee or volunteer only after a simple majority of the voting members of the DHS Employee and Volunteer Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult or the prospective employee does not meet DHS high standards of conduct or promote public trust, and identify permissible and impermissible DHS-wide work-related activities.~~

~~(5) The DHS Employee and Volunteer Comprehensive Review Committee shall recommend denial of the background screening of a prospective or probationary employee or volunteer when it finds that approval will likely create a risk of harm to a child or vulnerable adult in any DHS Office or Division or the prospective or probationary employee or volunteer does not meet DHS high standards of conduct or promote public trust.~~

~~(6) Except as described below, a prospective employee or a volunteer whose background screening has been denied shall not be accepted as a volunteer or hired as an employee. A probationary employee whose background screening has been denied shall have no direct access and employment shall be terminated.~~

~~(a) A Director may, in his/her sole discretion, appeal the decision of the DHS Employee and Volunteer Comprehensive Review Committee to the Executive Director.~~

]

R495-885-[8]6. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-[9]7. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than June 30, 2018.

KEY: background, employees, human services, screenings
Date of Enactment or Last Substantive Amendment: April 23, 2018
Authorizing, and Implemented or Interpreted Law: 62A-1-118; 62A-2-120

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.

Commerce, Occupational and Professional Licensing
R156-5a
Podiatric Physician Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 42869
FILED: 05/01/2018

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 5a, provides for the licensure and regulation of podiatric physicians. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-5a-201(3) provides that the Podiatric Physician Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 5a, with respect to podiatric physicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in September 2013, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under the statutory authority provided in Title 58, Chapter 5a, with respect to podiatric physicians. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lmarx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 05/01/2018

Commerce, Occupational and Professional Licensing
R156-37c
Utah Controlled Substance Precursor Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 42848
FILED: 04/24/2018

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 37c, provides for the licensure and regulation of controlled substance precursors. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-37c-5(3) provides that the Division shall make, adopt, amend, and repeal rules necessary for the proper administration of this chapter. This rule was enacted to clarify the provisions of Title 58, Chapter 37c, with respect to controlled substance precursors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in September 2013, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 37c, with respect to controlled substance precursors. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 04/24/2018

Commerce, Occupational and Professional Licensing
R156-74
Certified Court Reporters Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 42847
FILED: 04/24/2018

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 74, provides for the licensure and regulation of certified court reporters. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-74-201(3) provides that the Certified Court Reporters Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 74, with respect to certified court reporters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in September 2013, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 74, with respect to certified court reporters. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
OCCUPATIONAL AND PROFESSIONAL LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Robyn Barkdull by phone at 801-530-6727, by FAX at 801-530-6511, or by Internet E-mail at rbarkdull@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 04/24/2018

Public Safety, Driver License
R708-30
Motorcycle Rider Training Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 42825
FILED: 04/19/2018

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-3-903(1)(b), which requires the Driver License Division (Division) to make rules in accordance with Section 53-3-903 to develop standards for, and administer, the Motorcycle Rider Education Program; and procedures to oversee a novice and experienced rider training program and an instructor training program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comment was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required under Section 53-3-903, which requires the Division to make rules to establish procedures and standards to implement a novice and experienced rider training program. Additionally, this rule allows the Division to establish standards for training of motorcycle riders. This rule also includes requirements under Section 53-3-903 to establish minimum standards for motorcycle rider instructions, the application process for an instructor, and standards for administration of motorcycle skills tests, in addition to auditing procedures to maintain the integrity of the program. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Chris Caras, Director

EFFECTIVE: 04/19/2018

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
FIVE-YEAR EXPIRATIONS

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).

Education, Administration
R277-113
LEA Fiscal and Auditing Policies

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 42849
FILED: 04/24/2018

SUMMARY: The five-year review and notice of continuation was not filed by the deadline so this rule has expired and been removed from the Utah Administrative Code as of 04/24/2018.

EFFECTIVE: 04/24/2018

Regents (Board of), Administration
R765-136
Language Proficiency in the Utah System of Higher Education

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 42866
FILED: 05/01/2018

SUMMARY: The five-year review and notice of continuation was not filed by the deadline so this rule has expired and been removed from the Utah Administrative Code as of 05/01/2018.

EFFECTIVE: 05/01/2018

Regents (Board of), Administration
R765-254
Secure Area Hearing Rooms

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 42867
FILED: 05/01/2018

SUMMARY: The five-year review and notice of continuation was not filed by the deadline so this rule has expired and been removed from the Utah Administrative Code as of 05/01/2018.

EFFECTIVE: 05/01/2018

Regents (Board of), Administration
R765-555
Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 42868
FILED: 05/01/2018

SUMMARY: The five-year review and notice of continuation was not filed by the deadline so this rule has expired and been removed from the Utah Administrative Code as of 05/01/2018.

EFFECTIVE: 05/01/2018

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF
LEGISLATIVE NONREAUTHORIZATION

Section 63G-3-502 provides that "every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." To do this, the Legislature's Administrative Rules Review Committee prepares omnibus legislation each year. As part of this legislation, the Legislature may elect not to reauthorize a rule or a part of a rule down to the complete paragraph level. When this occurs, the Office of Administrative Rules files a **Notice of Legislative Nonreauthorization** to document the Legislature's action and removes the rule or part of a rule from the *Utah Administrative Code*. The list below represents administrative rules that the Legislature has elected not to reauthorize.

Legislative nonreauthorization of administrative rules is governed by Section 63G-3-502.

