

# UTAH STATE BULLETIN

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

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-957-7110. Additional rulemaking information and electronic versions of all administrative rule publications are available at <https://rules.utah.gov/>.

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

Office of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

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

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## EXECUTIVE ORDER 2021-10

### Requiring Water Conservation Due to Drought Conditions

**WHEREAS**, the state of Utah experienced a record dry and near record hot calendar year in 2020;

**WHEREAS**, the statewide snowpack reached approximately 81% of normal and peaked 10 days early;

**WHEREAS**, soil moisture reached exceptionally low levels not previously seen since soil moisture monitoring began in 2006;

**WHEREAS**, low soil moisture has already adversely affected the spring runoff;

**WHEREAS**, the state's reservoir storage has decreased 14% over the past year;

**WHEREAS**, all forecasts for spring runoff for the state are below 76% of the state seasonal average;

**WHEREAS**, the United States Department of Agriculture currently has listed 28 primary and one contiguous county in Utah under the Secretarial Disaster Designation for drought;

**WHEREAS**, these extreme drought conditions have adversely and significantly impacted agribusiness and livestock production, as well as wildlife and natural habitats;

**WHEREAS**, increased recreation in dry vegetative conditions has contributed to an increased and prolonged threat of wildfire across the state;

**WHEREAS**, drought conditions that require mitigation are expected to persist;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, hereby order the following:

1. As used in this Order:

- a. "State facility" means a building or structure that is owned or controlled by the state or a state governmental entity.
- b. "State facility" does not mean a building or structure that is owned or controlled exclusively by:
  - i. the legislative branch of the state;
  - ii. the judicial branch of the state;
  - iii. the Attorney General's Office;
  - iv. the State Auditor's Office;
  - v. the State Treasurer's Office;
  - vi. the State Board of Education; or
  - vii. an independent entity as defined in Utah Code § 63E-1-102.

- c. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education.
- 2. A state governmental entity may not water landscapes at a state facility between 10:00 a.m. and 6:00 p.m.
- 3. A state governmental entity shall do the following at all state facilities:
  - a. follow the [conservewater.utah.gov](http://conservewater.utah.gov) weekly lawn watering guide;
  - b. evaluate opportunities to update irrigation technology with devices that are WaterSense certified and include rain and wind shutoff functions and soil moisture sensors;
  - c. manually shut off systems during rain and wind events in areas without rain and wind sensors;
  - d. audit and repair all landscape irrigation systems so they are operating at maximum acceptable efficiency;
  - e. evaluate opportunities to limit turf areas surrounding facilities and replace turf with waterwise plants;
  - f. evaluate opportunities to replace inefficient plumbing fixtures with WaterSense certified low-flow fixtures;
  - g. evaluate opportunities to update facility-management technology to include metering for water-consuming processes related to irrigation, domestic, and mechanical systems;
  - h. implement leak-detection and repair programs for both indoor and outdoor water use;
  - i. conduct periodic checks of state facility restrooms, boiler rooms, etc., to ensure appliances are working at maximum efficiency;
  - j. use the Utah Division of Water Resources as a resource to implement water efficient methods, technologies, and practices.

I further make the following recommendations:

- 1. Water suppliers and irrigation companies should:
  - a. where possible, delay the start of the irrigation season or end irrigation early;
  - b. encourage efficient landscape watering; and
  - c. as needed, contact the Division of Water Resources for assistance with developing a drought response plan.
- 2. Cities and counties should consider developing and implementing water restriction plans for the upcoming irrigation season. Also, consider implementing the same practices that are recommended for state facilities at city and county buildings.
- 3. Residential water users should consider the following conservation practices:
  - a. delay outdoor irrigation or end irrigation early;
  - b. follow the weekly lawn watering guide at <https://conservewater.utah.gov/guide.html>;
  - c. fix irrigation inefficiencies;
  - d. purchase and install a smartcontroller or low-flow toilet (rebates are offered at [utahwatersavers.com](http://utahwatersavers.com));
  - e. reduce indoor water use by taking shorter showers, turning off water when not in use, and replacing appliances with water-efficient models;
  - f. follow the directions of local water providers;
  - g. convert turf areas to waterwise landscapes;
  - h. be an advocate of water efficiency by setting an example and help educate friends and neighbors on the importance of water conservation; and
  - i. reduce indoor water waste.

This Order is effective immediately and shall remain in effect until otherwise modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 3rd day of May, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2021/10/EO



**EXECUTIVE ORDER  
2021-11**

Updating the COVID-19 Vaccination Plan

**WHEREAS**, COVID-19 is a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

**WHEREAS**, as of May 6, 2021, 399,374 Utah residents have been infected with COVID-19; 16,303 Utah residents have been hospitalized due to COVID-19; and 2,219 Utah residents have died as a result of COVID-19;

**WHEREAS**, COVID-19 will continue to cause serious illness and death until a sufficient number of Utah residents are vaccinated or have immunity after recovering from this infection;

**WHEREAS**, the United States Food and Drug Administration has authorized the use of multiple COVID-19 vaccinations;

**WHEREAS**, Utah is making significant progress in providing vaccines to all adults who want to be vaccinated and as of May 6, 2021, 1,332,783 people in Utah have received at least one dose of a COVID-19 vaccine;

**WHEREAS**, Utah is receiving regular distributions of vaccines and has sufficient vaccines to provide them to any adult who wants to be vaccinated;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

1. **Definitions.** As used in this Order:
  - a. "COVID-19" means Novel Coronavirus Disease 2019 caused by Severe Acute Respiratory Syndrome Coronavirus 2, also known as SARS-CoV-2.
  - b. "COVID-19 vaccine" means a COVID-19 vaccine and adjuvant (if applicable) provided to a vaccine provider as part of the CDC COVID-19 Vaccination Program.
  - c. "Vaccine provider" means any person, including a CDC COVID-19 Vaccination Program Provider, that administers a COVID-19 vaccine in the state of Utah.
2. **Vaccine eligibility.** The Utah Department of Health shall, in consultation with the Governor's Office, establish vaccine eligibility criteria and publish the eligibility criteria on [coronavirus.utah.gov](http://coronavirus.utah.gov).
3. **Vaccine provider requirements.** A vaccine provider shall each day by 6:59 a.m.:
  - a. report to the Utah Statewide Immunization Information System COVID-19 vaccines administered during the previous calendar day by the vaccine provider; and
  - b. report to VaccineFinder the number of COVID-19 vaccines on-hand by the vaccine provider.
4. **Reduced distribution for noncompliance.** A vaccine provider that does not comply with this Order may be subject to a reduced COVID-19 vaccine distribution or no distribution for future distribution periods.
5. **Access by underserved communities.** The Utah Department of Health shall coordinate with local health departments and community stakeholders to establish procedures to offer the COVID-19 vaccine to eligible individuals in traditionally underserved communities.

This Order is effective immediately, and shall remain in effect until modified, amended, rescinded, or superseded. This Order supersedes Executive Order 2021-9.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 6th day of May, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2021/11/EO

**EXECUTIVE ORDER  
2021-12**

Establishing Effective Oversight Over State Agency Rulemaking

**WHEREAS**, the Legislature often mandates new administrative rules or changes to existing administrative rules;

**WHEREAS**, administrative rules have the effect of law;

**WHEREAS**, the public is best served by clear, cohesive, and concise administrative rules;

**WHEREAS**, rule writing standards will assist agencies in writing clear, cohesive, and concise administrative rules; and

**WHEREAS**, agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness to the public;

**NOW, THEREFORE**, I, Spencer J. Cox, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the state of Utah, do hereby order that each department shall implement the following procedures for promulgating administrative rules in accordance with and in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1. **Definitions.** As used in this Order:

a. "Agency" means any of the following entities that have rulemaking authority:

i. a department; or

ii. a division, office, board, commission, or other entity, within a department.

b. "Department" means a department of the Executive Branch and includes the State Tax Commission, National Guard, Board of Pardons and Parole, the Utah Board of Higher Education, and any public institution of higher education. "Department" does not include the Attorney General's Office, State Auditor's Office, State Treasurer's Office, the State Board of Education; or an independent entity as defined in Section 63E-1-102.

c. "Office" means the Office of Administrative Rules.

2. **Office of Administrative Rules – duties.** The Office shall:

a. develop and provide training to each administrative rules coordinator within 30 days of designation as administrative rules coordinator and at least annually thereafter;

b. develop and provide annual training to each agency employee who writes administrative rules; and

c. review each rule submitted for publication to ensure the drafting and formatting is consistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for Utah.

3. **Administrative rules coordinator – designation and training – duties.**

a. Each agency head shall:

i. designate one or more administrative rules coordinators and report those individuals' names to the Office as staff changes necessitate; and

ii. ensure that an administrative rules coordinator receives training from the Office within 30 days of designation as administrative rules coordinator and at least annually thereafter.

b. Each administrative rules coordinator shall:

i. examine each administrative rulemaking action prepared by an agency within the administrative rules coordinator's scope of responsibility prior to the action's submission to the Office to determine that:

1. the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;

2. interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);

3. standards reflect consistent and sound public regulatory policies; and

4. the rule is consistent with the current edition of the Office of Administrative Rules' Rule Writing Manual for Utah;

ii. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;

iii. provide training to each person within the administrative rules coordinator's scope of responsibility who writes administrative rules; and

iv. notify the Office staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Office Administrative Rules and the Governor's Office may contact with questions.

4. **Governor's Office – duties.** To ensure rules are consistent with statute and policy, the Governor's Office shall:

a. review administrative rules for legal authority and policy;

b. assist state entities in their role of defining public regulatory policy;

c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;

d. coordinate strategies to resolve regulatory questions and provide consistency among agencies; and

e. receive and review the rule analysis required by law.

**5. Departments and agencies – assistance from other offices – cooperation with other offices – administrative rule review timeline.**

a. Each agency may obtain assistance as provided in statute and from:

i. the Governor's Office of Planning and Budget for assistance in applying methods and tools to determine and calculate fiscal and non-fiscal, direct and indirect impacts; and

ii. the Governor's Office for assistance with coordinating rule content and policy.

b. Each agency director and department head shall cooperate with:

i. the Governor's Office as it conducts an executive review of rules; and

ii. the Office as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.

c. Each agency head or designee shall review each administrative rule in their agency by January 1, 2022. During the review, the agency head or designee shall:

i. repeal rules that are no longer necessary;

ii. amend rules that create unnecessary burdens or regulations for any individual or entity; and

iii. amend rules that are inconsistent with the current edition of the Office of Administrative Rules' Rulewriting Manual for

Utah.

**6. Effect on other laws.** This Order supersedes Executive Order 2017-1.

This order is effective immediately and shall remain in effect until otherwise modified, amended, rescinded, or superseded.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 6th day of May, 2021.

(State Seal)

**Spencer J. Cox**  
Governor

ATTEST:

**Deidre M. Henderson**  
Lieutenant Governor

2021/12/EO

**End of the Executive Documents Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 16, 2021, 12:00 a.m., and April 30, 2021, 11:59 p.m. are included in this, the May 15, 2021, 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, 2021. 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, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R13-4	Filing No. 53466

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Administration	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W FL 3	
<b>City, state:</b>	Taylorsville, UT	
<b>Mailing address:</b>	PO Box 141002	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1002	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kenneth A. Hansen	801-957-7173	khansen@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R13-4. In-State Work Location Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This rule establishes the conditions under which employees may work outside of the state, provides that employees' tax withholdings be paid to the state, and provides for the security of state information technology systems. The following positive outcomes will accrue from the rule: 1) it will provide employment opportunities to citizens of the state; 2) it will keep state income tax paid by state employees in the state; and 3) it will minimize costs borne by the state to provide workers' compensation and liability coverage for out-of-state workers.
<b>4. Summary of the new rule or change:</b>
This rule sets the fundamental condition that work performed for the state be performed in the state. It also establishes conditions under which agencies and employees may allow for work to be performed outside of the state.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There will be no cost to the state budget. Existing processes in the Divisions of Finance and Risk Management, and Departments of Human Resource Management and Technology Services can accommodate these requirements using existing resources. Some

financial benefit will accrue to the state; estimating the benefit is predicated on knowing how many employees who would have worked outside the state do not do so. This is currently impossible to estimate.

**B) Local governments:**

There will be no cost or savings to local governments. The rule affects only employees of the state's executive branch.

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

There will be no cost or savings to small businesses. The rule affects only employees of the state's executive branch.

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

There will be no cost or savings to non-small businesses. The rule affects only employees of the state's executive branch.

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

There will be no cost or savings to other persons. The rule affects only employees of the state's executive branch.

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

Compliance costs for this rule are primarily opportunity costs. Individuals wishing to work for the state's executive branch will need to consider the general rule that work for the state must occur in the state.

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

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0

<b>Total Fiscal Cost</b>	\$0	\$0	\$0
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits</b>	\$0	\$0	\$0
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Administrative Services, Jenney Rees, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
I have no comments beyond the fiscal analysis above.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Jenney Rees, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-1-105.5		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jenney Rees, Executive Director	<b>Date:</b>	04/30/2021
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**R13. Government Operations, Administration.**

**R13-4. In-State Work Location Rule.**

**R13-4-1. Authority and Purpose.**

- (1) This rule is authorized by Section 63A-1-105.5.
- (2) This rule establishes the conditions under which employees may work outside of the state, provides that employees' tax withholdings be paid to the state, and provides for the security of state information technology systems.
- (3) This rule provides the following positive outcomes:
  - (a) providing employment opportunities to citizens of the state;
  - (b) keeping in the state income tax paid by state employees; and
  - (c) minimizing costs borne by the state to provide workers' compensation and liability coverage for out-of-state workers.

**R13-4-2. Definitions.**

- (1) "Agency" means the same as defined in Subsection 63A-1-103(1), except that "agency" does not include the Office of the State Treasurer, the Office of the State Auditor, the Office of the Attorney General, the legislature, or the courts.
- (2) "DHRM" means the state Division of Human Resource Management.
- (3) "Employee" means an individual employed by an agency.
- (4) "Executive director" means the executive director, commissioner, or other chief administrative officer of a department-level agency.
- (5) "State" means the state of Utah.
- (6) "State-owned equipment" means personal computers, tablets, or cell phones provided by an agency to an employee for the employee's work.
- (7) "United States" means the 50 states and the District of Columbia.
- (8) "Work" means performing the duties for which the employee is hired by the agency.

**R13-4-3. General Requirements.**

- (1) An employee may work only while physically within the state's borders.
- (2) An employee's state employment-related tax withholdings are paid to the state and the employee acknowledges that any compensation paid by the agency is deemed earned within the state.

NOTICES OF PROPOSED RULES

(3) An employee may not take state-owned property outside of the United States without prior approval.

(4) An agency and an agency's employee shall follow the agency's business travel policy when an employee is sent outside of the state for business reasons for fewer than 30 days within a calendar year.

**R13-4-4. Exceptions.**

(1) For all exceptions detailed in this section, the employee is ultimately responsible for paying the proper amount of tax to the appropriate taxing authorities.

(2) Exceptions to this rule are rare in order to maximize the outcomes described in Subsection R13-4-1(3).

(3) An employee who travels to another state for personal reasons for fewer than 30 days within a calendar year may not work within that state without prior approval from the employee's supervisor.

(4) An employee who desires to work in another state for more than 30 days within a calendar year shall obtain prior written approval to work in that state from the employee's executive director.

(5) An employee traveling on agency business may work outside of the state if the assignment is for fewer than 30 days.

(6) An agency that desires to allow or require an employee to work for more than 30 days outside of the state within a calendar year, including the possibility of living outside of the state, shall:

(a) obtain approval from the Governor's Office or designee by completing and submitting an Exception Request - Regularly Work Outside the State, available from DHRM;

(b) instruct the employee to notify DHRM;

(i) that the employee will be working outside of the state; and

(ii) of the employee's new out-of-state address;

(c) notify and request the Division of Finance to set up tax withholdings to be paid to the state in which the employee is working;

(d) notify and request the Division of Risk Management to ensure the employee will be protected by workers' compensation insurance and other appropriate and available travel and liability coverage or insurance; and

(e) reimburse at the established rate the Division of Finance, the Division of Risk Management, or other state entity for costs incurred to research and establish tax withholdings, workers' compensation, travel, and liability policies, or any other requirements to cover the employee while working outside the state.

(7) An employee who plans to travel outside of the United States and who will be required or desires to work while outside of the United States shall obtain prior written approval to work from the employee's executive director.

(8) An employee who plans to travel outside of the United States and desires to take state-owned equipment shall obtain prior written approval from the employee's executive director or designee.

(9) An agency that desires to approve an employee to work and take state-owned equipment outside of the United States shall:

(a) obtain approval from the Governor's Office or designee by completing and submitting an Exception Request - Equipment form, available from the Governor's Office;

(b) notify and request the Division of Risk Management to assess the availability of workers' compensation insurance coverage and the need for travel insurance and general liability coverage;

(c) notify and request the Division of Technology Services to assess the security and legal issues of accessing state systems on state-owned equipment while the employee is outside of the United States;

(d) notify and request the Division of Finance to review potential tax implications if the employee would be working in a country outside of the United States at the agency's request for more than 30 days within a calendar year; and

(e) reimburse at the established rate the Division of Risk Management, the Division of Technology Services, or other state entity for costs incurred to research workers' compensation, travel, and liability policies, or any other requirements to cover the employee while working outside the United States.

(10) Any other exception must be granted by the Governor's Office or designee.