Public Safety, Driver License
R708-14-9
Findings, Conclusions,
Recommendations and Orders

LEGISLATIVE NONREAUTHORIZATION
DAR FILE NO.: 42865
FILED: 05/01/2018

SUMMARY: S.B. 84, passed during the 2018 General Session, reauthorized all administrative rules except for Section R708-14-9. Therefore, as of 05/01/2018, Section R708-14-9 is removed from the Administrative Code.

EFFECTIVE: 05/01/2018

End of the Notices of Legislative Nonreauthorization Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **Proposed Rules** or **Changes in Proposed Rules** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **Changes in Proposed Rules** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **Notice of Effective Date** within 120 days from the publication of a **Proposed Rule** or a related **Change in Proposed Rule** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

Notices of Effective Date are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services
Administration
No. 42634 (AMD): R13-3. Americans with Disabilities Act Grievance Procedures
Published: 03/15/2018
Effective: 04/23/2018

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 42626 (AMD): R414-60. Medicaid Policy for Pharmacy Program
Published: 03/15/2018
Effective: 05/01/2018

Family Health and Preparedness, Emergency Medical Services
No. 42554 (AMD): R426-1. General Definitions
Published: 02/15/2018
Effective: 04/19/2018

No. 42555 (AMD): R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews
Published: 02/15/2018
Effective: 04/19/2018

No. 42556 (AMD): R426-3. Licensure
Published: 02/15/2018
Effective: 04/19/2018

Insurance
Administration
No. 42214 (NEW): R590-276. Record Retention for Foreign, Alien, Commercially Domiciled, Foreign Title and Foreign Fraternals
Published: 11/01/2017
Effective: 04/23/2018

No. 42214 (CPR): R590-276. Record Retention for Foreign, Alien, Commercially Domiciled, Foreign Title and Foreign Fraternals
Published: 03/15/2018
Effective: 04/23/2018

Public Service Commission
Administration
No. 42632 (AMD): R746-8-403. Lifeline Support
Published: 03/15/2018
Effective: 04/24/2018

Transportation
Operations, Construction
No. 42616 (AMD): R916-4. Construction Manager/General Contractor Contracts
Published: 03/15/2018
Effective: 04/23/2018

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2018 through May 01, 2018. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **Rules Index** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (https://rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
Administration					
R13-3	Americans with Disabilities Act Grievance Procedures	42634	AMD	04/23/2018	2018-6/4
Facilities Construction and Management					
R23-5	Contingency Funds	42347	AMD	01/23/2018	2017-24/8
R23-9	Cooperation with Local Government Planning	42348	AMD	01/23/2018	2017-24/9
Finance					
R25-5	Payment of Meeting Compensation (Per Diem) to Boards	42570	5YR	02/08/2018	2018-5/141
R25-6	Relocation Reimbursement	42571	5YR	02/08/2018	2018-5/141
R25-7	Travel-Related Reimbursements for State Employees	42572	5YR	02/08/2018	2018-5/142
R25-8	Overtime Meal Allowance	42573	5YR	02/08/2018	2018-5/142
AGRICULTURE AND FOOD					
Administration					
R51-6	Agricultural Advisory Board Electronic Meeting	42472	NEW	03/23/2018	2018-3/4
Plant Industry					
R68-5	Grain Inspection	42530	5YR	01/30/2018	2018-4/95
R68-5	Grain Inspection	42531	NSC	02/27/2018	Not Printed
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	42721	5YR	03/26/2018	2018-8/145
Regulatory Services					
R70-940	Standards and Testing of Motor Fuel	42422	R&R	02/22/2018	2018-2/6
ATTORNEY GENERAL					
Administration					
R105-2	Records Access and Management	42367	AMD	02/07/2018	2018-1/2
CAREER SERVICE REVIEW OFFICE					
Administration					
R137-2	Government Records Access and Management Act	42779	5YR	04/09/2018	2018-9/69

COMMERCE

Consumer Protection

R152-1	Utah Division of Consumer Protection Buyer Beware List	42827	NSC	04/26/2018	Not Printed
R152-1a	Internet Content Provider Ratings Methods	42828	NSC	04/26/2018	Not Printed
R152-6	Utah Administrative Procedures Act Rules	42830	NSC	04/26/2018	Not Printed
R152-11	Utah Consumer Sales Practices Act	42831	NSC	04/26/2018	Not Printed
R152-15	Business Opportunity Disclosure Act Rules	42832	NSC	04/26/2018	Not Printed
R152-20	New Motor Vehicle Warranties	42833	NSC	04/26/2018	Not Printed
R152-21	Credit Services Organizations Act Rules	42834	NSC	04/26/2018	Not Printed
R152-22	Charitable Solicitations Act	42835	NSC	04/26/2018	Not Printed
R152-23	Utah Health Spa Services	42836	NSC	04/26/2018	Not Printed
R152-26	Telephone Fraud Prevention Act	42837	NSC	04/26/2018	Not Printed
R152-32a	Pawnshop and Secondhand Merchandise Transaction Information Act Rules	42838	NSC	04/26/2018	Not Printed
R152-34	Postsecondary Proprietary School Act Rules	42839	NSC	04/26/2018	Not Printed
R152-34a	Utah Postsecondary School State Authorization Act Rules	42840	NSC	04/26/2018	Not Printed
R152-39	Child Protection Registry Rules	42841	NSC	04/26/2018	Not Printed
R152-42	Uniform Debt-Management Services Act Rules	42842	NSC	04/26/2018	Not Printed
R152-49	Immigration Consultants Registration Act Rules	42843	NSC	04/26/2018	Not Printed

Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	42582	AMD	04/09/2018	2018-5/7
R156-5a	Podiatric Physician Licensing Act Rule	42869	5YR	05/01/2018	Not Printed
R156-24b-102	Definitions	42623	NSC	03/14/2018	Not Printed
R156-31b	Nurse Practice Act Rule	42448	5YR	01/08/2018	2018-3/69
R156-37c	Utah Controlled Substance Precursor Act Rule	42848	5YR	04/24/2018	Not Printed
R156-46b-401	In General	42428	NSC	01/18/2018	Not Printed
R156-55b-102	Definitions	42429	NSC	01/18/2018	Not Printed
R156-68	Utah Osteopathic Medical Practice Act Rule	42447	5YR	01/08/2018	2018-3/70
R156-72	Acupuncture Licensing Act Rule	42338	AMD	01/23/2018	2017-24/11
R156-74	Certified Court Reporters Licensing Act Rule	42847	5YR	04/24/2018	Not Printed
R156-78-502	Unprofessional Conduct	42243	AMD	01/02/2018	2017-22/28

CORRECTIONS

Administration

R251-114	Offender Long-Term Health Care - Notice	42637	5YR	03/07/2018	2018-7/161

EDUCATION

Administration

R277-100	Definitions for Utah State Board of Education (Board) Rules	42749	NSC	04/12/2018	Not Printed
R277-101	Public Participation in Utah State Board of Education Meetings	42750	NSC	04/12/2018	Not Printed
R277-102	Adjudicative Proceedings	42751	NSC	04/12/2018	Not Printed
R277-105	Recognizing Constitutional Freedoms in the Schools	42752	NSC	04/12/2018	Not Printed
R277-106	Utah Professional Practices Advisory Commission Appointment Process	42753	NSC	04/12/2018	Not Printed
R277-108	Annual Assurance of Compliance by Local School Boards	42754	NSC	04/12/2018	Not Printed
R277-109	Legislative Reporting and Accountability	42755	NSC	04/12/2018	Not Printed
R277-110	Educator Salary Adjustment	42756	NSC	04/12/2018	Not Printed
R277-113	LEA Fiscal and Auditing Policies	42849	EXD	04/24/2018	Not Printed
R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	42757	NSC	04/12/2018	Not Printed
R277-116	Audit Procedure	42609	AMD	04/09/2018	2018-5/14
R277-117	Utah State Board of Education Protected Documents	42758	NSC	04/12/2018	Not Printed
R277-119	Discretionary Funds	42759	NSC	04/12/2018	Not Printed
R277-120	Licensing of Material Developed with Public Education Funds	42760	NSC	04/12/2018	Not Printed

R277-121	Board Waiver of Administrative Rules	42761	NSC	04/12/2018	Not Printed
R277-122	Board of Education Procurement	42608	AMD	04/09/2018	2018-5/19
R277-122	Board of Education Procurement	42780	NSC	04/13/2018	Not Printed
R277-210	Utah Professional Practices Advisory Commission (UPPAC), Definitions	42771	NSC	04/13/2018	Not Printed
R277-211	Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions	42772	NSC	04/13/2018	Not Printed
R277-212	UPPAC Hearing Procedures and Reports	42773	NSC	04/13/2018	Not Printed
R277-213	Request for Licensure Reinstatement and Reinstatement Procedures	42774	NSC	04/13/2018	Not Printed
R277-214	Utah Professional Practices Advisory Commission Criminal Background Review	42775	NSC	04/13/2018	Not Printed
R277-215	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	42776	NSC	04/13/2018	Not Printed
R277-216	Surrender of License with UPPAC Investigation Pending	42777	NSC	04/13/2018	Not Printed
R277-404	Requirements for Assessments of Student Achievement	42479	AMD	03/14/2018	2018-3/5
R277-415	School Nurses Matching Funds	42480	NEW	03/14/2018	2018-3/11
R277-469	Instructional Materials Commission Operating Procedures	42322	AMD	01/09/2018	2017-23/4
R277-482	Charter School Timelines and Approval Processes	42610	AMD	04/09/2018	2018-5/22
R277-490	Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)	42471	5YR	01/12/2018	2018-3/70
R277-490	Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)	42481	AMD	03/14/2018	2018-3/13
R277-491-4	School Community Council Principal Responsibilities	42323	AMD	01/09/2018	2017-23/9
R277-508	Employment of Substitute Teachers	42762	5YR	04/02/2018	2018-8/145
R277-515	Utah Educator Professional Standards	42324	AMD	01/09/2018	2017-23/11
R277-518	Career and Technical Education Licenses	42618	5YR	02/26/2018	2018-6/47
R277-519	Educator Professional Learning Procedures and Credit	42325	AMD	01/09/2018	2017-23/16
R277-530-3	Board Expectations for Effective Teaching, Educational Leadership, and Educational School Counselor Standards	42439	NSC	01/25/2018	Not Printed
R277-532	Local Board Policies for Evaluation of Non-Licensed Public Education Employees (Classified Employees)	42763	5YR	04/02/2018	2018-8/146
R277-610	Released-Time Classes and Public Schools	42621	5YR	02/26/2018	2018-6/47
R277-610	Released-Time Classes and Public Schools	42611	AMD	04/09/2018	2018-5/26
R277-621	District of Residence	42326	NEW	01/09/2018	2017-23/17
R277-700	The Elementary and Secondary School General Core	42482	AMD	03/14/2018	2018-3/16
R277-705	Secondary School Completion and Diplomas	42394	AMD	02/28/2018	2018-1/5
R277-708	Enhancement for At-Risk Students	42483	AMD	03/14/2018	2018-3/23
R277-709	Education Programs Serving Youth in Custody	42619	5YR	02/26/2018	2018-6/48
R277-709	Education Programs Serving Youth in Custody	42613	AMD	04/09/2018	2018-5/34
R277-717	High School Course Grading Requirements	42484	AMD	03/14/2018	2018-3/26
R277-719	Standards for Selling Foods Outside of the Reimbursable Meal in Schools	42620	5YR	02/26/2018	2018-6/48
R277-719	Standards for Selling Foods Outside of the Reimbursable Meal in Schools	42614	AMD	04/09/2018	2018-5/39
R277-746	Driver Education Programs for Utah Schools	42764	5YR	04/02/2018	2018-8/146
R277-751	Special Education Extended School Year (ESY)	42765	5YR	04/02/2018	2018-8/147
R277-920	Implementation of the School Turnaround and Leadership Development Act	42327	AMD	01/09/2018	2017-23/19