**KEY: state employee, work location**

**Date of Enactment or Last Substantive Amendment: 2021**

**Authorizing, and Implemented or Interpreted Law: 63A-1-105.5**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R70-910	Filing No. 53433

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices
<b>3. Purpose of the new rule or reason for the change:</b>
Changes are needed to correct citations in this rule, make the language clearer, and make the text more consistent with the requirements of the Utah Rulewriting Manual.



**4. Summary of the new rule or change:**  
 The rule is updated to add a definition of "the department" and reference it correctly, ensure genders are addressed consistently, and clarify and simplify the language so it can be understood, and make other edits required by the Utah Rulewriting Manual.

**Fiscal Information**

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

**A) State budget:**

These changes clarify the rule language and do not carry any anticipated cost or savings to the state budget. They do not affect the administration of the Weights and Measures program.

**B) Local governments:**

There are no anticipated costs or savings to local governments because they do not participate in the Weights and Measures Program.

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

There are no anticipated costs or savings to small businesses because the changes merely clarify the language of this rule and do not affect the administration of the Weights and Measures Program.

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

There are no anticipated costs or savings to non-small businesses because the changes merely clarify the language of this rule and do not affect the administration of the Weights and Measures Program.

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

There are no anticipated costs or savings to other persons because the changes merely clarify the language of this rule and do not affect the administration of the Weights and Measures Program.

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

Compliance costs for affected persons will not change because the changes merely clarify the rule language. Fees charged by the Department of Agriculture and Food under the Weights and Measures Program remain the same.

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

this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved the regulatory impact analysis.

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

These rule changes clarify the language of this rule and will not have a fiscal impact on businesses in Utah.

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

Craig W. Buttars, Commissioner

**Citation Information**

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

Section 4-9-103		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	06/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	04/23/2021
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**R70. Agriculture and Food, Regulatory Services.**

**R70-910. Registration of Servicepersons for Commercial Weighing and Measuring Devices.**

**R70-910-1. Authority.**

Promulgated under Section 4-9-103.

**R70-910-2. Policy.**

(1) It shall be the policy of the ~~[Division of Regulatory Services, Weights and Measures Program, of the Utah Department of Agriculture and Food]~~department's Weights and Measures Program to accept registration of an individual who:

(a) ~~[P]~~provides acceptable evidence of ~~[all]each~~ business license[s] required by ~~[the]any~~ applicable cit[ies], county[ies], or state[s] to conduct business, if ~~the individual is~~ self-employed, or ~~[his employer's]if the individual is not self-employed, provide acceptable evidence with respect to their employer; [if not self-employed;]~~

~~(b)~~ provides acceptable evidence, as demonstrated by attending ~~[Department of Agriculture and Food]~~department provided training and successfully passing an exam administered by the department, that ~~[she is]they are~~ fully qualified to install, service, repair, or recondition a commercial weighing or measuring device and ha[s]ve a thorough working knowledge of ~~[all-]appropriate~~ weights and measures laws, orders, rules, and regulations; and

~~(b)c~~ has possession of, or has accessible for ~~[his]their~~ use, weights and measures standards and testing equipment certified by the ~~[Department of Agriculture and Food]~~department to be appropriate in design and capacity.

(2) It shall be unlawful for any individual to place into public or commercial service any weighing or measuring device ~~[prior to being]that has not been~~ tested and sealed by a registered serviceperson.

**R70-910-3. Definitions.**

(1) "Commercial Weighing and Measuring Device" means any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

(2) "Department" means the Utah Department of Agriculture and Food.

(3) "Placed in service report" means a report, completed on a department form for declaring that a commercial weighing or measuring device has been put into service.

~~(1)4~~ "Registered Serviceperson" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device, and who is registered by the [Department of Agriculture and Food]department to perform these services.

~~(2)~~ "Service Agency" means any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device.

~~(3)~~ "Commercial Weighing and Measuring Device" means any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

~~(4)5~~ "Security Seal" means a uniquely identifiable physical seal, such as a lead-and-wire seal or other type of locking seal, or similar apparatus attached to a weighing or measuring device for protection against or indication of access to adjustment.

~~(6)~~ "Service Agency" means any agency, firm, company, or corporation that, for hire, award, commission, or any other payment of any kind, installs, services, repairs, reconditions, calibrates or places into service a commercial weighing or measuring device.

~~(5)~~ "Placed in service report" means a report, completed on a department form for declaring that a commercial weighing or measuring device has been put into service.

**R70-910-4. Reciprocity.**

The ~~[Department of Agriculture and Food]~~department may enter into a reciprocal agreement with any other ~~[S]state or [S]states~~ that have similar registration policies. Under ~~[such]the~~ agreement, the registered servicepersons of the ~~[S]states~~ party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in ~~[all]any~~ states party to ~~[such]the~~ agreement.

**R70-910-5. Registration Fee.**

Upon application for and renewal of registration, the applicant shall pay to the ~~[Department of Agriculture and Food]~~department a registration fee determined by the department pursuant to ~~[s]~~Subsection 4-2-~~[2]~~103(2) for a registered serviceperson. Registration shall expire December 31 of each year, and shall be renewed annually.

**R70-910-6. Registration.**

(1) An individual may apply for registration to place into service commercial weighing or measuring devices on the ~~[Department of Agriculture and Food's]~~department's application form. An applicant ~~[also]~~shall submit appropriate evidence of having passed a department approved exam that measures the applicant's knowledge of device installation, service, repair and maintenance and applicable laws, orders, rules and regulations.

(2) The department shall provide a device service training class and administer a proficiency examination. The proficiency examination ~~[will]~~shall test the basic knowledge required for competency as a serviceperson. The passing score on the examination shall be above 80%.

(3) An examinee who fails the device service proficiency examination shall retake the training class in order to retake the examination.

(4) The department may revise the examination to address knowledge of changes in the law or technology.

(5) Training class attendance and successful completion of the examination may be used to apply for a Certificate of Registration for three successive registration cycles.

(6) Servicepersons who are employed by a service agency that provides training shall notify the department and shall have up to 30 days to become registered.

~~[(a)]~~ The department shall provide a class and examination opportunity for new servicepersons within two weeks of notification.

**R70-910-7. Certificate of Registration.**

(1) Upon receipt and acceptance of a properly executed application form, the ~~[Department of Agriculture and Food]~~department shall issue to the applicant a ~~[a]~~Certificate of Registration,~~[a]~~ including an assigned registration number~~[s]~~.

~~\_\_\_\_\_~~(2) The Certificate of Registration ~~[which]~~shall remain effective until it is returned by the applicant, withdrawn by the ~~[Department of Agriculture and Food]~~department, or ~~[registration]~~expires.

**R70-910-8. Privileges of a Registrant.**

The bearer of a Certificate of Registration shall have the authority to:

(1) ~~[R]~~remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the ~~[Department of Agriculture and Food]~~department; and

(2) ~~[P]~~place in service, until such time as an official examination can be made, a commercial weighing or measuring device that has been newly installed, routinely calibrated, or officially rejected.

**R70-910-9. Place in Service Report.**

(1) The ~~[Department of Agriculture and Food]~~department shall make available to each registered serviceperson the ~~[official]~~Placed in Service Report form.

~~\_\_\_\_\_~~(2) A ~~[p]~~Placed in ~~[s]~~Service ~~[r]~~Report shall be submitted ~~[within 24 hours]~~to the department by the serviceperson ~~[for each]~~within 24 hours of when a rejected device is restored to service ~~[and for each]~~or of when a newly installed device is placed in service.

~~\_\_\_\_\_~~(3) ~~[A]~~Each official rejection tag~~[s]~~ or mark~~[s]~~ removed from the device shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake City, UT 84114-6500.

~~\_\_\_\_\_~~(4) A duplicate copy of the report shall be retained by:

~~\_\_\_\_\_~~(a) the owner or operator of the device; ~~and~~~~[, and a duplicate copy of the report shall be retained by]~~

~~\_\_\_\_\_~~(b) the registered serviceperson or ~~[her]~~their employer.

**R70-910-10. Standards and Testing Equipment.**

(1) A registered serviceperson shall submit, at least biennially, to the ~~[Department of Agriculture and Food]~~department, for examination and certification, any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device.

(2) A registered serviceperson may not use, in officially servicing commercial weighing or measuring devices, any standards or testing equipment that ha~~[ve]~~s not been certified by the ~~[Department of Agriculture and Food]~~department.

**R70-910-11. Security Seals Required to be Submitted.**

(1) A registered serviceperson shall submit to the department the seal that ~~[she]~~they will use.

~~[(A)]~~ If the seal belongs to the registered serviceperson's employer, the serviceperson shall identify the employer.

(2) When a registered serviceperson changes ~~[his]~~their seal, ~~[he]~~they shall submit the seal and ~~their~~ employer's identification to the department prior to it being used.

(3) A registered serviceperson who uses their own seal shall submit that seal to the department.

(4) When a registered serviceperson changes their own seal, ~~[he or she]~~they shall submit the seal to the department prior to it being used.

**R70-910-12. Qualification to Service Heavy Capacity Scales.**

(1) No registered serviceperson shall be qualified to place in service or remove a rejection tag from a heavy capacity scale unless ~~[he has]~~they have adequate testing weights certified by the ~~[Utah Department of Agriculture and Food, Division of Regulatory Services, Weights and Measures Program]~~department.

~~\_\_\_\_\_~~(2) Adequate testing weights shall be deemed to be 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.

**R70-910-13. Unlawful Acts Specified.**

(1) It shall be unlawful for any non-registered individual to:

(a) place into public or commercial service a weighing or measuring device; or

(b) ~~[to]~~represent themselves as being registered as a serviceperson by the department.

**R70-910-14. Suspension or Revocation of Certificate of Registration.**

The ~~[Department of Agriculture and Food]~~department may, for good cause, after careful investigation, consideration, and due notice and process, ~~including~~~~[which shall include]~~ an opportunity for a hearing, suspend or revoke a Certificate of Registration~~[s]~~ under Section 4-1-~~[5]~~106 and ~~[Section]~~Title 63G, Chapter 4, Utah Administrative Procedures Act~~[63G-4]~~.

NOTICES OF PROPOSED RULES

**R70-910-15. Publication of Lists of Service Agencies and Registered Servicepersons.**

(1) The ~~[Department of Agriculture and Food]~~department shall publish, and may supply upon request, lists of registered servicepersons and ~~[those]~~service agencies ~~[which]~~that commit to using registered servicepersons to calibrate commercial weighing and measuring devices or place them in service.

(2) The department may remove from the lists a service agency found to have used a non-registered service person to calibrate or place into service a commercial weighing or measuring device.

**R70-910-16. Notification of Service Agency.**

~~[Whenever]~~If the voluntary registration of a service person is suspended or revoked, the department shall notify the known employing service agency within three working days.

**R70-910-17. Notification of Changed Equipment.**

~~[Whenever]~~If a voluntarily registered serviceperson changes any testing equipment and standards that are used, or are to be used, in calibrating or placing into service a commercial weighing and measuring device, the serviceperson shall notify and provide proof to the department that the testing equipment or standard has been approved by an official state metrologist.

**KEY: inspections, weights and measures**

**Date of Enactment or Last Substantive Amendment:** 2021  
~~[December 8, 2008]~~

**Notice of Continuation:** August 30, 2019

**Authorizing, and Implemented or Interpreted Law:** 4-9-~~[2]~~103

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R357-24	Filing No. 53468

**Agency Information**

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Economic Development	
<b>Building:</b>	World Trade Center	
<b>Street address:</b>	60 E South Temple	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dane Ishihara	801-538-8864	dishihara@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R357-24. Utah Works Program Rule

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

The purpose of this rule filing is to update definitions, eligibility criteria, and the proposal and submission process. H.B. 348 passed during the 2021 General Session and changed the Talent Ready Utah Board to the Talent, Education, and Industry Alignment Subcommittee.

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

This rule filing updates the definition of post-secondary institution, the minimum time standard for training programs, and the allowable expense associated with the program. H.B. 348 (2021) changed the Talent Ready Utah Board to the Talent, Education, and Industry Alignment Subcommittee.

**Fiscal Information**

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

**A) State budget:**

There is no aggregate anticipated cost or savings to the state budget. This rule is merely updating program criteria and making technical changes.

**B) Local governments:**

There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.

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

There is no aggregate anticipated cost or savings to small businesses because this proposed amendment does not create new obligations for small businesses, nor does it increase the costs associated with any existing obligation. Participation in the program is optional.

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

There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because 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.

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

There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because 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.

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

There are no compliance costs for affected persons because participation in the program is optional.

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Governor's Office of Economic Development, Dan Hemmert, has reviewed and approved this fiscal analysis.

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

The purpose of this rule filing is to clarify the standards for participation in the program and make technical changes. This rule will have no impact on businesses.

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

Dan Hemmert, Executive Director

**Citation Information**

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

Section 63N-12-505		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 06/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Dan Hemmert, Executive Director	<b>Date:</b>	04/30/2021
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**R357. Governor, Economic Development.**

**R357-24. Utah Works Program.**

**R357-24-103. Definitions.**

The following terms are defined as follows:

(1) "Applicant" means a collaboration between one or more companies and one or more post-secondary institutions for a particular hiring program.

(2) "Awardee[~~s~~]" means an applicant that has been awarded a UWP grant.

(3) "Collaboration" means the strategic coordination between a company and post-secondary institution to address a skilled labor gap.

(4) "Company" means a corporation, limited liability company, partnership, association, or other business entity and may include a federal military installation when such entity otherwise meets

NOTICES OF PROPOSED RULES

UWP eligibility requirements and does not include an individual, sole proprietorship, or educational institution.

(5) "Company representative" means a representative from a company that is designated to support the efforts of the collaboration.

(6) "High demand position" means a position in which there are hard to fill jobs with a lack of skilled labor employees or a large number of skilled labor positions needed in a short amount of time.

(7) "Pre-hire program" means an applicant's plan to vet potential hires prior to the skills training. The pre-hire program will typically consist of a training lasting from two days to two weeks.

(8) "Post-secondary institution" means an entity under the Utah System of Higher Education~~[or the Utah System of Technical Colleges]~~.

(9) "Skilled labor" means jobs that require skills training and a level of skill.

(10) "Skilled labor gap" means the disparity between a company's existing or future skill need.

(11) "Skills training program" means a training plan developed and agreed upon between the post-secondary institution and a company.

(12) "TRU" means the Talent Ready Utah Center.

(13) "UWP" means the Utah Works Program.

(14) "UWP grant" means the competitive grants awarded and administered under this Rule.

**R357-24-106. Proposal and Submission Process.**

(1) TRU will accept proposals for UWP grants on an ongoing basis subject to available funds.

(2) Applicants shall submit proposals in a form and manner specified by TRU.

(3) The proposal must include the following:

(a) a description of the applicant's eligibility~~[as outlined in section 105 above]~~;

(b) a detailed description of pre-hire program, if applicable, and skills training program;

(c) description of skilled labor positions;

(d) projected number of individuals who will start the program, finish the program and be successfully hired;

(e) potential economic impact on the Utah economy;

(f) an executed collaboration agreement between the company and post-secondary institution; and

(g) outlined budget for total program cost, including~~[ ]~~;

(i) a description of any funds already secured for activities related to the program;

(ii) breakdown of costs to complete the scope of work;

(iii) an itemized budget detailing planned use of grant funds, including how the funding will be allocated, tracked, and reported; and

(iv) awardee must use grant funds for expenses specific to the program and may include:

(A) instructors;

(B) marketing;

(C) equipment;

~~(D) equipment maintenance;~~

~~(D)E~~ tuition reimbursements;

~~(E)E~~ curriculum and program development;

~~(F)G~~ program management; and

~~(G)H~~ US security clearances~~[as outlined in subsection 108(4)(b)]~~.

~~(I)~~ travel for training from rural areas as approved by TRU.

(4) All completed proposals will be reviewed and awardees selected via the criteria and method outlined in this Rule.

**R357-24-107. Method for Selecting Awardees.**

(1) TRU will evaluate grant proposals and recommend grant amounts.

(2) TRU will, according to its discretion and judgment, review the applicant's proposal by considering the following factors:

(a) statewide or regional importance of the industry to Utah's economy;

(b) relative size of the sector, its stability, and growth potential;

(c) characteristics of the state's workforce including education and training;

(d) the current availability of other sources of funding;

(e) the potential for the industry to develop new jobs and business opportunities in the state;

(f) likelihood that skilled labor in this sector will result in the creation of a company in Utah or growth of existing Utah company;

(g) number of positions to be trained and filled;

(h) impact on the local economy; and

(i) any other factor TRU deems relevant, considering the mission of UWP and the purpose of the UWP grant.

(3) The criteria will be designed to assess each proposal and may include:

(a) completeness of proposal;

(b) thorough pre-hire program and skills training program;

(c) reasonableness of proposal;

(d) reasonableness of the proposed timeline;

~~(e) reasonableness of the proposed budget [e.g., size and allocation of budget is appropriate for the work proposed and matching funds available];~~

(f) availability of UWP grant funds;

(g) potential for economic impact, as measured by:

(i) skilled labor gap mitigation;

(ii) meeting target head count;

(iii) potential revenue due to expansion of current business or development of new businesses;

(iv) projected time to fill job needs;

(v) market need or industry impact;

(h) any other factor of the applicant's ability to produce measurable and timely benefits to the state; and

(i) any factor relating to eligibility requirements~~[outlined in section 105]~~.

(4) UWP grants must be used to mitigate gaps and meet company hiring demands. The program proposals referenced in section 106 must identify specific pre-hire program and skills training.