ENVIRONMENTAL QUALITY

Air Quality

R307-102	General Requirements: Broadly Applicable Requirements	42546	EXT	01/31/2018	2018-4/111
R307-102	General Requirements: Broadly Applicable Requirements	42639	5YR	03/08/2018	2018-7/161
R307-107	General Requirements: Breakdowns	42640	5YR	03/08/2018	2018-7/162
R307-115	General Conformity	42548	EXT	01/31/2018	2018-4/111
R307-115	General Conformity	42641	5YR	03/08/2018	2018-7/163
R307-123	General Requirements: Clean Fuels and Vehicle Technology Grant and Loan Program	42642	5YR	03/08/2018	2018-7/163
R307-150	Emission Inventories	42107	AMD	03/05/2018	2017-19/55
R307-150	Emission Inventories	42107	CPR	03/05/2018	2018-3/46
R307-170	Continuous Emission Monitoring Program	42550	EXT	01/31/2018	2018-4/111
R307-170	Continuous Emission Monitoring Program	42643	5YR	03/08/2018	2018-7/164
R307-208	Outdoor Wood Boilers	42644	5YR	03/08/2018	2018-7/164
R307-220	Emission Standards: Plan for Designated Facilities	42553	EXT	01/31/2018	2018-4/111
R307-220	Emission Standards: Plan for Designated Facilities	42645	5YR	03/08/2018	2018-7/165
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	42552	EXT	01/31/2018	2018-4/112
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	42646	5YR	03/08/2018	2018-7/166
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	42532	EXT	01/31/2018	2018-4/112
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	42647	5YR	03/08/2018	2018-7/166
R307-223	Emission Standards: Existing Small Municipal Waste Combustion Units	42533	EXT	01/31/2018	2018-4/112
R307-223	Emission Standards: Existing Small Municipal Waste Combustion Units	42648	5YR	03/08/2018	2018-7/167
R307-224	Mercury Emission Standards: Coal-Fired Electric Generating Units	42534	EXT	01/31/2018	2018-4/112
R307-224	Mercury Emission Standards: Coal-Fired Electric Generating Units	42649	5YR	03/08/2018	2018-7/167
R307-250	Western Backstop Sulfur Dioxide Trading Program	42535	EXT	01/31/2018	2018-4/113
R307-250	Western Backstop Sulfur Dioxide Trading Program	42650	5YR	03/08/2018	2018-7/168
R307-303	Commercial Cooking	42651	5YR	03/08/2018	2018-7/168
R307-312	Aggregate Processing Operations for PM2.5 Nonattainment Areas	42536	EXT	01/31/2018	2018-4/113
R307-312	Aggregate Processing Operations for PM2.5 Nonattainment Areas	42652	5YR	03/08/2018	2018-7/169
R307-342	Adhesives and Sealants	42653	5YR	03/08/2018	2018-7/170
R307-344	Paper, Film, and Foil Coatings	42537	EXT	01/31/2018	2018-4/113
R307-344	Paper, Film, and Foil Coatings	42654	5YR	03/08/2018	2018-7/170
R307-345	Fabric and Vinyl Coatings	42538	EXT	01/31/2018	2018-4/113
R307-345	Fabric and Vinyl Coatings	42655	5YR	03/08/2018	2018-7/171
R307-346	Metal Furniture Surface Coatings	42539	EXT	01/31/2018	2018-4/114
R307-346	Metal Furniture Surface Coatings	42656	5YR	03/08/2018	2018-7/171
R307-347	Large Appliance Surface Coatings	42541	EXT	01/31/2018	2018-4/114
R307-347	Large Appliance Surface Coatings	42657	5YR	03/08/2018	2018-7/172
R307-348	Magnet Wire Coatings	42543	EXT	01/31/2018	2018-4/114
R307-348	Magnet Wire Coatings	42659	5YR	03/08/2018	2018-7/172
R307-349	Flat Wood Panel Coatings	42540	EXT	01/31/2018	2018-4/114
R307-349	Flat Wood Paneling Coatings	42660	5YR	03/08/2018	2018-7/173
R307-350	Miscellaneous Metal Parts and Products Coatings	42542	EXT	01/31/2018	2018-4/114
R307-350	Miscellaneous Metal Parts and Products Coatings	42661	5YR	03/08/2018	2018-7/174
R307-351	Graphic Arts	42544	EXT	01/31/2018	2018-4/115
R307-351	Graphic Arts	42662	5YR	03/08/2018	2018-7/174
R307-352	Metal Container, Closure, and Coil Coatings	42545	EXT	01/31/2018	2018-4/115
R307-352	Metal Container, Closure, and Coil Coatings	42663	5YR	03/08/2018	2018-7/175