(5) In the event of a favorable recommendation by TRU the proposal will be reviewed by the ~~[talent ready Utah board]~~Talent, Education, and Industry Alignment Subcommittee using the same criteria.

(6) An applicant will become an awardee only upon approval by TRU and the ~~[talent ready Utah board]~~Talent, Education, and Industry Alignment Subcommittee.

**R357-24-109. Contract Modifications.**

(1) Awardee may request a modification to the terms of a UWP contract.

(2) TRU may deny a modification request for any reason.

(3) TRU shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the proposal materials; and

- (iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law.
- (4) Substantive changes must be approved by TRU in consultation with the ~~[Talent Ready Utah board]~~ Talent, Education, and Industry Alignment subcommittee.
- (5) A ~~H~~approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.
- (6) Awardees refusal or failure to sign the contract within 90 days of receipt of contract constitutes a rejection of the UWP grant and a waiver of any rights and benefits.

**KEY:** economic development, Talent Ready Utah, Utah Works Program  
**Date of Enactment or Last Substantive Amendment:** ~~2021~~ October 15, 2019  
**Authorizing, and Implemented or Interpreted Law:** 63N-12-505

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R414-401-3	Filing No. 53442

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>Mailing address:</b>	PO Box 143102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-401-3. Assessment
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to update the annual assessment amounts for nursing care facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) for State Fiscal Year (SFY) 2022.
<b>4. Summary of the new rule or change:</b>
Every nursing facility is assessed at the uniform rate of \$28.15 per patient day, which is an increase from the previous \$27.56 per patient day assessment based upon projected days. Additionally, ICFs/IID are assessed at the uniform rate of \$9.51 per patient day, which is an increase

from the previous \$8.28 per patient day assessment based upon projected days. These updates are based on estimates of patient days for SFY 2022 and the appropriation amounts.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The update to the assessment rates is anticipated to be budget neutral as it does not impact the General Fund.
<b>B) Local governments:</b>
About 21 local governments that own nursing care facilities or have swing-bed facilities would see an increase in the assessment cost but would also see increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that local governments will realize an additional cost of \$1,665,400, but also realize additional revenues of \$5,046,700.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
About 20 small businesses that own nursing care facilities would see an increase in the assessment cost, but also see increased revenues as a result of the higher rates that will be paid. These businesses, therefore, will realize an additional cost of \$482,700, but also realize additional revenues of \$1,462,800.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
About 85 businesses that own nursing care facilities or have swing-bed facilities would see an increase in the assessment cost, but also see increased revenues as a result of the higher rates that will be paid. These businesses, therefore, will realize an additional cost of \$603,400, but also realize additional revenues of \$1,828,500.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
About 58 private and public health providers would see an increase in the assessment cost but would also realize increased revenues as a result of the higher rates that will be paid. Therefore, it is estimated that these other providers will receive a share of the amounts noted previously.
<b>F) Compliance costs for affected persons:</b>
Compliance costs include an increased collection of \$0.59 per non-Medicare patient day from each nursing facility,

and an increase of \$1.23 per non-Medicare patient day for an ICF/IID.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$1,665,400	\$0	\$0
Small Businesses	\$482,700	\$0	\$0
Non-Small Businesses	\$603,400	\$0	\$0
Other Persons	\$	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$2,751,500</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$	\$0	\$0
Local Governments	\$5,046,700	\$0	\$0
Small Businesses	\$1,462,800	\$0	\$0
Non-Small Businesses	\$1,828,500	\$0	\$0
Other Persons	\$	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$8,338,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$5,586,500</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

Businesses will see initial assessment costs but will also see a higher increase in additional revenues.

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

Richard G. Saunders, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3	Title 26, Chapter 36a
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	04/26/2021
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-401. Nursing Care Facility Assessment.**

**R414-401-3. Assessment.**

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

(2) The uniform rate of assessment for every facility is \$~~27.56~~28.15 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$~~8.28~~9.51 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the succeeding month, and may not combine payments of assessments with other nursing care facilities owned or controlled by a single entity.

**KEY: Medicaid, nursing facility**

**Date of Enactment or Last Substantive Amendment:** ~~2021~~July 1, 2020



Notice of Continuation: November 15, 2018  
 Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R426-8	Filing No. 53436

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Emergency Medical Services	
<b>Room no.:</b>	404	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 West	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 142002	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2002	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Guy Dansie	801-560-1544	gdansie@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R426-8. Emergency Medical Services Ground Ambulance Rates and Charges
<b>3. Purpose of the new rule or reason for the change:</b>
Section 26-8a-403 mandates the Department of Health (Department) set ground ambulance rates. This is performed annually and made effective on the first day of the new fiscal year.
<b>4. Summary of the new rule or change:</b>
The rule amendments increase the ground ambulance rates by 5%. This includes the mileage rate for patient transportation. Rates are determined based on analysis of fiscal data collected from all ground ambulance providers.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No anticipated costs or saving to the state budget. The amendments do not affect costs or revenues since the state does not provide ground ambulance services.

<b>B) Local governments:</b>
Eighty local governments including counties, cities, towns, and special service districts provide ground ambulance services based licensed issued by the Department.
Anticipated revenues for local governments that provide ground ambulance services will have a net increase of 1.6% based on a gross rate increase of 5%. The net revenue increase is based on a statewide estimate of allowable billing charges compared to actual revenue collections. Factors that reduce billable charges to collected revenues include fixed payer amounts for Medicare, Medicaid, and Veterans, non-payments, negotiated payments, and private insurance payments. Mileage rates are included as part of the 5% increase to compensate increased market vehicle costs. Financial data is obtained directly from all ground ambulance providers. Local government operated ground ambulance patient transports total is estimated at 86,382 based on the previous reported calendar year.
Increased rates will require additional costs for local governments to the State EMS Medicaid fund of an additional estimate of \$2 per transport. 86,382 (total estimated transports) X \$2 (EMS Medicaid assessment rate increase) = \$172,764 (estimated local government costs).
Gross revenues for local governments are estimated from past annual fiscal reports and billing data. Gross revenue estimate from patient transports for 2020 is \$133,632,950. \$133,632,950 X 1.6% (net effect of 5% raise in rate) = \$2,138,127 increase benefits estimate.
Net revenues for local governments are calculated as follows: \$2,138,127 (gross revenue increase estimate) - \$172,764 (Medicaid assessment increase) = \$1,965,363 (net revenue or benefit for local governments).
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
One small business operates an ambulance service in Utah based on licenses issued by the Department.
Anticipated revenues for small businesses that provide ground ambulance services will have a net increase of 1.6% based on a gross rate increase of 5%. The net revenue increase is based on a statewide estimate of allowable billing charges compared to actual revenue collections. Factors that reduce billable charges to collected revenues include fixed payer amounts for Medicare, Medicaid, and Veterans, non-payments, negotiated payments, and private insurance payments. Mileage rates are included as part of the 5% increase to compensate increased market vehicle costs. Financial data is obtained directly from all ground ambulance providers. Small business operated ground ambulance patient transports total is estimated at 373 based on the previous reported calendar year.

Increased rates will require additional costs for small businesses to the State EMS Medicaid fund of an additional estimate of \$2 per transport. 373 (total estimated transports) X \$2 (EMS Medicaid assessment rate increase) = \$746 (estimated small business costs).

Gross revenues for small businesses are estimated from past annual fiscal reports and billing data. Gross revenue estimate from patient transports for 2020 is \$652,750. \$652,750 X 1.6% (net effect of 5% raise in rate) = \$10,444 increase benefit estimate.

Net revenues for small businesses are calculated as follows: \$10,444 (gross revenue increase estimate) - \$746 (Medicaid assessment increase) = \$9,698 (net revenue or benefit for small businesses).

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

Eight non-small businesses including one for profit and seven non-profit provide ground ambulance services based licensed issued by the Department.

Anticipated revenues for non-small businesses that provide ground ambulance services will have a net increase of 1.6% based on a gross rate increase of 5%. The net revenue increase is based on a statewide estimate of allowable billing charges compared to actual revenue collections. Factors that reduce billable charges to collected revenues include fixed payer amounts for Medicare, Medicaid, and Veterans, non-payments, negotiated payments, and private insurance payments. Mileage rates are included as part of the 5% increase to compensate increased market vehicle costs. Financial data is obtained directly from all ground ambulance providers. Non-small business operated ground ambulance patient transports total is estimated at 53,084 based on the previous reported calendar year.

Increased rates will require additional costs for non-small businesses to the State EMS Medicaid fund of an additional estimate of \$2 per transport. 53,084 (total estimated transports) X \$2 (EMS Medicaid assessment rate increase) = \$106,168 (estimated non-small business costs).

Gross revenues for non-small businesses are estimated from past annual fiscal reports and billing data. Gross revenue estimate from patient transports for 2020 is \$82,120,948. \$82,120,948 X 1.6% (net effect of 5% raise in rate) = \$1,313,935 increase benefit estimate.

Net revenues for non-small businesses are calculated as follows: \$1,313,935 (gross revenue increase estimate) - \$106,168 (Medicaid assessment increase) = \$1,207,761 (net revenue or benefit for non-small businesses).

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

There will be costs due to increasing federal Medicaid funding for ground ambulance EMT base rates. Federal payments to ground ambulance providers totaled \$19,671,072 for January 1, 2020, to December 31, 2020. A 5% increase would be an estimated cost of \$983,554.

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

Compliance costs remain unchanged.

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

**Regulatory Impact Table**

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$172,764	\$172,764	\$172,764
Small Businesses	\$746	\$746	\$746
Non-Small Businesses	\$106,168	\$106,168	\$106,168
Other Persons	\$983,554	\$983,554	\$983,554
<b>Total Fiscal Cost</b>	<b>\$1,263,232</b>	<b>\$1,263,232</b>	<b>\$1,263,232</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$2,138,127	\$2,138,127	\$2,138,127
Small Businesses	\$10,444	\$10,444	\$10,444
Non-Small Businesses	\$1,313,935	\$1,313,935	\$1,313,935
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$3,462,506</b>	<b>\$3,462,506</b>	<b>\$3,462,506</b>
<b>Net Fiscal Benefits</b>	<b>\$2,199,274</b>	<b>\$2,199,274</b>	<b>\$2,199,274</b>

<b>H) Department head approval of regulatory impact analysis:</b>
The Executive Director of the Utah Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see a net increase in revenue based on the increased rates increase.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Richard G. Saunders, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Section 26-8a-403

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
<b>A) Comments will be accepted until:</b> 06/14/2021

<b>10. This rule change MAY become effective on:</b> 06/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b> Rich Saunders, Executive Director	<b>Date:</b> 04/23/2021
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**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.**

**R426-8-100. Authority and Purpose.**

(1) This rule is established pursuant to Title 26, Chapter 8a, Utah Emergency Medical Services System Act.

(2) This rule establishes maximum ambulance rates and charges for Utah licensed ground ambulance providers.

**R426-8-200. Ground Ambulance Transportation Revenues, Rates, and Charges.**

(1) A licensed ground ambulance provider shall not charge more than the rate described pursuant to R426-8-200(6)(~~7~~)(~~8~~)(~~9~~) through (10)

(2) Net income and subsidies for a licensed ground ambulance provider shall not exceed ten percent of gross revenue.

(3) A licensed ground ambulance provider may lower a rate at their discretion.

(4) A licensed ground ambulance provider shall not charge a base rate for transportation to a patient who is not transported.

(5) The Department may adjust each rate annually based on financial data received from licensed ground ambulance providers.

(6) Ground ambulance base rates for patient transport to a hospital or patient receiving facility are as follows:

(a) EMT ground ambulance license level - [~~\$906.00~~]\$951.00 per transport;

(b) Advanced EMT ground ambulance license level - [~~\$1,196.00~~]\$1,256.00 per transport;

(c) Advanced EMT ground ambulance license level, who prior to June 30, 2016 was licensed as an EMT-IA ground licensed ambulance provider - [~~\$1,473.00~~]\$1,547.00 per transport;

(d) Paramedic ground ambulance license level - [~~\$1,750.00~~]\$1,838.00 per transport; and

(e) Any EMT or AEMT level licensed ground ambulance provider with a paramedic on-board - [~~\$1,750.00~~]\$1,838.00 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) the licensed ground ambulance provider has a reimbursement for paramedic services agreement with a paramedic licensed provider for the service provided.

(7) A mileage rate may be charged up to a maximum of [~~\$36.10~~]\$36.90 per mile computed from the location of the patient upon ambulance arrival to the destination hospital or patient receiving facility. A fuel fluctuation surcharge of \$0.25 per mile may be added when the diesel fuel price exceeds \$5.10 per gallon, or the gasoline price exceeds \$4.25 per gallon as invoiced.

(8) A surcharge of \$1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(9) If more than one patient is transported from [~~from~~]the location of the patients to the same destination hospital or patient receiving facility, a charge shall be assessed to each patient as follows:

(a) The transportation base rate; and

NOTICES OF PROPOSED RULES

(b) the mileage rate divided equally between the total number of patients.

(10) A licensed ground ambulance provider may charge separately for a round trip if the following conditions apply:

(a) no charge is billed to the patient for at least 30 minutes at the hospital or a patient receiving facility at the half-way point of the trip; and

(b) no more than \$22.05 per quarter hour is charged for time over 30 minutes.

(11) A Licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

(a) supplies are priced fairly and competitively with a similar product in the local area;

(b) the individual does not refuse the service; and

(c) the licensed ground ambulance personnel assess or treats the individual.

(12) A licensed ground ambulance provider may petition the Department for a temporary service-specific surcharge when there is a temporary escalation of costs. The petition shall specify the surcharge amount and financial justification. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(13) A licensed ground ambulance provider shall submit a fiscal report in accordance with the instructions, guidelines and review criteria as specified by the Department.

(a) A fiscal report shall be submitted within six months of the end of their fiscal year.

(b) The Department shall provide guidance and a template for a fiscal report. Guidance will be posted on the Department's website.

(c) The Department shall provide a summary of fiscal reports to the EMS Committee prior to adjusting a maximum base rate for a licensed ground ambulance provider.

(14) The Department may review a licensed ground ambulance provider's fiscal report for compliance. The Department may perform financial audits to ensure compliance to reporting requirements.

(15) Each licensed ground ambulance provider shall submit a written total number of billed 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 a patient transport number is not in agreement with patient care data submitted to the Department pursuant to Rule R426-7. A written justification shall include a description of each data reporting error, and a plan to correct future data submission.

(c) Any submitted patient transport number not in agreement with patient care report data may be evaluated, corrected, or audited by the Department.

**KEY: emergency medical services, rates**

**Date of Enactment or Last Substantive Amendment:** 2021~~[July 1, 2020]~~

**Notice of Continuation:** November 10, 2015

**Authorizing, and Implemented or Interpreted Law:** 26-8a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R432-725-4	Filing No. 53420

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Licensing	
<b>Room no.:</b>	4th Floor	
<b>Building:</b>	Cannon	
<b>Street address:</b>	288 N 1460 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144103	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4103	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kristi Grimes	385-214-9187	kristigrimes@utah.gov
Joel Hoffman	801-273-2804	jhoffman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R432-725-4. Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this amendment is to modify the definition of "personal care services". The amendment is needed due to a statutory change from the 2020 General Session, H.B. 274. The Division of Occupational and Professional Licensing (DOPL) oversees the Nurse Practice Act, which resulted in amendments from the same legislation. The Nurse Practice Act now has a list of tasks that do not need to be delegated. This amendment will comply with the statute and rule changes for DOPL.
<b>4. Summary of the new rule or change:</b>
This amendment modifies the definition of "personal care services". The previous definition listed specific tasks which could be performed under the Personal Care Agency rule. The amended definition allows any services provided to assist an individual with activities of daily living which do not require the delegation or direct supervision of a licensed health care professional. The Health Facility Committee reviewed and approved this rule amendment on 02/10/2021.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
State government personal care agency survey process was thoroughly reviewed. This change will not impact the

current process for licensure and re-licensure surveys. No change to the state budget is expected.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures. Personal care agencies are regulated by the state health department and not local governments. There will be no change in local business licensing or any other item(s) with which local governments are involved.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses Licensed Personal Care Agencies. The services provided remain the same, only the definition would be changed. There are 94 personal care agencies, as determined by the Department of Health's licensing data system. (North American Industry Classification System (NAICS) codes used – Home Health Care Services 621610, reports 373 small businesses).

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small business. There are no Personal Care Agencies that are non-small businesses.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to other persons because this amendment modifies the definition of "personal care services" and therefore, would not add cost for persons, businesses, or local government entities.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies the definition of "personal care services" and therefore, would not add cost for affected persons.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this amendment will not result in fiscal impact to businesses.

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

Richard G. Saunders, Executive Director

**Citation Information**

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

Title 26, Chapter 21		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	06/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	04/14/2021
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**R432. Health, Family Health and Preparedness, Licensing.**

**R432-725. Personal Care Agency Rule.**

**R432-725-4. Definitions.**

(1) ~~[See common definitions rule]~~The terms used in these rules are defined in R432-1-3.

(2) ~~[Special definitions]~~In addition:

(a) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(b) A "Personal Care Agency" consists of two or more individuals providing personal care services on a visiting basis.

(c) "Personal Care Services" means any service provided to assist an individual with activities of daily living or other tasks which do not require the direct intervention or supervision of a licensed healthcare professional. These tasks may include those health care services which may be performed by an unlicensed individual without delegation by a health care provider Section 58-1-307.1 and Subsection R156-31b-701a(1).