R307-353	Plastic Parts Coatings	42664	5YR	03/08/2018	2018-7/176
R307-354	Automotive Refinishing Coatings	42547	EXT	01/31/2018	2018-4/115
R307-354	Automotive Refinishing Coatings	42665	5YR	03/08/2018	2018-7/176
R307-355	Control of Emissions from Aerospace Manufacture and Rework Facilities	42549	EXT	01/31/2018	2018-4/115
R307-355	Aerospace Manufacture and Rework Facilities	42666	5YR	03/08/2018	2018-7/177
R307-355-3	Exemptions	42370	AMD	03/08/2018	2018-1/10
R307-356	Appliance Pilot Light	42430	EXT	01/02/2018	2018-2/59
R307-356	Appliance Pilot Light	42667	5YR	03/08/2018	2018-7/177
R307-357	Consumer Products	42668	5YR	03/08/2018	2018-7/178
R307-401	Permit: New and Modified Sources	42108	AMD	03/05/2018	2017-19/58
R307-401	Permit: New and Modified Sources	42108	CPR	03/05/2018	2018-3/49
R307-401	Permit: New and Modified Sources	42574	NSC	03/05/2018	Not Printed
R307-504	Oil and Gas Industry: Tank Truck Loading	42109	AMD	03/05/2018	2017-19/70
R307-504	Oil and Gas Industry: Tank Truck Loading	42109	CPR	03/05/2018	2018-3/56
R307-505	Oil and Gas Industry: Registration Requirements	42110	NEW	01/26/2018	2017-19/71
R307-506	Oil and Gas Industry: Storage Vessels	42111	NEW	03/05/2018	2017-19/73
R307-506	Oil and Gas Industry: Storage Vessels	42111	CPR	03/05/2018	2018-3/58
R307-507	Oil and Gas Industry: Dehydrators	42112	NEW	03/05/2018	2017-19/75
R307-507	Oil and Gas Industry: Dehydrators	42112	CPR	03/05/2018	2018-3/60
R307-508	Oil and Gas Industry: VOC Control Devices	42113	NEW	03/05/2018	2017-19/77
R307-508	Oil and Gas Industry: VOC Control Devices	42113	CPR	03/05/2018	2018-3/62
R307-509	Oil and Gas Industry: Leak Detection and Repair Requirements	42114	NEW	03/05/2018	2017-19/79
R307-509	Oil and Gas Industry: Leak Detection and Repair Requirements	42114	CPR	03/05/2018	2018-3/63
R307-510	Oil and Gas Industry: Natural Gas Engine Requirements	42115	NEW	03/05/2018	2017-19/81
R307-510	Oil and Gas Industry: Natural Gas Engine Requirements	42115	CPR	03/05/2018	2018-3/65
R307-801	Utah Asbestos Rule	42551	EXT	01/31/2018	2018-4/115
R307-801	Utah Asbestos Rule	42669	5YR	03/08/2018	2018-7/179
Waste Management and Radiation Control, Radiation					
R313-25	License Requirements for Land Disposal of Radioactive Waste – General Provisions	42204	AMD	04/09/2018	2017-21/83
R313-25	License Requirements for Land Disposal of Radioactive Waste – General Provisions	42204	CPR	04/16/2018	2018-5/128
Waste Management and Radiation Control, Waste Management					
R315-15	Standards for the Management of Used Oil	42451	AMD	04/19/2018	2018-3/35
R315-15-5	Standards for Used Oil Processors and Re-Refiners	42615	NSC	03/14/2018	Not Printed
R315-262-17	General -- Conditions for Exemption for a Large Quantity Generator that Accumulates Hazardous Waste	42672	NSC	03/30/2018	Not Printed
R315-301	Solid Waste Authority; Definitions, and General Requirements	42452	5YR	01/12/2018	2018-3/71
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	42453	5YR	01/12/2018	2018-3/72
R315-303	Landfilling Standards	42454	5YR	01/12/2018	2018-3/72
R315-304	Industrial Solid Waste Landfill Requirements	42455	5YR	01/12/2018	2018-3/73
R315-305	Class IV and VI Landfill Requirements	42456	5YR	01/12/2018	2018-3/74
R315-306	Incinerator Standards	42457	5YR	01/12/2018	2018-3/74
R315-307	Landtreatment Disposal Standards	42458	5YR	01/12/2018	2018-3/75
R315-308	Ground Water Monitoring Requirements	42459	5YR	01/12/2018	2018-3/75
R315-309	Financial Assurance	42460	5YR	01/12/2018	2018-3/76
R315-310	Permit Requirements for Solid Waste Facilities	42461	5YR	01/12/2018	2018-3/77
R315-311	Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	42462	5YR	01/12/2018	2018-3/77
R315-312	Recycling and Composting Facility Standards	42463	5YR	01/12/2018	2018-3/78
R315-313	Transfer Stations and Drop Box Facilities	42464	5YR	01/12/2018	2018-3/79
R315-314	Facility Standards for Piles Used for Storage and Treatment	42465	5YR	01/12/2018	2018-3/79