~~(i) self administration of medications with the assistance of a Personal Care Aide which may include:~~

- ~~(A) Reminding the client to take medications, and~~
- ~~(B) Opening containers for the client;~~

~~(ii) medication set up by a Registered Nurse, which shall include:~~

- ~~(A) completing a functional assessment;~~
- ~~(B) reviewing all medication orders; and~~
- ~~(C) placing medication in mediset containers.~~
- ~~(iii) transferring;~~
- ~~(iv) personal grooming and dressing;~~
- ~~(v) eating and meal preparation;~~
- ~~(vi) oral hygiene and denture care;~~
- ~~(vii) toileting and toilet hygiene;~~
- ~~(viii) bathing;~~
- ~~(ix) taking and recording temperatures and weights;~~
- ~~(x) administering emergency first aid;~~
- ~~(xi) providing transportation;~~

(d) "Service Agreement" means a written agreement for services between the client and the personal care provider ~~which~~ that outlines how the services are to be provided.

(e) "Transportation Services Agency" means an agency that provides transportation and does not provide any Personal Care Services.

**KEY: health care facilities**

**Date of Enactment or Last Substantive Amendment:** 2021 ~~(June 2, 2015)~~

**Notice of Continuation:** September 15, 2016

**Authorizing, and Implemented or Interpreted Law:** 26-21

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R434-40	Filing No. 53446

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Family Health and Preparedness, Primary Care and Rural Health	
<b>Room no.:</b>	4163	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142005	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2005	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ashley Moretz	801-350-1546	amoretz@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R434-40. Utah Health Care Workforce Financial Assistance Program Rules

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

During the 2020 General Session, the Utah Legislature, in H.B. 87, amended Section 26-46-102 governing the Utah Health Care Workforce Financial Assistance Program. Section 26-46-102 requires eligible professionals to submit a written commitment from the health care facility employing the eligible professional that the facility will provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

The existing rule is being amended to reflect both the requirement for the employing health care facilities to pay the 20% award match and the requirement for providers to submit written documentation of the commitment from their employer as part of the application process. In the 2021 General Session, the Utah Legislature made an ongoing appropriation of \$300,000 for the program, of which \$270,000 will be used for the benefit of participating health care professionals (after subtracting 10% of the appropriation for UDOH's administration of the program).

Separately, the penalty clauses have been updated for simplicity and consistency with Rule R434-20, which covers the Behavioral Health Workforce Reinvestment Initiative.

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

Health care facilities employing eligible professionals must now provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional through the program. Eligible professionals must submit a written document confirming the "site match" before award approval. Participation in the program is voluntary for health care facilities; however, if the employing health care facility does not commit to providing the 20% match, the professional will not be able to participate in the loan repayment program.

Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement. Previously, this rule spelled out a range of actions that applied to recipients.

**Fiscal Information**

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

**A) State budget:**

None--State government will not receive or be required to expend any funds as a result of the amendment. The 20% site match provided by employing health care facility will be paid by the health care facility to the participating health care professional.

**B) Local governments:**

None--Local governments will not receive or expend any additional funding as a result of the required match. The

20% site match provided by employing health care facility will be paid by the health care facility to the participating health care professional.

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

None--Small businesses will not receive or be required to expend any funds as a result of the amendment. The 20% site match provided by employing health care facility will be paid to the participating health care professional.

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

None--Non-small businesses will not receive or be required to expend any funds as a result of the amendment. The 20% site match provided by employing health care facility will be paid to the participating health care professional.

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

Health care facilities that employ eligible professionals must provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional. The total projected cost to health care facilities that employ eligible professionals is \$54,000, based on total available funding for awards of \$270,000.

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

None--Participation in the program is voluntary for health care facilities; however, if the employing health care facility does not commit to providing the 20% match, the professional will not be able to participate in the loan repayment program.

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Other Persons	\$0	\$54,000	\$54,000
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$54,000</b>	<b>\$54,000</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$270,000	\$270,000
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$270,000</b>	<b>\$270,000</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$216,000</b>	<b>\$216,000</b>

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

The Executive Director of the Department of Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.

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

There is no fiscal impact to business because businesses will not receive or be required to expend any funds as a result of the amendment.

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

Richard Saunders, Executive Director

**Citation Information**

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

Section 26-46-101	Section 26-46-102
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 06/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard Saunders, Executive Director	<b>Date:</b>	04/27/2021
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**R434. Health, Family Health and Preparedness, Primary Care and Rural Health.**

**R434-40. Utah Health Care Workforce Financial Assistance Program Rules.**

**R434-40-1. Purpose.**

This rule implements the Utah Health Care Workforce Financial Assistance Program Act, Utah Code, Title 26, Chapter 46; which governs the award of grant funds to geriatric professionals and health care professionals to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become nurse educators in exchange for serving for a specified period of time in a underserved area of the state.

**R434-40-2. Authority.**

This rule is required by Subsections 26-46-102(3) and 26-46-103(6)(a), and is promulgated under the authority of Section 26-1-5.

**R434-40-3. Definitions.**

The definitions as they appear in Section 26-46-101 apply. In addition:

(1) "Applicant" means an individual who submits a completed application and meets the application requirements established by the Department for a loan repayment or scholarship grant under the act.

(2) "Approved site" means a site approved by the Department that meets the eligibility criteria established in this rule and that is:

(a) within an underserved area where health care is provided and the majority of patients served are medically underserved due to lack of health care insurance, unwillingness of existing geriatric professional and health care professionals to accept patients covered by government health programs, or other economic, cultural, or language barriers to health care access; or

(b) that is a Utah nursing school or training institution that provides a nursing education course of study to prepare persons for the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act; has a shortage of nurse educator faculty; and meets the criteria established by the Department.

(3) "Committee" means the Utah Health Care Workforce Advisory Committee created by Section 26-1-7.



(4) "Dentist" means an individual licensed under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, to practice dentistry.

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

(6) "Educational expenses" means the cost of education in a health care profession, including books, education equipment, fees, materials, reasonable living expenses, supplies, and tuition.

(7) "Educational loan" means a commercial, government, or government-guaranteed loan taken to pay educational expenses.

(8) "Geriatric" means individuals 65 years old and older.

(9) "Geriatric professional" is further defined to mean an individual who has successfully completed one or more of the following:

a. graduate level certification in gerontology from a nationally accredited certifying organization or transcribed program of an accredited academic institution;

b. graduate degree in gerontology; or

c. additional training focused on the geriatric or gerontological aspects of the professional's discipline. Additional training may include, but is not limited to, internship, practicum, preceptorship, residency, or fellowship.

(10) "Grant" means a grant of funds under a grant agreement.

(11) "Loan repayment" means a grant of funds under a grant to defray educational loans in exchange for service for a specified period of time at an approved site.

(12) "Mental health therapist" means an individual licensed under:

(a) Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act; or

(b) Title 58, Chapter 67, Utah Medical Practice Act, as a physician and surgeon, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as an osteopathic physician and surgeon who is engaged in the practice of mental health therapy.

(13) "Nurse" means an individual licensed to practice nursing in the state under Title 58, Chapter 31b, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act.

(14) "Nurse educator" means a nurse employed by a Utah school of nursing providing nursing education to individuals leading to licensure or certification as a nurse.

(15) "Occupational Therapist" means an individual licensed to practice in the state under Title 58, Chapter 42a, Occupational Therapy Practice Act.

(16) "Pharmacist" means an individual licensed to practice in the state under Title 58, Chapter 17b, Pharmacy Practice Act.

(17) "Physical Therapist" means an individual licensed to practice in the state under Title 58, Chapter 24b, Physical Therapy Practice Act.

(18) "Physician" means an individual licensed to practice in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(19) "Physician assistant" means an individual licensed to practice in the state under Title 58, Chapter 70a, Physician Assistant Practice Act.

(20) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for geriatric professional and health care professionals licensure and as required by this rule.

(21) "Recipient" means an applicant selected to receive a loan repayment or scholarship grant under the act.

(22) "Scholarship" means a grant of funds for educational expenses given to an individual under a grant agreement where the individual agrees to become a nurse educator in exchange for service for

a specified period of time at an approved site that is a Utah nursing school or training institution.

(23) "Service obligation" means professional service rendered at an approved site for a minimum of two years in exchange for a scholarship or loan repayment grant.

#### **R434-40-4. Geriatric Professionals and Health Care Professionals Loan Repayment Grants -- Terms and Service.**

(1) To increase the number of geriatric professionals and health care professionals in underserved areas of the state, the Department may provide loan repayment grants to geriatric professional and health care professionals to repay loans taken for educational expenses in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Loan repayment grants may be given only to repay bona fide loans taken by a geriatric professional and health care professional for educational expenses incurred while pursuing an education at an institution that awards a degree that qualifies a geriatric professional and health care professional to practice in ~~his~~ the professional's field.

(3) Loan repayment grants under this section may not:

(a) be used to satisfy other obligations owed by the geriatric professional and health care professional under any similar program and may not be used to repay a loan that is in default at the time of application; or

(b) be in an amount greater than the total outstanding balance on the loans taken for educational expenses, including accrued interest.

(4) The Department may not disburse any grant monies under the act until the recipient has performed at least six months of service at the approved site.

#### **R434-40-5. Health Care Professionals Scholarship Grants -- Terms and Service.**

(1) To increase the number of nurse educators in underserved areas in the state, the Department may provide scholarship grants to individuals seeking to become nurse educators in exchange for their agreement to serve for a specified period of time at an approved site in the state.

(2) Scholarship grants may be given to pay educational expenses while pursuing an education at an institution accredited by the National League of Nursing that provides training leading to the award of a final degree that qualifies the applicant to become a nurse educator in the state.

(3) Scholarship grants given under this section may not be used to satisfy other obligations owed under any similar program and may not be in an amount more than is reasonably necessary to meet educational expenses.

(4) Scholarship grant recipients shall seek a course of education following a schedule of at least a minimum number of course hours per year as set by the Department which leads to receipt of a degree or completion of specified additional course work in a number of years as established by the Department.

#### **R434-40-6. Loan Repayment Grant Administration.**

(1) The Department may award loan repayment grants to repay loans taken for geriatric professionals' and health care professionals' educational expenses. The Department may consider committee recommendations in awarding loan repayment grants.

(2) As requested by the Department, a loan repayment grant recipient shall provide information reasonably necessary for administration of the program.

(3) The Department shall determine the total amount of the loan repayment grant.

NOTICES OF PROPOSED RULES

(4) The loan repayment grant recipient may not enter into any other similar contract until the recipient satisfies the service obligation described in the grant agreement.

(5) The Department may approve payment to a loan repayment grant recipient for increased federal, state, and local taxes caused by receipt of the loan repayment grant.

(6) The Department shall not pay for an educational loan of a loan repayment grant applicant who is in default at the time of an application.

(7) Before receiving a loan repayment grant, the applicant must enter into a grant agreement with the Department that binds him to the terms of the program.

(8) A loan repayment grant recipient must have a permanent, unrestricted license to practice in ~~his~~the recipient's health care specialty in Utah before ~~his~~the recipient's first day of service under the grant agreement.

(9) Prior to beginning to fulfill ~~his~~the service obligation, a loan repayment grant recipient must obtain approval from the Department~~s~~ of the site where the recipient may complete ~~his~~the service obligation.

(10) A loan repayment grant recipient must obtain approval from the Department prior to changing the approved site where the recipient fulfills ~~his~~the service obligation.

**R434-40-7. Scholarship Grant Administration.**

(1) The Department may award scholarship grant funds to an applicant for a maximum of four years or until earning the nursing postgraduate degree. The Department may consider committee recommendations in awarding scholarship grants.

(2) The Department may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(3) The scholarship grant recipient may not enter into a scholarship agreement other than with the program established in Section 26-46-1 until the service obligation agreed upon in the grant agreement with the Department is satisfied.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in ~~his~~the grant agreement with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may cancel a scholarship grant at any time if it finds that the scholarship grant recipient has voluntarily or involuntarily terminated ~~his~~the recipient's schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship grant recipient does not intend to practice as required by statute, rules, and grant agreement in an underserved area in the state.

(7) Upon completion of schooling and required postgraduate training, the scholarship grant recipient is responsible for finding employment at an approved site.

(8) A scholarship grant recipient must obtain approval from the Department prior to beginning service obligation at an approved site.

(9) A scholarship grant recipient must obtain approval from the Department prior to changing the approved site where the recipient fulfills ~~his~~the service obligation.

(10) A scholarship grant recipient must obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within three months of completion of postgraduate training.

(11) If there is no available approved site upon a scholarship grant recipient's graduation, the recipient shall repay the scholarship grant amount as negotiated in the scholarship grant agreement.

**R434-40-8. Eligible Bona Fide Loans.**

(1) An eligible bona fide loan is a loan used to pay for educational expenses leading to a qualifying geriatric professional or health care professional degree approved by the Department.

(2) A bona fide loan includes the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person that is documented by a contract notarized at the time of the making of the loan, indicative of an arm's length transaction, and with competitive term and rate as other loans available to students; or

(d) a loan that the applicant conclusively demonstrates to the Department is a bona fide loan.

**R434-40-9. Full-Time Equivalency Provisions for Recipients.**

(1) The loan repayment grant amount is based on the level of full-time equivalency that the loan repayment grant recipient agrees to work.

(2) A loan repayment grant recipient who provides services for at least 40 hours per week may be awarded a loan repayment grant based on the percentages as determined by the Department.

(3) A loan repayment grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower loan repayment grant based on a full-time equivalency of 40 hours per week.

(4) A scholarship grant recipient must work full-time, as defined by the scholarship grant recipient's employer and as specified in the scholarship grant with the Department.

(5) A scholarship grant recipient must serve one year of service obligation for each year he received a scholarship grant under this program, with a minimum of two years required.

(6) The Department may approve a full-time equivalency of less than 40 hours per week if the applicant's employer can demonstrate that performing less than 40 hours per week at the work site combined with other activities, such as on-call service, is equivalent to a 40 hour work week.

**R434-40-10. Approved Site Determination.**

(1) The Department shall approve sites based on comprehensive applications submitted by sites.

(2) The criteria the Department may use to determine an approved site for sites that are not nursing schools include:

(a) the percentage of the population with incomes under 200% of the federal poverty level;

(b) the percentage of the population 65 years of age and over;

(c) the percentage of the population under 18 years of age;

(d) the distance to the nearest geriatric professionals or health care professionals and barriers to reaching the geriatric professionals or health care professionals;

(e) ability of the site to provide support facilities and services for the requested geriatric professional or health care professional;

(f) financial stability of the site;~~and~~

(g) percent of patients served who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;~~and~~

(h) the applicant's policy and practice to provide care regardless of a patient's ability to pay.

(3) The criteria the Department may use to determine an approved site for sites that are nursing schools include:

- (a) a demonstrated shortage of nursing educator faculty;
- (b) number of and degrees sought by students;
- (c) number of students denied for each degree sought;
- (d) residency of students;
- (e) ability of the nursing school to provide support facilities and services for the requested position to be trained;
- (f) faculty to student ratio, including ratios of clinical and classroom instructors;
- (g) average class sizes for each of the degrees offered by the school;
- (h) school plans to expand enrollment;
- (i) diversity of students;
- (j) current and projected staffing for the type of instructor requested;

(k) sources and stability of funding to hire and support the prospective instructor; and

- (l) distance to the next closest nursing school.

(4) The Department may give preference to sites that provide letters of support from the area served by the prospective employer, such as from:

- (a) a majority of practicing health care professionals;
- (b) county and civic leaders;
- (c) hospital administrators;
- (d) business leaders, local chamber of commerce, citizens;

and

- (e) local health departments.

(5) The Department may give preference to sites located in a service area designated by the Secretary of Health and Human Services as having a ~~shortage of~~ health care professional~~(s)~~ shortage and that are requesting one of the following medical specialties:

- (a) family practice;
- (b) internal medicine;
- (c) obstetrics~~(s)~~ and gynecology; and
- (d) pediatrics.

(6) To become approved, a site must offer a salary and benefit package competitive with salaries and benefits of other geriatric professionals and health care professionals in the service area.

(7) The health care facility employing the eligible professional shall provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

(8) Other criteria that the site applicant can demonstrate as furthering the purposes of the act.

#### **R434-40-11. Loan Repayment Grant Eligibility and Selection.**

(1) In selecting a loan repayment grant recipient for a loan repayment grant award, the Department may evaluate the applicant based on the following selection criteria:

- (a) the extent to which an applicant's training in a health care specialty is needed at an approved site;
- (b) the applicant's commitment to serve in an underserved area, which can be demonstrated in any of the following ways:
  - (i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, worked with geriatric populations, or other service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, has worked with geriatric populations, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of health care services to the medically underserved;

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes ~~his~~ the applicant's commitment to serve in an underserved area; and

(v) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(c) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving in an underserved area;

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the Department that establishes ~~his~~ the applicant's professional competence or conduct;

(d) the applicant's financial need;

(e) the applicant's willingness to serve patients who are without insurance or whose care is paid for by government programs, such as Medicaid, Medicare, and CHIP;

(f) the applicant's willingness to provide care regardless of a patient's ability to pay;

(g) the applicant's ability and willingness to provide care; and

(h) the applicant's achieving an early match with an approved site.

(2) To be eligible for a loan repayment grant, an applicant must be a United States citizen or permanent resident.

(3) The applicant shall submit a written commitment from the health care facility employing the eligible professional that the health care facility will provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.

(4) The Department may consider only grant applicants who apply within 18 months of the applicant's beginning employment at an approved eligible site.

#### **R434-40-12. Scholarship Grant Eligibility and Selection.**

(1) In selecting a recipient for a nurse scholarship grant, the Department may evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in an underserved area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve in an underserved area or service commitment to the medically underserved;

(ii) has work or educational experience with the medically underserved through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for services in an underserved area; and

(iv) other facts or experience that the applicant can demonstrate to the Department that establishes ~~his~~ the applicant's commitment to the medically underserved.

(b) evidence that the applicant has a license in good standing to practice in the state under Title 58, Chapter 31, Nurse Practice Act, or under Title 58, Chapter 44a, Nurse Midwife Practice Act;

NOTICES OF PROPOSED RULES

- (c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;
  - (d) the applicant's evidence that he has been accepted by or currently attends an accredited school;
  - (e) the applicant's projected educational expenses;
  - (f) the applicant's educational, personal, and professional references that demonstrate the applicant's good character and potential to successfully complete school; and
  - (g) the applicant's essay which is required as part of the scholarship application[;].
- (2) In selecting a scholarship grant recipient, the Department may give preference to applicants who agree to serve for a greater length of time in return for scholarship assistance.
- (3) To be eligible to receive a scholarship grant, an applicant must be a United States citizen or permanent resident.

**R434-40-13. Loan Repayment and Scholarship Grant Service Obligation.**

- (1) Before receiving an award under the act, the recipient shall enter into a grant agreement with the state agreeing to the conditions upon which the award is to be made.
- (2) The grant agreement shall include necessary conditions to carry out the purposes of the act.
- (3) In exchange for financial assistance under the act, the recipient shall serve for a period established at the time of the award, but which may not be for less than 24 months, in an underserved area at a site approved by the Department.
- (4) The recipient's service in an underserved area at a site approved by the Department retires the amount owed for the award according to the schedule established by the Department at the time of the award.
- (5) Periods of internship, preceptorship, or other clinical training do not satisfy the service obligation under the act.
- (6) A scholarship grant recipient must:
  - (a) be a full-time matriculated student and meet the school's requirements to continue in the program and receive an advanced degree within the time specified in the scholarship grant agreement, unless extended pursuant to Section R434-40-16;
  - (b) within three months before and not exceeding one month following graduation or completion of postgraduate training, a scholarship grant recipient shall provide to the Department documented evidence of an approved site's intent to hire him.
  - (c) upon completion of schooling or postgraduate training, the scholarship grant recipient must find employment at an approved site.
  - (d) obtain an unrestricted license to practice in Utah prior to beginning to fulfill the service obligation at the approved site.
  - (e) obtain approval from the Department prior to beginning to fulfill [his]the recipient's service obligation at an approved site.
  - (f) begin employment at the approved site within three months of graduation or completion of postgraduate training.
  - (g) obtain Department approval prior to changing the approved site where the recipient fulfills [his]the service obligation.

**R434-40-14. Loan Repayment Grant Breach, Repayment, and Penalties.**

Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement.[~~(1) A loan repayment grant recipient under the act who fails to complete the service obligation shall:~~

- ~~(a) pay as a penalty twice the total amount of the loan repayment grant on a prorated basis according to a schedule established~~

~~by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and~~

- ~~(b) costs and expenses incurred in collection, including attorney fees;~~
- ~~(2) A loan repayment grant recipient who breaches his grant agreement with the Department shall begin to repay within 30 days of the breach. The Department may submit for immediate collection all amounts due from a breaching loan repayment grant recipient who does not begin to repay within 30 days.~~
- ~~(3) The breaching loan repayment grant recipient shall pay the total amount due within one year of breaching the grant agreement. The scheduled payback may not be less than four equal quarterly payments.~~
- ~~(4) The amount to be paid back shall be determined from the end of the month in which the loan repayment grant recipient breached the grant as if the recipient had breached at the end of the month.~~
- ~~(5) The breaching loan repayment grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the grant agreement.~~
- ~~(6) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.]~~

**R434-40-15. Scholarship Grant Breach, Repayment, and Penalties.**

Penalties for a recipient who fails to complete the service obligation shall be made in accordance with the grant agreement.[~~(1) A scholarship grant recipient who:~~

- ~~(a) fails to finish his professional schooling within the period of time agreed upon with the Department shall within 90 days after the deadline for completing his schooling or within 90 days of his failure to continue his schooling, whichever occurs earlier, shall repay:~~
- ~~(i) all scholarship money received according to a schedule established at the time of the award with the Department;~~
- ~~(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant agreement; and~~
- ~~(iii) costs and expenses incurred in collection, including attorney fees;~~
- ~~(b) finishes his schooling and fails to pass the necessary professional certifications or examinations within the time period agreed upon with the Department shall repay:~~
- ~~(i) all scholarship money received according to a schedule established by grant agreement with the Department;~~
- ~~(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship money calculated from the date each installment was received under the scholarship grant; and~~
- ~~(iii) costs and expenses incurred in collection, including attorney fees;~~
- ~~(c) finishes his schooling and fails to take the necessary professional certifications or examinations within the time period agreed upon with the Department shall:~~
- ~~(i) pay as a penalty twice the total amount of the scholarship money on a prorated basis according to a schedule established by grant agreement with the Department and 12% per annum interest on the unpaid penalty amount; and~~
- ~~(ii) costs and expenses incurred in collection, including attorney fees;~~
- ~~(d) finishes his schooling and becomes a health care professional but who fails to fulfill his service obligation shall repay:~~

~~(i) twice the total scholarship grant amount received that is not yet retired by his service on a prorated basis according to a schedule established by grant agreement with the Department;~~

~~(ii) 12% per annum interest on the unretired scholarship money calculated from the date each installment was received under the scholarship grant agreement; and~~

~~(iii) costs and expenses incurred in collection, including attorney fees.~~

~~(2) Amounts recovered and damages collected under this section shall be deposited as dedicated credits to be used to carry out the provisions of the act.~~

~~(3) The amount to be paid back shall be determined from the end of the month in which the scholarship grant recipient breached the scholarship grant as if the scholarship grant recipient had breached at the end of the month~~

~~(4) The breaching scholarship grant recipient shall pay the total amount due according to a schedule agreed upon with the Department which may not be longer than within four years of breaching the scholarship grant agreement.]~~

**R434-40-16. Extension of Loan Repayment and Scholarship Grants.**

(1) The Department may extend the period within which the loan repayment grant recipient must complete the service obligation:

(a) if the loan repayment grant recipient has signed a grant agreement for two years the loan repayment grant recipient may apply on or after [his]the recipient's first day of service under a loan repayment grant to extend [his]the grant agreement by one year;

(b) a loan repayment grant may be extended only at an approved site; and

(c) a loan repayment grant recipient who desires to extend [his]the loan repayment grant must inform the Department in writing of [his]the recipient's interest in extending [his]the grant agreement at least six months prior to the end of the current service obligation.

(2) The Department may extend the period within which the scholarship grant recipient must complete [his]the recipient's education:

(a) if the scholarship grant recipient has a serious illness;

(b) if the scholarship grant recipient is activated by the military; or

(c) for other good cause shown, as determined by the Department.

(3) The service obligation may be extended only at an approved site.

**R434-40-17. Release of Recipient from Service Obligation.**

(1) The Department may cancel or release, in full or in part, a recipient from [his]the service obligation under the grant agreement without penalty:

(a) if the service obligation has been fulfilled;

(b) if the recipient fails to meet the conditions of the award or if it reasonably appears the recipient will not meet the loan repayment or scholarship grant conditions;

(c) if the recipient is unable to fulfill the service obligation due to permanent disability that prevents the recipient from performing any work for remuneration or profit;

(d) if the recipient dies; or

(e) for other good cause shown, as determined by the Department.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete the required schooling or fulfill service obligation due to permanent disability that prevents the recipient

from completing school or performing any work for remuneration or profit; or

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

(3) The Department may develop alternative service obligation criteria that a loan repayment or scholarship grant recipient may use to fulfill [his]the service obligation if the loan repayment or scholarship grant recipient is unable to fulfill [his]the service obligation at an approved site due to reasons beyond [his]the recipient's control.

**R434-40-18. Reporting Requirements of Award Recipients.**

The Department may require an award recipient to provide information regarding:

(1) the academic performance[;];

(2) commitment to underserved areas[;];

(3) continuing financial need[;]; and

(4) service obligation fulfillment[;]; and

(5) other information reasonably necessary for the administration of the program during the period the recipient is in school; postgraduate training; and during the period the award recipient is completing the service obligation.

**R434-40-19. Reporting Requirements of Approved Sites.**

The Department may require the approved site to provide information regarding:

(1) the award recipients' performance[;];

(2) commitment to underserved areas[;];

(3) service obligation fulfillment[;]; and

(4) other information reasonably necessary for the administration of the program during the period the award recipient is completing the service obligation.

**KEY: medically underserved, grants, scholarships**

**Date of Enactment or Last Substantive Amendment: 2021[June 1, 2016]**

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

**Authorizing, and Implemented or Interpreted Law: 26-46-102**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-1	Filing No. 53447

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R477-1. Definitions

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

The agency found that some information in this rule was outdated and updates needed to occur to account for legislative actions.

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

This amendment removes outdated information, updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

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

**A) State budget:**

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

**B) Local governments:**

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

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

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

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

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

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management (DHRM), John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by DHRM have no

direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This Act limits the provisions of career service and this rule to employees of the executive branch of state government.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Section 63A-17-301	Section 63A-17-306
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-1. Definitions.**

**R477-1-1. Definitions.**

The following definitions apply ~~(throughout these rules)~~ to R477-1 through R477-101 unless otherwise indicated within the text of each rule.

(1) "Abandonment of Position"~~[-A]~~ means an act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) "Actual FTE"~~[-F]~~ means the total number of full time equivalents based on actual hours paid in the state payroll system.

(3) "Actual Hours Worked"~~[-F]~~ means time spent performing duties and responsibilities associated with the employee's job assignments.

(4) "Actual Wage"~~[-F]~~ means the employee's assigned wage rate in the central personnel record maintained by the D~~epartment~~ivision of Human Resource Management.

(5) "ADA" means the Americans With Disabilities Act, 42 U.S.C. 12102.

(6) "Administrative Leave"~~[-L]~~ means leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(~~6~~7) "Administrative Adjustment"~~[-A]~~ means a DHRM approved adjustment to a job or salary range~~[-approved by DHRM]~~ that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(~~7~~8) "Administrative Salary Decrease"~~[-A]~~ means a decrease in ~~the~~an employee's current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(~~8~~9) "Administrative Salary Increase"~~[-A]~~ means an increase in ~~the~~an employee's current actual wage based on special circumstances determined by an agency head.

(~~9~~10) "Agency"~~[-A]~~ means an entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22, State Officer Compensation, or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title ~~67~~63A, Chapter ~~19~~17, Utah State Personnel Management Act.

(~~10~~11) "Agency Head"~~[-F]~~ means the executive director or commissioner of each agency or a designated appointee.

(~~11~~12) "Agency Human Resource Field Office"~~[-A]~~ means an office of the D~~epartment~~ivision of Human Resource Management located at another agency's facility.

(~~12~~13) "Agency Management"~~[-F]~~ means the agency head and any other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(~~13~~14) "Alternative State Application Program (ASAP)"~~[-A]~~ means a program designed to appoint a qualified person with a disability through an on the job examination period.

(~~14~~15) "Appeal"~~[-A]~~ means a formal request to a higher level for reconsideration of a grievance decision.

(~~15~~16) "Appointing Authority"~~[-F]~~ means the officer, board, commission, person, or group of persons authorized to make appointments in their agencies.

(~~16~~17) "Break in Service"~~[-A]~~ means a point at which an individual has an official separation date and is no longer ~~employed by~~an employee of the State of Utah.

(~~17~~18) "Budgeted FTE"~~[-F]~~ means the total number of full time equivalents budgeted by the Legislature and approved by the Governor.

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~~[(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] means a temporary assignment of an employee to a different position for [purposes of ]professional [growth]development or [fulfillment—of]to fulfill specific organizational needs.

(20) "Career Service Employee"[:—A] means an employee who has successfully completed a probationary period in a career service position.

(21) "Career Service Exempt Employee"[:—A] means an employee [appointed to work for a period of time, serving]who serves at the pleasure of the appointing authority[:—who] and may be separated from state employment at any time [without just cause]for any reason or for no reason.

(22) "Career Service Exempt Position"[:—A] means a position in state service [exempted by law]that is exempt from [provisions of—]career service provisions under Section [67-19-15]63A-17-301.

(23) "Career Service Status"[:—S] means status granted to an employee who successfully completes a probationary period following appointment to a career service position.

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

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

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

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

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

(25) "Change of Workload"[:—A] means 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"[:—F] means 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"[:—P] means positions that are subject to the classification and compensation provisions stipulated in Section [67-19-12]63A-17-307.

(28) "Classification Study"[:—A] means 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"[:—F] means time off that is provided to an employee in lieu of monetary overtime compensation.

(30) "Contractor"[:—A] means an individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee

within a specified time. The contractor shall be responsible for paying any taxes and FICA payments, and may not accrue benefits.

(31) "Critical Incident Drug or Alcohol Test"[:—A] means 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] means a disciplinary action resulting in a reduction of an employee's current actual wage.

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

(34) "DHRM"[:—F] means the D[epartment]ivision of Human Resource Management.

(35) "DHRM Approved Recruitment and Selection System"[:—F] means the state's recruitment and selection system, which is a centralized and automated computer system administered by the D[epartment]ivision of Human Resource Management.

(36) "Direct Supervisor"[:—A] means 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] has the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 U.S.C. 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(38) "Disciplinary Action"[:—A] means action taken by management under Rule R477-11.

(39) "Dismissal"[:—A] means a separation from state employment for cause under Section R477-11-2.

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

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

(42) "Employee Personnel Files"[:—For purposes of Title 67, Chapters 18 and 19,] means the files or records maintained by DHRM and agencies as required by Section R477-2-5 for purposes of Title 67, Chapter 18 and Title 63A, Chapter 17. This does not include employee information maintained by supervisors.

(43) "Employment Eligibility Verification"[:—A] means a requirement of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324 that employers verify the identity and eligibility of individuals for employment in the United States.

(44) "Escalator" Principle"[:—Under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq. (USERRA),] means returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq. (USERRA).

(45) "Excess Hours"[:—A] means 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"~~[-A]~~ means an employee's relative or household member as defined in Section 52-3-1 but also including, step-siblings, step-parents, and step-children.

(47) "Fitness For Duty Evaluation"~~[-E]~~ means 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"~~[-E]~~ means employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(49) "FLSA Non-Exempt"~~[-E]~~ means 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"~~[-U]~~ means 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]~~ means 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.]~~ "GOPB" means Governor's Office of Planning and Budget.

(53) "Grievance"~~[-A]~~ means 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.

(54) "Grievance Procedures"~~[-F]~~ means the statutory process of grievances and appeals as set forth in Title 67, Chapter 19a, Grievance Procedures, and the rules promulgated by the Career Service Review Office.

(55) "Gross Compensation"~~[-E]~~ means an employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(56) "Highly Sensitive Position"~~[-A]~~ means a position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383;

(ii) directly related to law enforcement;

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

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

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

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

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

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(57) "Hiring List"~~[-A]~~ means 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) "Incompetence"~~[-F]~~ means inadequacy or unsuitability in performance of assigned duties and responsibilities.

(59) "Inefficiency"~~[-W]~~ means wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

~~(60) [Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.]~~

~~(61) "Intern"~~~~[-A]~~ means 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.

~~(62)~~ (61) "Job"~~[-A]~~ means 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.

~~(63)~~ (62) "Job Description"~~[-A]~~ means a document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

~~(64)~~ (63) "Job Family"~~[-A]~~ means a group of jobs that have related or common work content, that share common skills, responsibilities, and requirements, and that normally represents a general occupation area.

~~(65)~~ (64) "Job Requirements"~~[-S]~~ means skill requirements defined at the job level.

~~(66)~~ (65) "Job Series"~~[-F]~~ means 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.

~~(67)~~ (66) "Leave Benefit"~~[-A]~~ means 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.

~~(68)~~ (67) "Legislative Salary Adjustment"~~[-A]~~ means a legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

~~(69)~~ (68) "Malfeasance"~~[-F]~~ means intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

~~(70)~~ (69) "Market Based Bonus"~~[-O]~~ means a one time lump sum monies given to a new hire or a current employee to encourage employment with the state.

~~(71)~~ (70) "Market Comparability Adjustment"~~[-A]~~ means a legislatively approved 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.

~~(72)~~ (71) "Merit Increase"~~[-A]~~ means a legislatively approved and funded salary increase for employees to recognize and reward successful performance.

~~(73)~~ (72) "Misconduct"~~[-W]~~ means wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

~~(74)~~ (73) "Misfeasance"~~[-F]~~ means the improper or unlawful performance of an act that is lawful or proper.

NOTICES OF PROPOSED RULES

(~~75~~74) "Nonfeasance"~~[-F]~~ means failure to perform either an official duty or legal requirement.

(~~76~~75) "Pay for Performance Award"~~[-A]~~ means 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.

(~~77~~76) "Pay for Performance"~~[-A]~~ means 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.

(~~78~~77) "Performance Evaluation"~~[-A]~~ means a formal, periodic evaluation of an employee's work performance.

(~~79~~78) "Performance Improvement Plan"~~[-A]~~ means a documented administrative action to address substandard performance of an employee under Section R477-10-2.

(~~80~~79) "Performance Management"~~[-T]~~ means 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.