R315-315	Special Waste Requirements	42466	5YR	01/12/2018	2018-3/80
R315-316	Infectious Waste Requirements	42467	5YR	01/12/2018	2018-3/80
R315-317	Other Processes, Variances, Violations, and Petition for Rule Change	42468	5YR	01/12/2018	2018-3/81
R315-318	Permit by Rule	42469	5YR	01/12/2018	2018-3/82
R315-320	Waste Tire Transporter and Recycler Requirements	42470	5YR	01/12/2018	2018-3/82
Water Quality					
R317-9	Administrative Procedures	42509	5YR	01/24/2018	2018-4/95
R317-10-10	Examination	42274	AMD	01/24/2018	2017-22/29
R317-13	Approvals and Permits for a Water Reuse Project	42510	5YR	01/24/2018	2018-4/96
R317-14	Approval of Change in Point of Discharge of POTW	42511	5YR	01/24/2018	2018-4/96
R317-101	Utah Wastewater Project Assistance Program	42705	5YR	03/20/2018	2018-8/147
GOVERNOR					
Criminal and Juvenile Justice (State Commission on)					
R356-2-10	Evaluation Criteria	42337	AMD	04/02/2018	2017-24/13
R356-4	Juvenile Confinement	42055	NEW	01/02/2018	2017-18/26
Criminal and Juvenile Justice (State Commission on), Indigent Defense Commission					
R364-1	Conflicts of Interest for Indigent Defense Commission Members	42351	NEW	01/29/2018	2017-24/14
Economic Development					
R357-16	Utah Outdoor Recreation Infrastructure Grant	42332	AMD	01/17/2018	2017-23/25
R357-16	Utah Outdoor Recreation Infrastructure Grant	42633	NSC	03/14/2018	Not Printed
HEALTH					
Administration					
R380-250	HIPAA Privacy Rule Implementation	42784	5YR	04/10/2018	2018-9/69
Center for Health Data, Vital Records and Statistics					
R436-1	Duties of the Department of Health	42704	5YR	03/19/2018	2018-8/149
R436-2	Infants of Unknown Parentage; Foundling Registration	42706	5YR	03/20/2018	2018-8/149
R436-3	Amendment of Vital Records	42707	5YR	03/20/2018	2018-8/150
R436-4	Delayed Registration of Birth	42708	5YR	03/20/2018	2018-8/150
R436-6	Delayed Registration of Birth or Death	42339	REP	04/03/2018	2017-24/20
R436-7	Death Registration	42713	5YR	03/21/2018	2018-8/151
R436-8	Authorization for Final Disposition of Deceased Persons	42709	5YR	03/20/2018	2018-8/151
R436-9	Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events	42712	5YR	03/21/2018	2018-8/152
R436-10	Birth and Death Certificates	42710	5YR	03/20/2018	2018-8/152
R436-12	Certified Copies of Vital Statistics Records	42714	5YR	03/21/2018	2018-8/153
R436-13	Disclosure of Records	42715	5YR	03/21/2018	2018-8/153
R436-14	Copies of Data From Vital Records	42716	5YR	03/21/2018	2018-8/154
R436-15	Fees	42717	5YR	03/21/2018	2018-8/154
R436-16	Violation of Rules	42718	5YR	03/21/2018	2018-8/155
R436-17	Review and Approval of Research Requests	42719	5YR	03/21/2018	2018-8/155
Children's Health Insurance Program					
R382-1	Benefits and Administration	42790	5YR	04/11/2018	2018-9/70
R382-10	Eligibility	42791	5YR	04/11/2018	2018-9/70
Disease Control and Prevention, Environmental Services					
R392-300	Recreation Camp Sanitation	42516	R&R	03/26/2018	2018-4/4
R392-401	Roadway Rest Stop Sanitation	42514	R&R	03/26/2018	2018-4/27
R392-502	Hotel, Motel and Resort Sanitation	42515	R&R	03/26/2018	2018-4/31
R392-700	Indoor Tanning Bed Sanitation	42491	5YR	01/19/2018	2018-4/97

Disease Control and Prevention, Epidemiology					
R386-702	Communicable Disease Rule	42285	AMD	01/02/2018	2017-22/31
Disease Control and Prevention, Health Promotion					
R384-201	School-Based Vision Screening for Students in Public Schools	42569	EXT	02/08/2018	2018-5/161
Disease Control and Prevention, Laboratory Services					
R438-15	Newborn Screening	42282	NEW	01/29/2018	2017-22/60
Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health					
R388-805	Ryan White Part B Program	42328	AMD	02/01/2018	2017-23/28
Family Health and Preparedness, Children with Special Health Care Needs					
R398-1	Newborn Screening	42279	REP	01/29/2018	2017-22/46
Family Health and Preparedness, Emergency Medical Services					
R426-1	General Definitions	42554	AMD	04/19/2018	2018-4/43
R426-2	Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews	42555	AMD	04/19/2018	2018-4/46
R426-3	Licensure	42556	AMD	04/19/2018	2018-4/50
R426-6	Emergency Medical Services Per Capita and Competitive Grant Programs Rules	42724	5YR	03/28/2018	2018-8/148
Family Health and Preparedness, Licensing					
R432-1	General Health Care Facility Rules	42520	5YR	01/29/2018	2018-4/98
R432-2	General Licensing Provisions	42521	5YR	01/29/2018	2018-4/98
R432-2-5	Requirements for a Satellite Service Operation	42397	AMD	03/22/2018	2018-2/9
R432-2-13	New License Required	42396	AMD	03/22/2018	2018-2/11
R432-3	General Health Care Facility Rules Inspection and Enforcement	42522	5YR	01/29/2018	2018-4/99
R432-4	General Construction	42523	5YR	01/29/2018	2018-4/99
R432-5	Nursing Facility Construction	42524	5YR	01/29/2018	2018-4/100
R432-6	Assisted Living Facility General Construction	42525	5YR	01/29/2018	2018-4/100
R432-16	Hospice Inpatient Facility Construction	42518	5YR	01/29/2018	2018-4/101
R432-35	Background Screening -- Health Facilities	42519	5YR	01/29/2018	2018-4/101
R432-150-8	Administrator	42201	AMD	01/11/2018	2017-21/108
R432-270-19	Medication Administration	42200	AMD	01/11/2018	2017-21/109
Family Health and Preparedness, Primary Care and Rural Health					
R434-150	Adverse Events from the Administration of Sedation or Anesthesia; Recording and Reporting	42334	NEW	04/14/2018	2017-24/18
R434-150	Adverse Events from the Administration of Sedation or Anesthesia; Recording and Reporting	42671	NSC	04/14/2018	Not Printed
Health Care Financing					
R410-14	Administrative Hearing Procedures	42517	EMR	01/29/2018	2018-4/81
Health Care Financing, Coverage and Reimbursement Policy					
R414-3A	Outpatient Hospital Services	42180	AMD	03/05/2018	2017-20/26
R414-3A	Outpatient Hospital Services	42180	CPR	03/05/2018	2018-2/42
R414-4x	Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment	42306	REP	01/19/2018	2017-23/49
R414-27	Medicaid Enrollment Process for Nursing Care Facilities	42427	5YR	01/02/2018	2018-2/54
R414-52	Optometry Services	42782	5YR	04/10/2018	2018-9/71
R414-53	Eyeglasses Services	42783	5YR	04/10/2018	2018-9/71
R414-60	Medicaid Policy for Pharmacy Program	42626	AMD	05/01/2018	2018-6/13
R414-301	Medicaid General Provisions	42440	5YR	01/08/2018	2018-3/83
R414-302	Eligibility Requirements	42441	5YR	01/08/2018	2018-3/84
R414-302-6	Residents of Institutions	42487	EMR	01/19/2018	2018-4/85
R414-303	Coverage Groups	42442	5YR	01/08/2018	2018-3/84