(~~81~~80) "Performance Plan"~~[-A]~~ means 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.

(~~82~~81) "Performance Standard"~~[-S]~~ means specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(~~83~~82) "Personnel Adjudicatory Proceedings"~~[-T]~~ means the informal appeals procedure contained in Title 63G, Chapter 4, Administrative Procedures Act for human resource policies and practices not covered by the state employee's grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(~~84~~83) "Phased Retirement"~~[-E]~~ means employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date~~[-During phased retirement,]~~ where the retiree will receive a reduced retirement allowance.

(~~85~~84) "Position"~~[-A]~~ means a unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(~~86~~85) "Position Description"~~[-A]~~ means a document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(~~87~~86) "Position Identification Number"~~[-A]~~ means a unique number assigned to a position for FTE management.

(~~88~~87) "Post Accident Drug or Alcohol Test"~~[-A]~~ means a drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

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

(b) the driver receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involved:

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

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

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

(~~89~~88) "Pre-employment Drug Test"~~[-A]~~ means 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.

(~~90~~89) "Probationary Employee"~~[-A]~~ means an employee hired into a career service position who has not completed the required probationary period for that position.

(~~91~~90) "Probationary Period"~~[-A]~~ means a period of time ~~[considered part of the selection process, identified at the job level, the purpose of which is to allow]~~ for management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted to the employee. The length of the period is identified at the job level and the period is considered part of the selection process.

(~~92~~91) "Proficiency"~~[-A]~~ means an employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(~~93~~92) "Promotion"~~[-A]~~ means an action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(~~94~~93) "Protected Activity"~~[-O]~~ means 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.

(~~95~~94) "Random Drug or Alcohol Test"~~[-U]~~ means unannounced drug or alcohol testing of a sample of an employee in a highly sensitive position done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(~~96~~95) "Reappointment"~~[-R]~~ means return to work of an individual from the reappointment register after separation from employment.

(~~97~~96) "Reappointment Register"~~[-A]~~ means 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.

(~~98~~97) "Reasonable Suspicion Drug or Alcohol Test"~~[-A]~~ means 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.

([99]98) "Reassignment"~~[-A]~~ means 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.

([400]99) "Reclassification"~~[-A]~~ means 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.

([404]100) "Reduction in Force[-] (RIF)" ~~[-A]~~ means abolishment of positions resulting in the termination of career service employment. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

([402]101) "Reemployment"~~[-R]~~ means 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.

([403]102) "Salary Range"~~[-E]~~ means established minimum and maximum wage rates assigned to a job.

([404]103) "Schedule"~~[-T]~~ means the ~~[determination]~~ designation of ~~[whether]~~ a position ~~[meets criteria stipulated in Title 67, Chapter 19, Utah State Personnel Management Act to be]~~ as career service (schedule B) or career service exempt (schedule A) under Title 63A, Chapter 17, Utah State Personnel Management Act.

([405]104) "Separation"~~[-A]~~ means an employee's voluntary or involuntary departure from state employment.

([406]105) "Settling Period"~~[-A]~~ means a sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

([407]106) "Structure Adjustment"~~[-A]~~ means a DHRM approved 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.

([408]107) "Tangible Employment Action"~~[-A]~~ means a significant change in employment status, such as dismissal, demotion, failure to promote, work reassignment, or a decision which changes benefits.

([409]108) "Transfer"~~[-A]~~ means 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.

([440]109) "Uniformed Services"~~[-T]~~ means 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.

([444]110) "Unlawful Discrimination"~~[-A]~~ means 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.

([442]111) "USERRA"~~[-A]~~ means the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq. requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

([443]112) "Veteran"~~[-A]~~ means 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.

([444]113) "Veteran Employment Opportunity Program (VEOP)"~~[-A]~~ means a program designed to appoint a qualified veteran through an on the job examination period.

([445]114) "Volunteer"~~[-A]~~ means 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.

([446]115) "Wage"~~[-T]~~ means the fixed hourly rate paid to an employee.

([447]116) "Work Period"~~[-T]~~ means the maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in Section ~~[67-19-6.7]~~ 63A-17-502 and 29 CFR 553.230.

**KEY: personnel management, rules and procedures, definitions**  
**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2020]~~2021**

**Notice of Continuation: April 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: ~~[67-19-6; 67-19-15; 67-19-18]~~63A-17-106; 63A-17-301; 63A-17-306**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-2	Filing No. 53448

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R477-2. Administration
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>F) Compliance costs for affected persons:</b>
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 52-3-1	Title 63G, Chapter 2	Section 63G-5-201
Title 63G, Chapter 7	Section 63A-17-106	Section 63A-17-306
Section 63A-17-307		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-2. Administration.**

**R477-2-1. Rules Applicability.**

~~[These rules]~~R477-1 through R477-101 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]~~R477-1 through R477-101 are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with ~~[these rules]~~R477-1 through R477-101 include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch and their Schedule A employees;

(7) employees of independent entities, quasi-governmental agencies and special service districts; and

(8) employees in any position that is ~~[determined]~~designated by statute to be exempt from ~~[these rules]~~R477-1 through R477-101.

**R477-2-2. Compliance Responsibility.**

Agencies shall comply with ~~[these rules]~~R477-1 through R477-101.

(1) Except where prohibited by statute, the ~~[Executive]~~Division Director, DHRM, may authorize exceptions to ~~[these rules]~~R477-1 through R477-101 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]~~R477-1 through R477-101, and are subject to compliance audits by DHRM.

**R477-2-3. Fair Employment Practice and Discrimination.**

State personnel actions shall provide equal employment opportunity for 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 under Subsection ~~[67-19-15]~~63A-17-301(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, t]The Governor's Office of [Management]Planning and Budget, the D[epartment]ivision of Human Resource Management, and the Division of Finance share responsibility for the statewide control of personal service expenditures.~~

(2) The Division Director, DHRM or designee shall approve [€]changes in job identification numbers, salary ranges, or number of positions listed in the [Detailed P]osition [Record M]management [R]eport[ shall be approved by the Executive Director, DHRM or designee].

NOTICES OF PROPOSED RULES

(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 P]~~ position ~~[Record M]~~ management ~~[R]~~ report.

**R477-2-5. Records.**

~~[Access to and privacy of personnel records maintained by DHRM are governed by]~~ Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA) and applicable federal laws govern access to and privacy of personnel records maintained by DHRM. DHRM shall designate and classify ~~[the]any~~ 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;
- (b) performance ratings; and
- (c) records of actions affecting employee salary history, classification history, title and salary range, employment status, and other personal data.

(2) Personally identifiable information in Subsection (1)(a) is classified as private under GRAMA. An agency may have access to this information and shall maintain the privacy of the information.

(3) DHRM shall maintain, on behalf of agencies, personnel files.

(4) 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, Chapter 2, Government Records Access and Management Act.

(5) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative. An employee may request corrections, amendments to, or challenge any information in the ~~[DHRM]~~ employee's electronic or hard copy personnel ~~[file, through the following process]~~ record by sending a written request to management.

~~\_\_\_\_\_ (a) The employee shall request in writing to the appropriate agency human resource field office that changes occur.~~

~~\_\_\_\_\_ (b) The employing agency shall be given an opportunity to respond.~~

~~\_\_\_\_\_ (c) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.]~~

(6) Agency management shall remove from the employee's personnel file all ~~[When a disciplinary action is rescinded or disapproved upon appeal,]~~ forms, documents, and records pertaining to a disciplinary action ~~[the case shall be removed from the personnel file]~~ when that action is rescinded or otherwise vacated by proper authority.

(7) DHRM shall retain records according to the applicable record retention schedule.

(8) ~~[When an employee transfers from one agency to another, t]~~ The former agency shall transfer the employee's personnel file, medical, and I-9 records to the new agency when an employee transfers from one agency to another.

(9) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(10) Records related to conduct for which an employee may be disciplined under Subsection R477-11-1(1) are classified as private records under Subsection 6~~[2]~~3G-2-302(2)(a).

(11) If disciplinary action under R477-11-1(4) has been sustained ~~[and completed]~~ and all time periods for administrative appeal ~~[has been exhausted]~~ have expired, 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, 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 Title 63G, Chapter 2, Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

**R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act -- 1986).**

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986, Pub. L. No. 99 603.

**R477-2-8. Public Officers Supervising a Relative or Household Member.**

(1) A public officer may not appoint, directly supervise, or make salary, performance, disciplinary, or other employment matter decisions regarding a family member, including a household member.

(2) A public officer supervising a family member, including a household member, shall make a complete written disclosure of any such relationship to the agency head and be recused from any 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]~~ Government Operations, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, 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 Title 63G, Chapter 5, Governmental Dispute Resolution Act.

**KEY:** administrative responsibility, confidentiality of information, fair employment practices, public information  
**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2020~~ 2021  
**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~~ 63A-17-106; 63A-17-306; 63A-17-307

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-3	Filing No. 53449

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-3. Classification
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

<b>B) Local governments:</b>																																
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.																																
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NOTICES OF PROPOSED RULES

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

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Section 63A-17-307	Section 63A-17-602
--------------------	--------------------	--------------------

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-3. Classification.**

**R477-3-1. Job Classification Applicability.**

(1) The ~~Executive~~ Division Director, DHRM, shall prescribe the procedures and methods for classifying positions except for the following positions, which include:

- (a) employees already exempted from DHRM rules in Section R477-2-1;
- (b) employees in:
  - (i) the office and residence of the governor;
  - (ii) the Public Lands Policy Coordinating Council;
  - (iii) the Office of the Utah State Auditor; and
  - (iv) the Utah State Treasurer's Office;
- (c) employees of the State Board of Education;
- (d) employees in any position that is determined by statute to be exempt from classified service;
- (e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;
- (f) other persons appointed by the governor under statute;
- (g) temporary employees who work part time indefinite or work on a time limited basis;
- (h) patients and inmates designated as schedule AU;
- (i) members of state and local boards and councils and other employees designated as schedule AQ; and
- (j) educational interpreters and educators as defined by Section 53E-8-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The ~~Executive~~ Division Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for employees exempted in Sections R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not considered classified employees.

(3) Employees in schedule codes AD and AR are not considered classified employees but are subject to Sections R477-3-2 and R477-3-3.

**R477-3-2. Job Description.**

- (1) DHRM shall maintain job descriptions, as appropriate.
- (2) Job descriptions shall contain:
  - (a) job title;
  - (b) distinguishing characteristics;
  - (c) a description of tasks commonly associated with most positions in the job;
  - (d) statements of required knowledge, skills, and other requirements; and



(e) FLSA status and other administrative information as approved by DHRM.

**R477-3-3. Assignment of Duties.**

(1) Management may assign, modify, or remove any position, task, or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.

(2) Significant changes in the assigned duties may require a position classification review as described in Section R477-3-4.

**R477-3-4. Position Classification Review.**

(1) ~~[A]DHRM may conduct a formal classification review [may be conducted under the following circumstances]:~~

- (a) as part of a classification study;
- (b) at the request of agency management, with the approval of the ~~[Executive]Division~~ Director, DHRM, or designee; or
- (c) as part of a classification grievance review.

(2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.

~~(3) [When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.]DHRM may not conduct a classification review until after an appropriate settling period following reorganization of an agency or position redesign.~~

(4) The ~~[Executive]Division~~ Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

**R477-3-5. Position Classification Grievances.**

(1) Under Section ~~[67-19-34]~~63A-17-602, an agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

~~(2) [Formal service for classification grievance communication to employees shall be made.]DHRM shall send formal notification to grievants under this Subsection by:~~

- (a) certified mail to the employee's address of record; and
- (b) email to the employee's state email account.

**KEY: administrative procedures, grievances, job descriptions, position classifications**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2020]~~2021

**Notice of Continuation:** April 27, 2017

**Authorizing, and Implemented or Interpreted Law:** ~~[67-19-6; 67-19-12]~~63A-17-106; 63A-17-307; 63A-17-602

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-4	Filing No. 53450

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-4. Filling Positions
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):

NOTICES OF PROPOSED RULES

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

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
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**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Section 67-20-8	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.****R477-4. Filling Positions.****R477-4-1. Authorized Recruitment System.**

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

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

**R477-4-2. Career Service Exempt Positions.**

(1) The ~~[Executive]Division~~ Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section ~~[67-19-15]~~ 63A-17-301.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Agencies may make [A]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]~~ must be temporary.

(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]~~ must work less than 1560 hours per fiscal year; or

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

(5) ~~[A]Management may offer benefits to an employee appointed under Subsection (4) [may, at the discretion of management, be offered benefits if working a]~~ if the employee works a minimum of 40 hours per pay period.

(6) ~~[H]Agency management shall consult with DHRM to review possible alternative options if the required work hours of the position meet or exceed 1,560 hours per fiscal year for Schedule IN or if the position exceeds anticipated time limits for Schedule TL; agency management shall consult with DHRM to review possible alternative options].~~

(7) Only career service exempt appointments made from a hiring list under Section R477-4-8 may be considered for conversion to [C]career service[- exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Section R477-4-8].

(8) Agency management shall ensure that new hire appointees in Schedules AB, AC, AD, AR, and AS submit a disclosure statement under Section 67-16-7 and submit to a background check.

**R477-4-3. Career Service Positions.**

(1) Management shall [Selection of a]select career service employees [shall be governed by]according to the following:

(a) DHRM ~~[business practices]~~ standard operating procedures;

(b) career service principles as outlined in Section R477-2-3;

(c) equal employment opportunity principles;

(d) Section 52-3-1; and

(e) the Americans With Disabilities Act, 42 U.S.C. 12102.

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

(1) Prior to initiating a 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 with an employee who is returning[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 any career service position vacancy. 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) 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) An agency may carry out the following steps for recruitment and selection of vacant career service positions concurrently. Management ~~[may make appointments according to the following order:~~

~~----- (a) ]shall appoint a qualified applicant who meets minimum qualifications from the reappointment register created prior to March 2, 2009, [provided the applicant applies for the position and meets minimum qualifications.~~

~~----- (b) ]before making an appointment from a hiring list of qualified applicants for the position, or from another process pre-approved by the [Executive]Division 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 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 range maximum and may not immediately 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 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

## NOTICES OF PROPOSED RULES

receive their next longevity increase three years from the date they received the most recent increase when all other longevity criteria are met [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 under Section 49-11-13 shall be:

(a) classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and

(b) placed at or below the employee's wage at the time of retirement. Employees cannot be placed below the minimum of the established salary range of the job.

### **R477-4-7. Examinations.**

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

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

(a) an initial, impartial screening of the individual's qualifications;

(b) an impartial evaluation and results; and

(c) reasonable accommodation 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) 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 applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

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

### **R477-4-9. Job Sharing.**

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

### **R477-4-10. Internships.**

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

### **R477-4-11. Volunteer Experience Credit.**

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

(1) 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.

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

### **R477-4-12. Reorganization.**

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

### **R477-4-13. Career Mobility Programs.**

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

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

(3) An 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 use written career mobility contract agreements between the employee and the supervisor to outline any program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

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

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

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

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

**R477-4-14. Assimilation.**

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]~~Division Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

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

(2) An assimilated employee ~~[shall]~~accrues leave based on years of assimilated service plus benefits-eligible state service under Subsection R477-7-3(1)~~[at the same rate as other career service employees with the same seniority].~~

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

(1) Section ~~[67-19e-104.5]~~63A-17-704 applies to hiring Administrative Law Judges. Section ~~[67-19e-104.5]~~63A-17-704 does not apply to:

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

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

(2) The hiring panel shall consist of:

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

(b) the ~~[Executive]~~Division Director, DHRM, or designee; and

(c) the head of another agency, as appointed by the ~~[Executive]~~Division Director, DHRM, who 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]~~Division 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, in addition to the panel members established in Subsection (2).

**KEY: employment, fair employment practices, hiring practices**  
**Date of Enactment or Last Substantive Amendment: ~~July 1, 2020~~2021**  
**Notice of Continuation: April 27, 2017**  
**Authorizing, and Implemented or Interpreted Law: ~~67-19-6~~63A-17-106; 67-20-8**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-5	Filing No. 53451

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2100
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W

<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-5. Employee Status and Probation
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice, revised conditions of extending a probationary period, and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, revises probationary period extension terms, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation,

association, governmental entity, or public or private organization of any character other than an **agency**):

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Subsection 63A-17-305(5)(b)	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-5. Employee Status and Probation.**

**R477-5-1. Career Service Status.**

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

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

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

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

(b) the employee was hired from a public hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by Section 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) ~~Management must provide each~~ employee ~~shall receive~~ an opportunity to demonstrate competence in a career service position ~~by establishing a performance plan and giving~~ ~~— A performance plan shall be established and~~ the employee ~~shall receive~~ feedback on performance in relation to that plan.

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

(b) At the end of ~~the~~ ~~each employee's~~ probationary period, ~~management shall evaluate the~~ ~~[an]~~ employee's performance ~~— shall receive a performance evaluation~~. DHRM shall enter the [E]evaluations [shall be entered] into the human resource information system as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) DHRM shall assign a probationary period to [E]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 including leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, FMLA, postpartum recovery leave, or donated leave from an approved leave bank. The probationary period may not be extended for any absence covered by USERRA.

(b) The designated probationary period may not be reduced after an employee is appointed to the position.

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

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

(4) An employee serving probation in a career service position may accept a transfer, reassignment, promotion, or career mobility ~~[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.