R414-304	Income and Budgeting	42443	5YR	01/08/2018	2018-3/85
R414-305	Resources	42444	5YR	01/08/2018	2018-3/85
R414-306	Program Benefits and Date of Eligibility	42445	5YR	01/08/2018	2018-3/86
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	42446	5YR	01/08/2018	2018-3/86
R414-308-3	Application and Signature	42488	EMR	01/19/2018	2018-4/87
R414-311	Targeted Adult Medicaid	42489	EMR	01/19/2018	2018-4/90
R414-509	Medicaid Autism Waiver Open Enrollment Process	42490	REP	04/11/2018	2018-4/41
R414-517	Inpatient Hospital Provider Assessments	42353	AMD	01/29/2018	2017-24/16
HUMAN SERVICES					
Administration					
R495-881	Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation	42766	5YR	04/02/2018	2018-8/156
R495-885	Employee Background Screenings	42417	AMD	02/23/2018	2018-2/13
R495-885	Employee Background Screenings	42845	EMR	04/23/2018	Not Printed
Administration, Administrative Services, Licensing					
R501-1	General Provisions for Licensing	42216	AMD	02/23/2018	2017-21/111
R501-12	Foster Care Services	42217	AMD	02/23/2018	2017-21/120
R501-14	Human Service Program Background Screening	42233	AMD	02/23/2018	2017-21/130
R501-18	Recovery Residence Services	42234	AMD	02/07/2018	2017-21/136
Aging and Adult Services					
R510-105	"Out and About" Homebound Transportation Assistance Fund Rules	42485	5YR	01/17/2018	2018-4/102
Child and Family Services					
R512-100	In-Home Services	42596	5YR	02/15/2018	2018-5/143
R512-200	Child Protective Services, Intake Services	42597	5YR	02/15/2018	2018-5/143
R512-201	Child Protective Services, Investigation Services	42598	5YR	02/15/2018	2018-5/144
R512-202	Child Protective Services, General Allegation Categories	42599	5YR	02/15/2018	2018-5/144
R512-300	Out-of-Home Services	42600	5YR	02/15/2018	2018-5/145
R512-301	Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian	42601	5YR	02/15/2018	2018-5/145
R512-302	Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver	42602	5YR	02/15/2018	2018-5/146
R512-305	Out-of-Home Services, Transition to Adult Living Services	42603	5YR	02/15/2018	2018-5/146
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	42604	5YR	02/15/2018	2018-5/147
R512-500	Kinship Services, Placement and Background Screening	42605	5YR	02/15/2018	2018-5/147
Recovery Services					
R527-920	Mandatory Disbursement to Obligee Through Electronic Funds Transfer	42720	5YR	03/23/2018	2018-8/156
Services for People with Disabilities					
R539-1	Eligibility	42560	NSC	03/01/2018	Not Printed
Substance Abuse and Mental Health, State Hospital					
R525-2	Patient Rights	42473	5YR	01/16/2018	2018-3/87
R525-3	Medication Treatment of Patients	42474	5YR	01/16/2018	2018-3/87
R525-3	Medication Treatment of Patients	42558	NSC	03/01/2018	Not Printed
R525-4	Visitors	42475	5YR	01/16/2018	2018-3/88
R525-5	Background Checks	42476	5YR	01/16/2018	2018-3/88
R525-6	Prohibited Items and Devices	42477	5YR	01/16/2018	2018-3/89
R525-6	Prohibited Items and Devices	42557	NSC	03/01/2018	Not Printed
R525-7	Complaints/Suggestions/Concerns	42478	5YR	01/16/2018	2018-3/89

INSURANCE

Administration					
R590-94	Rule Permitting Smoker/Nonsmoker Mortality Tables For Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	42686	5YR	03/14/2018	2018-7/179
R590-102	Insurance Department Fee Payment Rule	42395	AMD	02/08/2018	2018-1/11
R590-154	Unfair Marketing Practices Rule; Misleading Names	42687	5YR	03/14/2018	2018-7/180
R590-157	Surplus Lines Insurance Premium Tax and Stamping Fee	42438	5YR	01/04/2018	2018-3/90
R590-218	Permitted Language for Reservation of Discretion Clauses	42437	5YR	01/04/2018	2018-3/90
R590-243	Commercial Motor Vehicle Insurance Coverage	42436	5YR	01/04/2018	2018-3/91
R590-266-1	Authority	42319	AMD	01/10/2018	2017-23/66
R590-276	Record Retention for Foreign, Alien, Commercially Domiciled, Foreign Title and Foreign Fraternals	42214	NEW	04/23/2018	2017-21/165
R590-276	Record Retention for Foreign, Alien, Commercially Domiciled, Foreign Title and Foreign Fraternals	42214	CPR	04/23/2018	2018-6/44

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration					
R597-5	Electronic Meetings	42262	NEW	01/02/2018	2017-22/68

LABOR COMMISSION

Administration					
R600-1	Declaratory Orders	42622	5YR	02/26/2018	2018-6/49
Boiler, Elevator and Coal Mine Safety					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	42565	AMD	04/09/2018	2018-5/49
R616-3-3	Safety Codes for Elevators	42566	AMD	04/09/2018	2018-5/51
Industrial Accidents					
R612-100	Workers' Compensation Rules - General Provisions	42561	5YR	02/08/2018	2018-5/148
R612-200	Workers' Compensation Rules - Filing and Paying Claims	42562	5YR	02/08/2018	2018-5/149
R612-300	Workers' Compensation Rules - Medical Care	42563	5YR	02/08/2018	2018-5/149
R612-300-4	General Method for Computing Medical Fees	42567	AMD	04/09/2018	2018-5/46
R612-400	Workers' Compensation Insurance, Self-Insurance and Waivers	42564	5YR	02/08/2018	2018-5/150

NATURAL RESOURCES

Administration					
R634-3	Compensatory Mitigation Program	42309	NEW	03/26/2018	2017-23/67
R634-3	Compensatory Mitigation Program	42309	CPR	03/26/2018	2018-4/71
Oil, Gas and Mining; Administration					
R642-200	Applicability	42495	5YR	01/24/2018	2018-4/102
Oil, Gas and Mining; Coal					
R645-101	Restrictions on State Employees	42496	5YR	01/24/2018	2018-4/103
R645-102	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction	42497	5YR	01/24/2018	2018-4/103
R645-104	Protection of Employees	42498	5YR	01/24/2018	2018-4/104
R645-401	Inspection and Enforcement: Civil Penalties	42499	5YR	01/24/2018	2018-4/104
Oil, Gas and Mining; Non-Coal					
R647-1	Minerals Regulatory Program	42500	5YR	01/24/2018	2018-4/105
R647-2	Exploration	42501	5YR	01/24/2018	2018-4/105

R647-3	Small Mining Operations	42502	5YR	01/24/2018	2018-4/106
R647-4	Large Mining Operations	42503	5YR	01/24/2018	2018-4/106
R647-5	Administrative Procedures	42504	5YR	01/24/2018	2018-4/107
R647-6	Inspection and Enforcement: Division Authority and Procedures	42505	5YR	01/24/2018	2018-4/108
R647-7	Inspection and Enforcement: Civil Penalties	42506	5YR	01/24/2018	2018-4/108
R647-8	Inspection and Enforcement: Individual Civil Penalties	42507	5YR	01/24/2018	2018-4/109
Oil, Gas and Mining; Oil and Gas					
R649-6	Gas Processing and Waste Crude Oil Treatment	42508	5YR	01/24/2018	2018-4/109
Parks and Recreation					
R651-406	Off-Highway Vehicle Registration Fees	42431	AMD	02/21/2018	2018-2/16
R651-407	Off-Highway Vehicle Advisory Council	42682	5YR	03/13/2018	2018-7/181
Water Resources					
R653-9	Electronic Meetings	42257	NEW	03/02/2018	2017-22/74
Water Rights					
R655-1	Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah	42606	R&R	04/09/2018	2018-5/53
R655-4	Water Wells	42607	R&R	04/09/2018	2018-5/67
Wildlife Resources					
R657-3	Collection, Importation, Transportation, and Possession of Animals	42624	5YR	02/27/2018	2018-6/49
R657-5	Taking Big Game	42371	AMD	02/07/2018	2018-1/19
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	42376	AMD	02/07/2018	2018-1/33
R657-12	Hunting and Fishing Accommodations for People With Disabilities	42375	NSC	02/13/2018	Not Printed
R657-19	Taking Nongame Mammals	42377	AMD	02/07/2018	2018-1/35
R657-33	Taking Bear	42492	AMD	03/26/2018	2018-4/55
R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	42796	5YR	04/12/2018	2018-9/72
R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	42795	5YR	04/12/2018	2018-9/72
R657-41	Conservation and Sportsman Permits	42379	AMD	02/07/2018	2018-1/38
R657-42	Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents	42794	5YR	04/12/2018	2018-9/73
R657-45	Wildlife License, Permit, and Certificate of Registration Forms and Terms	42793	5YR	04/12/2018	2018-9/73
R657-53	Amphibian and Reptile Collection, Importation, Transportation and Possession	42792	5YR	04/12/2018	2018-9/74
R657-58	Fishing Contests and Clinics	42449	5YR	01/09/2018	2018-3/91
R657-62	Drawing Application Procedures	42374	AMD	02/07/2018	2018-1/41
R657-62	Drawing Application Procedures	42493	AMD	03/26/2018	2018-4/57
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

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