**KEY: employment, personnel management, state employees**  
**Date of Enactment or Last Substantive Amendment: ~~July 1, 2020~~ 2021**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: ~~[67-19-6; 67-19-16]~~ 63A-17-106; 63A-17-305(5)(b)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-6	Filing No. 53452

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-6. Compensation
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

<b>B) Local governments:</b>			
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.			
<b>F) Compliance costs for affected persons:</b>			
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

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

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-16-105	Section 63A-17-106	Subsection 63A-17-302(4)
Section 63A-17-307	Section 63A-17-803	

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021



<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-6. Compensation.**

**R477-6-1. Pay Plans.**

With approval of the Governor, the ~~[Executive]~~Division Director, DHRM, shall develop salary ranges for pay plans for each job.

(1) ~~DHRM [Each job description]~~ shall include a salary range in each job description.

(2) Management may increase an employee's wage up to the salary range maximum. A wage increase shall be at least 1/2% of the current wage unless the difference between the current wage and the salary range maximum is less than 1/2%.~~[Agency approved wage increases within salary ranges shall be:~~

- ~~\_\_\_\_\_ (a) at least 1/2%, or~~
- ~~\_\_\_\_\_ (b) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.]~~

(3) Management may not increase an employee's wage above the salary range maximum except for longevity increases under Subsection R477-6-6(3).~~[Agency approved wage decreases within salary ranges shall be:~~

- ~~\_\_\_\_\_ (a) at least 1/2%, or~~
- ~~\_\_\_\_\_ (b) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.]~~

(4) Management may decrease an employee's wage down to the salary range minimum. A wage decrease shall be at least 1/2% of the current wage unless the difference between the current wage and the salary range minimum is less than 1/2%.

(5) Management may not decrease an employee's wage below the salary range minimum.~~[Salary increases and decreases may not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.]~~

**R477-6-2. Allocation to the Pay Plans for Classified Employees.**

- (1) ~~For [E]each job in classified service, DHRM shall [be]:~~
  - (a) ~~assign[ed] the job~~ to a salary range and job family;
  - (b) ~~survey[ed] the job~~ in the market in accordance with the benchmark jobs; and
  - (c) ~~include[ed] the job~~ in a market comparability adjustment recommendation if warranted.
- (2) DHRM may adjust [S]salary ranges [can be adjusted through]by:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment when any agency involved agrees to resolve budgetary impacts prior to implementation; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) ~~[M]DHRM shall include 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]a market comparability adjustment would cause a budgetary impact, DHRM may not make the adjustment unless the Legislature has approved funding for the adjustment.~~

(iii) If market comparability adjustments are funded and approved for benchmark jobs, DHRM shall adjust salary ranges for other jobs in the same job family [shall be adjusted-]by relative ranking with the benchmark job.

(3) ~~[Salary ranges]DHRM may not [be adjusted]adjust salary ranges more frequently than on an annual basis unless approved by [without an exception by-]the [Executive]Division Director, DHRM.~~

**R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.**

(1) DHRM shall assign [E]each job in an AD or AR pay plan [shall be assigned-]to a salary range that is no more than 40% above and below the salary range midpoint.

(2) DHRM may adjust [S]salary ranges [may be adjusted]through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes; or

(b) a structure adjustment.

(i) DHRM ~~[will]shall~~ consult with the Governor's Office of ~~[Management]Planning~~ and Budget (~~[GOMB]GOPB~~) 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]GOPB~~.

(ii) If a structure adjustment would cause a budgetary impact, DHRM may not approve the adjustment unless the Legislature has approved funding for the adjustment or any agency involved agrees to resolve budgetary impacts prior to implementation.~~[Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact or any agency involved agrees to resolve budgetary impacts prior to implementation].~~

(iii) DHRM may include [S]structure adjustment recommendations that require funding [may be included-]in the annual compensation plan.

(iv) DHRM may not implement a structure adjustment more frequently than on an annual basis unless approved by the DHRM Division Director to address a critical need.~~[Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.]~~

~~(v) Structure adjustments may not be approved for cross agency jobs unless any agency involved agrees to resolve budgetary impacts prior to implementation.~~

**R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ, and employees of the State Board of Education.**

(1) For ~~[E]~~each job exempted from classified service that is identified in positions under Subsection R477-3-1(1), ~~the affected agency shall determine[have]~~ a salary range with a beginning and ending salary ~~[of any amount determined appropriate by the affected agency].~~

**R477-6-5. Appointments.**

(1) ~~Management shall assign a newly appointed employee a salary within[Appointments shall be placed on]~~ the DHRM approved salary range for the job.

(2) ~~[Q]Management shall place~~ 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]~~Management shall increase an employee's wage by at least 5% when the employee, who is not 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.] If a 5% wage increase would set an employee's wage above the maximum of the new salary range, the employee's wage shall be the salary range maximum of the new range.~~

~~(c) [To be eligible for a promotion, an] Management may promote an employee when the employee [shall] meets 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] Agency management may grant an employee a wage increase of at least 1/2% or up to the salary range maximum when the employee is 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] Management shall place the employee 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] Management may not decrease the wage of 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]~~Management shall grant 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, including service in more than one agency;

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) the employee received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

~~(b) A change in salary range the employee does not choose, such as a reassignment or legislative action, does not reset the one year period under Subsection (3)(a)(ii). Any change in salary range the employee seeks or voluntarily accepts resets the one year period.~~

~~(c) Management shall grant [A] an employee who meets the conditions of (3)(a) and has received the initial longevity increase [is then eligible for] an additional 2.75% wage 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] each longevity increase.~~

~~([e]d) For an [An] employee with a wage that is above the [maximum] salary range maximum because of a longevity salary increase:~~

~~(i) management may not change [shall retain] the employee's current actual wage [if receiving] when the employee receives an administrative adjustment, [or] is reassigned, or is reclassified to a job with a lower salary range maximum [-]; and~~

~~(ii) management may increase an employee's current actual wage when the employee [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.~~

~~(A) Any such [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.~~

~~(B) If the employee is placed at the maximum of the new salary range, this action does not interrupt continued eligibility for longevity under Subsection (3)(a)(ii).~~

~~(iii) management may increase the current actual wage of an employee 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.~~

~~(A) The wage increase shall be at least 5% or up to the salary range maximum of the new job.~~

~~(B) If the employee is placed at the maximum of the new salary range, this action does not interrupt continued eligibility for longevity under Subsection (3)(a)(ii).~~

~~(iv) if the employee [who] is promoted, reclassified, transferred, reassigned, or receives an administrative adjustment and remains at or above the salary range maximum, management shall [receive their next] grant a longevity salary increase three years from the date [they] the employee received the most recent increase under Subsection (3)(a).~~

~~([e]f) 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 not [considered to be above maximum and may be] eligible for a longevity salary increase until [after meeting] the employee meets the requirements of Subsection (3)(a).~~

~~([e]f) [An] Management may not grant a longevity increase to an employee in Schedules AB, AN, IN, or TL [is not eligible for the longevity salary increase program].~~

## (4) Administrative Adjustment.

~~[(a) An] Management may not adjust the current actual wage of 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's wage 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.

~~[(a) Management may not decrease 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.

~~[(a) Management may reduce the current actual wage of an employee demoted under Section R477-11-2 [shall receive a reduction in the current actual wage of] by 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) Any ~~[employee shall receive an]~~ increase ~~[of]~~ shall be at least 1/2% or up to the employee's salary range maximum.

(b) ~~[Administrative] Management may not grant an administrative salary increase[s] shall only be granted when] unless the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.~~

(c) Justification[s] for an administrative salary increase[s] shall be:

- (i) in writing;
- (ii) approved by the agency head or designee; and
- (iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) ~~[Administrative] Management may grant an administrative salary increase[s] may be given] to an employee 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) ~~[(a) Management may not grant an administrative salary increase to an employee whose wage is 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] DHRM shall process an administrative salary increase [in a separate] separately from any other action.~~

## (9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) management may not decrease the final wage [may not be less than] below the salary range minimum;

(b) management shall decrease the employee's wage by [wage decreases shall be] at least 1/2% or down to the salary range minimum;

(c) justification for an administrative salary decrease[s] shall be:

- (i) in writing;
- (ii) approved by the agency head; and
- (iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency; and

(d) the agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease;

## (10) Career Mobility.

(a) When commencing a career mobility assignment, management shall determine the new wage by following the [A wage change at the commencement of a career mobility is governed by the] rules governing the appropriate underlying action [including] such as:

- (i) promotion;
- (ii) reassignment; or
- (iii) transfer.

(b) If a career mobility assignment does not become permanent at its conclusion, management shall return the employee [shall return] to the employee's previous position or a similar position and [shall receive] grant, at a minimum, the same wage and the same or higher salary range that the employee would have received ~~[without]~~ had the career mobility assignment not occurred.

**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] DHRM shall review agency incentive award policies to ensure that they are consistent with standards established in these rules and the Department of ~~[Administrative Services] Government Operations~~, Division of Finance, rules, and procedures.~~

(b) ~~[Individual] Management may not grant individual awards [may not exceed] greater than \$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] An agency shall include documentation of the work units affected and any cost savings in a request for an exception to (b) for a retirement incentive award.~~

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) Any cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

## (2) Performance Based Incentive Awards.

## (a) Cash Incentive Awards.

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort

NOTICES OF PROPOSED RULES

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.]~~To implement a Pay for Performance cash incentive awards program, an agency shall include the program 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) ~~[Any cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.]~~The agency head or designee shall approve any cash awards and ensure that documentation relating to the award is maintained.

(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]~~Government Operations, Division of Finance.

(3) Cost Savings Bonus.

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses.

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market. Any market based bonuses shall be approved by the DHRM ~~[Executive]~~Division Director or designee.

(a) When requesting market based awards, an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

- (i) budget;
- (ii) recruitment difficulties;
- (iii) a mission critical need to attract or retain unique or hard to find skills in the market; or
- (iv) other market based reasons.

(b) Eligible reason types for market based bonuses include:

(i) Retention Bonus.

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(ii) Recruitment or Signing Bonus.

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(iii) Scarce Skills Bonus.

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(iv) Relocation Bonus.

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(v) Referral Bonus.

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(vi) Geographic Job Market Bonus.

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

**R477-6-8. Employee Benefits.**

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee ~~[has 30 days from the hire date to]~~shall enroll in or decline one of the traditional medical insurance plans within 30 days of the hire date 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 within 60 days of the hire date.

(a) An employee ~~[shall only be permitted to]~~may change medical plans only during the annual open enrollment period for state employees or following a qualifying life event.

(3) An eligible employee ~~[has 60 days from the hire date to]~~may enroll in dental, vision, and a flexible spending account within 60 days of the hire date.

(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) Utah Retirement Systems (URS) administers [An employee eligible for] retirement benefits for eligible employees according to Title 49, Utah State Retirement and Insurance Benefit Act.

(a) DHRM shall provide eligible employees with information regarding available options for URS retirement programs.

(b) An employee shall communicate directly with URS through their website regarding retirement system options, changes in employee contributions, beneficiaries, and investment strategies. [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]~~is entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) Any insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under Subsection R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

#### **R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.**

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS ~~[shall have]~~may, within 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.]~~If the employee chooses to convert, management shall offer the employee:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum; and

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) ~~[An]~~For an employee at or above the current salary range maximum at the time of conversation, management shall [receive] grant, in lieu of the salary adjustment from Subsection (1)(a), a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b).

(3) ~~[An]~~For an employee electing to convert to career service exempt after the 60 day election period, management may not [be eligible for] grant the wage increase, but shall ~~[be entitled]~~permit the employee to apply for the insurance coverage through the Group Insurance Office.

(4) An employee electing not to convert to career service ~~[exemption shall retain]~~exempt status retains career service status even though the employee's position shall be designated as schedule AC, AD, AR, or AS. When these career service employees vacate these positions, any subsequent ~~[appointments shall be]~~incumbent is career service exempt.

(5) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, ~~[the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group~~

~~Insurance Office to discontinue the exempt life insurance coverage.]~~an affected employee:

~~(a) shall resume career service status if the employee previously earned career service status;~~

~~(b) is no longer eligible for severance pay under R477-6-10;~~

~~(c) shall accrue annual leave based on service time under Subsection R477-7-3(1); and~~

~~(d) shall work with management and the Group Insurance Office to discontinue exempt life insurance coverage.~~

(6) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, management may fill the position under Rule R477-4.~~[subsequent appointments shall be consistent with Rule R477-4.]~~

(7) An agency shall communicate ~~[to any impacted and future eligible employees]~~the conditions and limitations of this incentive program to any employees currently or imminently affected by the program.

#### **R477-6-10. State Paid Life Insurance.**

(1) An agency shall pay the premiums for term life insurance coverage for a benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT ~~[shall be provided state paid term life insurance coverage]~~if the employee is determined eligible by the Group Insurance Office and approved through underwriting to participate in the Term Life Program Public Employees Health Plan at the following levels:

(a) ~~[H]~~hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(b) ~~[H]~~hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance; and

(c) ~~[H]~~hourly wage \$28.85 or higher shall receive \$200,000 of term life insurance.

(2) ~~[An]~~The appointing authority may provide these benefits to 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.]~~For a 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]~~management may offer 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 AB, AC, AD, AE, AR, AS, or AT employees; [or~~

~~(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB employees;] and~~

(b) if the employee is eligible for COBRA, medical insurance coverage at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

(2) Management shall offer the severance benefit at the time the employee is separated from employment.

(3) Insurance provided under Subsection (1)(b) is medical coverage only and shall be the same plan the employee had at the time of severance.

NOTICES OF PROPOSED RULES

**R477-6-12. Human Resource Transactions.**

The [Executive]Division 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, 2020]2021**

**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)]63A-16-105; 63A-17-106; 63A-17-302(4); 63A-17-307; 63A-17-803**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-7	Filing No. 53453

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-7. Leave
<b>3. Purpose of the new rule or reason for the change:</b>
Our agency needs to implement rules pursuant to S.B. 207 passed in the 2020 General Session and make adjustments for clarification and corrections to formatting.
<b>4. Summary of the new rule or change:</b>
This amendment removes outdated information, updates citations, corrects formatting, implements new legislation regarding postpartum recovery leave, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets. While implementing the postpartum recovery leave will cost money, the legislature appropriated \$512,300 for agencies to use for the program.			
<b>B) Local governments:</b>			
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>			
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.			
<b>F) Compliance costs for affected persons:</b>			
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.			
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0

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

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

The Executive Director of the Department of Human Resource Management (DHRM), John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This Act limits the provisions of career service and this rule to employees of the executive branch of state government.

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

John Barrand, Executive Director

**Citation Information**

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

Section 34-43-103	Section 39-3-1	Section 63G-1-301
Section 63A-17-106	Section 63A-17-504	Section 63A-17-505

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-7. Leave.**

**R477-7-1. Conditions of Leave.**

(1) An employee [~~shall be~~] is 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~~] accrues annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual or sick 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.

NOTICES OF PROPOSED RULES

(8) An employee transferring from one agency to another ~~is entitled to transfer~~ retains any accrued annual, sick, and converted sick leave ~~to~~ at the new agency.

(9) An agency shall make a lump sum payment to an employee separating from state service for:

~~(a) [shall be paid in a lump sum for any] annual leave hours;~~

~~(b) [and] excess leave hours;~~

~~(c) compensatory hours earned by a FLSA non-exempt employee; and~~

~~(d) converted sick leave if the employee is not retiring under Title 49, Utah State Retirement and Insurance Benefit Act. [An FLSA non-exempt employee shall also be paid in a lump sum for any compensatory hours.]~~

~~(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for any converted sick leave.~~

~~(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.~~

~~(e) [10] Annual, sick, and holiday leave may not be used or accrued after the] Management may not approve the use of leave after an employee's last day worked[.] except for:~~

~~(i) [a] leave without pay;~~

~~(ii) [b] administrative leave [specifically approved by management to be used after the last day worked];~~

~~(iii) [c] leave granted under the FMLA; or~~

~~(iv) [d] leave granted for other medical or pregnancy related reasons that was approved prior to the commencement of the leave period.~~

~~([10] 11) [After four months] Management may separate an employee from employment after 18 workweeks cumulative leave in a 24 month period[.] an employee may be separated from employment] regardless of paid leave status unless prohibited by state or federal law. This rule incorporates by reference 29 CFR 825.205 (March 21, 2021) for purposes of calculating workweeks. The agency head shall make the [Decisions] decision to separate the employee [shall be made by the agency head] in consultation with DHRM.~~

~~([11] 12) [Contributions to benefits] An agency may not [be paid] pay contributions to benefits on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Subsection 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; and

(1) 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, management shall grant an eligible employee [shall receive] equivalent time off or excess hours, 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, management shall grant the employee [shall receive] appropriate holiday leave[.] or [shall accrue] excess hours.

~~(4) [A] Management may not grant holiday pay to a new hire [shall be] before the employee is in a paid status[.] on or before the holiday in order to receive holiday leave].~~

~~(5) [A] Management may not grant holiday pay to a separating employee [shall be] unless the employee is in a paid status on or after the holiday [in order to receive holiday leave].~~

**R477-7-3. Annual Leave.**

(1) An eligible employee shall accrue leave based on the following years of benefits-eligible state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years -- six hours per pay period; or

(d) 20 years or more -- seven hours per pay period.

(2) The following [maximum annual leave accrual rate shall be granted to an] employees shall accrue seven hours of annual leave per pay period, effective from the day the employee is appointed through the duration of the appointment[.] ~~under the following conditions]:~~

~~(a) schedule AB employees;~~

~~(b) agency deputy directors;~~

~~(c) division directors appointed to career service exempt positions; and~~

~~(d) an employee who is schedule A, FLSA exempt, and who has a direct reporting relationship to an executive director, deputy director, commissioner, or board,~~

~~[ (a) an employee in schedule AB, 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 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 any eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management [shall allow every employee the option to use annual leave each year for at least the amount accrued] may not restrict the use of annual leave used in a calendar year to less than the amount the employee accrues in the year.

(6) [Unused] An employee forfeits 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~~ accrued sick leave, not to exceed four hours per pay period. Sick leave ~~shall~~ accrues without limit.

(2) Agency management may approve the use of sick leave for:

- (a) preventive health and dental care;
- (b) maternity;
- (c) paternity;
- (d) adoption care; or
- (e) absence from duty because of illness, injury, or disability of:
  - (i) the employee;
  - (ii) a spouse;
  - (iii) children;
  - (iv) parents;
  - (v) an individual for whom the employee is a legal guardian; or

(vi) a qualifying FMLA purpose[s].

(3) Agency management may approve the use of sick leave for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) ~~[Any application for a grant of]Management shall require an employee to produce administratively acceptable evidence to support any request for 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 using sick leave for reasons not listed in Subsections (2) and (3), a supervisor]Management may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used if there is reason to believe that an employee is using sick leave for reasons not listed in Subsections (2) and (3).~~

(8) ~~[Unless retiring, an]An employee separating from state employment [shall]forfeits any unused sick leave without compensation unless the leave is utilized for the sick leave retirement benefit under Section R477-7-6.~~

(a) ~~[An]Management shall reinstate forfeited sick leave when an employee is rehired into a benefited position within one year of separation due to a reduction in force. Sick leave shall be[shall have forfeited sick leave] reinstated [to]as Program I, Program II, and Program III as accrued prior to the reduction in force.~~

(b) ~~[An]Management shall reinstate forfeited sick leave when an employee is appointed to a benefits eligible position [rehired with benefits]within one year of [separation]leaving a benefits eligible position for reasons other than a reduction in force. Reinstated sick leave shall be[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)c] [An]Management may not reinstate forfeited sick leave when an employee [who]retires from state service under Title 49, Utah State Retirement and Insurance Benefit Act 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~~may be used for retirement under Subsection R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(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 under Title 49, Utah State Retirement and Insurance Benefit Act, management shall place 25% of the value of ~~the]an employee's~~ 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]Management shall place 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]employee may use any remaining converted sick leave 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 under Title 49, Utah State Retirement and Insurance Benefit Act, an employee may not suspend or defer for future use any 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 or LTD under Title 49, Utah State Retirement and Insurance Benefit Act, including when a retirement eligible employee passes away, management shall grant an employee or surviving spouse ~~[shall receive]an~~ unused sick leave retirement benefit under Sections ~~[67-19-14.2]63A-17-507 and [67-19-14.4]63A-17-508.~~

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system ~~[shall]becomes~~ eligible for this benefit when actively retiring ~~[with Utah Retirement Systems]under Title 49, Utah State Retirement and Insurance Benefit Act.~~

(2) An employee in the Tier II defined contribution system ~~[shall]becomes~~ 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.

NOTICES OF PROPOSED RULES

(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~~ 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 its employees at least 60 days before the new fiscal year begins.

(5) ~~An~~ The Unused Sick Leave Retirement Options Program I provides an employee in a participating agency ~~shall receive~~ the following benefit ~~provided by the Unused Sick Leave Retirement Options Program I.~~

(a) Management shall place 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)~~ b ~~Sick~~ Management shall place sick leave hours from Program II ~~shall be placed~~ in the employee's 401(k) account before hours from Program I.

~~(ii)~~ c After the 401(k) contribution ~~is made~~, management shall use 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 ~~[-]~~:

~~(i)~~ ii 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~~ is the same plan ~~carried by~~ the employee has at the time of retirement.

(B) The purchase rate ~~shall be~~ is 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~~ The life insurance provided ~~shall be~~ is the minimum authorized coverage provided for state employees at the time the employee retires.

~~(i)~~ ii When the employee becomes eligible for Medicare, the employee may purchase 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.

~~(i)~~ iii When the employee becomes eligible for Medicare, the employee may purchase 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~~ is 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.

~~(i)~~ iv 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.

~~(v)~~ ii In the event an employee is killed in the line of duty, the employee's spouse ~~shall be~~ is eligible to use the employee's available sick leave hours for the purchase of additional medical coverage under Section ~~[67-19-14.3]~~ 63A-17-804.

~~(b)~~ d 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.

~~(e)~~ e Upon retirement under Title 49, Utah State Retirement and Insurance Benefit Act, an employee may not suspend or defer for future use any 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 The Unused Sick Leave Retirement Option Program II provides an employee the following benefit: [-]

(a) Management shall place 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, management shall deposit 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~~ is not eligible for a benefit calculated on any Program II sick leave hours ~~if~~ unless:

(i) the employee ~~chooses to suspend~~ voluntarily suspends their 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~~ works for two years or more after reemployment to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 3, 2014 ~~shall~~ accrues Program III sick leave, which ~~shall have~~ has no benefit upon subsequent retirement.

**R477-7-7. Administrative Leave.**

(1) ~~Administrative~~ Management may grant administrative leave ~~may be granted~~ to any employee consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy;

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personnel decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy;

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) ~~administrative leave in excess of one day may be granted with written approval by the agency head~~ management may not grant administrative leave in excess of one day without written approval from the agency head;

(iii) management may not grant more than 40 hours of administrative leave ~~given~~ as a reward in lieu of cash ~~may not exceed 40 hours in a fiscal year~~;

(iv) management may grant administrative leave ~~given~~ as a reward in lieu of cash ~~may be given from one agency~~ to employees of another agency if both agency heads agree in advance; or

(d) employee education assistance.

(2) ~~An~~ Management shall grant 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. 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~~ Management shall include employees who are on leave under the FMLA or military leave under USERRA in a grant of administrative leave for non-performance based purposes if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward under Subsection R477-7-7(1)(c), only the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

(6) Administrative leave is not an employee right and management may grant it disparately within its workforce depending on agency needs.

#### **R477-7-8. Witness and Jury Leave.**

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state;

(b) serve as a witness in a grievance hearing under Section ~~67-19-31~~ 63A-17-602 and Title 67, Chapter 19a, Grievance Procedures; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be ~~is~~ entitled to keep juror's fees;

(4) An employee who chooses to take a leave of absence from a regularly scheduled work day with full pay while on jury duty shall return any juror's fee ~~otherwise, juror's fees received shall be returned~~ to agency finance or agency payroll staff for deposit with the State Treasurer.

(~~4~~5) An employee may not use work time or witness and jury leave when ~~who is~~ absent in order to litigate matters unrelated to state employment ~~shall use eligible accrued leave or leave without pay~~.

#### **R477-7-9. Bereavement Leave.**

~~An employee may receive~~ Management may grant a maximum of three work days of bereavement leave per occurrence with pay ~~at management's discretion~~, following the death of a member of the employee's immediate family. ~~Bereavement~~ Management may not charge bereavement leave ~~may not be charged~~ against an employee's accrued sick or annual leave.

(1) ~~The immediate family~~ "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) any level of grandparents; or
- (f) any level of grandchildren.

(2) Agency management may grant bereavement leave for other unique family relationships.

#### **R477-7-10. Military Leave.**

~~A~~ Under Section 39-3-2, management shall grant up to 120 hours of paid military leave each calendar year to 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 Section 39-3-2~~. Military leave for part-time employees ~~shall be~~ is ~~based on a~~ prorated ~~basis that is~~ to be no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since the date of hire.

(1) An eligible employee may use any combination of military leave, accrued leave, or leave without pay under Section R477-7-13.

(2) ~~Accrued~~ An eligible employee may only use 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 ~~notify management~~ of official military orders as soon as possible.

(5) Upon an employee's release from official military orders under honorable conditions, management shall place the ~~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, management shall place 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, management shall place 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, 38 U.S.C. 4301, et seq.

(d) ~~[The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20 CFR 1002.103 for the purposes of calculating cumulative time.~~

~~\_\_\_\_\_~~(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

**R477-7-11. Disaster Relief Volunteer Leave.**

(1) An agency head or designee may grant an employee ~~may be granted~~ leave from work with pay ~~[by the agency head or designee,~~ for an aggregate of 15 working days in any 12-month period to participate in disaster relief services for a non-governmental disaster relief organization. ~~[To request this leave an employee shall be a]~~ An employee is not eligible for disaster relief volunteer leave unless they are certified as a disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

(2) ~~[An]~~ Management may not dismiss an employee who is absent from or late to work ~~[may not be dismissed]~~ if the absence or tardiness was a result of the employee acting as an emergency services volunteer as defined in Section 34-55-102.

(a) Management may request a written statement to verify the employee's status as an emergency services volunteer.

(b) An emergency services volunteer is not entitled to paid leave except as provided in Subsection (1), but may use their own accrued leave or leave without pay.

**R477-7-12. Organ Donor Leave.**

~~[An]~~ Management shall grant an employee who serves as a bone marrow or human organ donor ~~[shall be granted]~~ paid leave for the donation and recovery as follows:~~[-]~~

(1) ~~[An employee who donates bone marrow shall be granted]~~ up to seven days of paid leave for donation of bone marrow; and~~[-]~~

(2) ~~[An employee who donates a human organ shall be granted]~~ up to 30 days of paid leave for donation of a human organ.

**R477-7-13. Leave of Absence Without Pay.**

(1) An employee shall apply in writing to agency management and ~~[be approved]~~ receive management's approval before taking a leave of absence without pay.

(2) ~~[Leave]~~ Management may not grant leave without pay ~~[may be granted only when there is an expectation that the employee will]~~ unless the employee is expected to return to work.

(3) ~~[A leave of absence may be denied]~~ Management may deny a request for leave of absence without pay 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 requires the leave to be granted.

(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]~~ Management shall place 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.**

Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. ~~[Furlough]~~ The agency head shall approve furlough plans ~~[are]~~ subject to the ~~[approval of the agency head and the]~~ following conditions:

(1) Furlough hours ~~[shall be counted]~~ count for purposes of annual, sick, and holiday leave accrual.

(2) ~~[Payment of any state paid benefits shall continue at the agency's expense.~~

~~\_\_\_\_\_~~ (a) ~~Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.~~

~~\_\_\_\_\_~~ (b) ~~Benefits that are paid as a percentage of actual wages shall continue to be paid as a percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.~~ The agency pays for any state paid benefits:

(a) at the full rate for benefits with fixed costs, regardless of how many days an employee is furloughed; and

(b) as a percentage of actual wages for benefits paid as a percentage of actual wages, including a pay period with no actual wages.

(3) An employee who is furloughed ~~[shall continue]~~ is responsible to pay the employee portion of any benefits. Voluntary benefits ~~[shall]~~ remain entirely at the employee's expense.

(4) An employee shall return to the current position.

(5) ~~[Furlough is applied]~~ Management shall apply the furlough equitably to any person in a given class, program staff, or organization.

**R477-7-15. Family and Medical Leave.**

(1) An eligible employee ~~[is allowed]~~ may take up to 12 workweeks of family and medical leave each calendar year for any of the following qualifying 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;  
 (e) care of a spouse, child, or parent with a serious medical condition; or

(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 eligible employee ~~is allowed~~ may take up to 26 workweeks of family and medical leave during a 12-month period to care for a spouse, son, daughter, parent or next of kin who is a covered servicemember as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave ~~shall~~ continues 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~~ receives 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~~ An employee is eligible for family and medical leave ~~, the employee shall~~ when the employee:

(a) ~~be~~ has been employed by the state for at least 12 months; and

(b) ~~be employed by the state for a minimum of~~ has worked 1,250 hours ~~worked~~ or more, as determined under FMLA, during the 12-month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson shall notify management of the need for leave:

- (a) thirty days in advance for foreseeable needs; or
- (b) as soon as practicable in emergencies.

(7) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the designated period of family and medical leave.

(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) first, Program III sick leave;
- (ii) ~~(A) compensatory time;~~

~~(B) excess leave; or~~

~~(C) annual leave;~~ second, compensatory time, excess leave, or annual leave; and

- (iii) ~~(A) converted sick leave;~~

~~(B) Program II sick leave; or~~

~~(C) Program I sick leave.]~~ third, converted sick leave, Program II sick leave, or Program I sick leave.

(8) When an employee chooses to use FMLA leave, the employing agency shall designate as FMLA leave any absences related to that qualifying event which occurred when the employee was eligible for FMLA.

(9) An FMLA eligible employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(10) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency

may recover, with certain exceptions under 29 CFR 825.213, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(11) ~~Leave~~ When leave is taken after childbirth or placement of a healthy child for adoption or foster care, an employee may not ~~be taken~~ take leave intermittently or on a reduced leave schedule unless the ~~employee and~~ employer ~~mutually agree~~ agrees.

(12) Medical records created for purposes of FMLA and the Americans with Disabilities Act, 42 U.S.C. 12102 ~~shall be maintained in accordance with~~ are subject to the confidentiality requirements [of] set forth in Section R477-2-5.

#### **R477-7-16. Workers' Compensation Leave.**

(1) An employee may use accrued leave benefits to supplement the workers' compensation benefit.

(a) The combination of leave benefit, wages, and workers compensation benefit may not exceed the employee's gross salary. ~~Leave benefits shall only be used in increments of one hour in making up any difference.]~~

(b) ~~The use of~~ An employee may not use accrued leave to supplement the workers' compensation benefit ~~shall be terminated if the~~ when:

(i) the employee is declared medically stable by a licensed medical authority;

(ii) the workers compensation fund terminates the benefit;

(iii) the employee refuses to accept appropriate employment offered by the state; or

(iv) the employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) ~~The~~ An 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~~ count 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 ~~the~~ an 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.

(5) If ~~the~~ an 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 agency may separate 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.

(6) ~~An employee who~~ Management shall take disciplinary action under Rule R477-11 when an employee files a fraudulent workers compensation claim ~~shall be disciplined under Rule R477-11].~~

#### **R477-7-17. Long Term Disability Leave.**

(1) Upon approval of an LTD claim:

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(a) ~~[Biweekly]~~An agency shall cease biweekly salary payments [that]to 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]~~An agency shall pay the employee for any 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]may buy 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]~~may choose to receive a lump sum payout of any part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the employee's wage rate at the time of LTD eligibility.

(d) An employee who ~~[retires from state government directly from]~~has been separated from state employment bu retires under Title 49, Utah State Retirement and Insurance Benefit Act while receiving LTD may [be eligible]utilize unused sick leave for health and life insurance under Section [67-19-14]R477-7-6 when the employee is otherwise eligible for the sick leave retirement benefit.

~~[(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 Section 67-19-14.2.]~~

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) An employee who was not separated from employment may return to work following long term disability when they provide an administratively acceptable medical release allowing a return to work.

(4) Long term disability benefits are provided to eligible employees under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.

**R477-7-18. Disabled Law Enforcement Officer Amendments.**

(1) ~~[A]~~When a law enforcement officer or state correctional officer, as defined in Section [67-19-27]63A-17-512, [who] is injured in the course of employment, as defined in Section [67-19-27]63A-17-512, management shall [be given]approve a leave of absence with 100% of the officer's regular monthly salary and benefits[~~, either~~]:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49, Utah State Retirement and Insurance Benefit Act or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware. These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply Section R477-7-16, workers compensation leave, and Section R477-7-17, long term disability leave rules first. ~~[They]~~The agency then must consider any benefit amounts received under Subsection (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. 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 Subsection (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]~~An agency head may approve the establishment of a leave bank program.

(1) A leave bank program shall include an agency policy with the following provisions.

(a) ~~[Access]~~A statement that access to [a]the leave bank is not an employee right and shall be authorized at management's discretion.

(b) ~~[Any]~~A requirement that any application for [a]leave from the leave bank[~~program shall~~] be supported by administratively acceptable medical documentation.

(c) ~~[An approval process that prohibits]~~A provision prohibiting leave donors, supervisors, managers, or management teams from reviewing any employee's medical certifications or physician statements.

(d) ~~[An]~~A requirement that an employee may not receive donated leave until any individually accrued leave is exhausted.

(e) ~~[Leave shall be]~~A statement that leave is accrued if an employee [is on]receives sick leave donated from an approved leave bank program.

(f) ~~[Employees]~~A requirement that employees using donated leave [may not work a second job without written consent of the agency head]request and receive written consent from the agency head to work a second job.

(g) ~~[Only]~~A statement that only compensatory time earned by an FLSA non-exempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) ~~[Only]~~A statement that 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~~] and only if both agencies agree to allow the donation.

(2) Any medical records created for ~~[the purpose of a leave bank, shall be maintained in accordance with]~~leave bank program purposes are subject to the confidentiality requirements of Section R477-2-5.

**R477-7-20. Postpartum Recovery Leave.**

Postpartum recovery leave means leave hours a state employer provides to an eligible employee to recover from childbirth.

(1) An employee is eligible for postpartum recovery leave when:

(a) the employee is eligible for benefits under Subsections R477-6-8(1) and R477-7-1(1);

(b) the employee is not reemployed post-retirement as defined in Section 49-11-1202;

(c) the employee gives birth to a child; and

- (d) the employee is not an employee of:
  - (i) the State Board of Education; or
  - (ii) an independent entity as defined in Section 63E-1-102.
- (2) Agency management shall grant up to three weeks of paid leave to an eligible employee who requests postpartum recovery leave.
  - (a) Management shall calculate three weeks of paid leave based on the employee's normal work schedule, including normally scheduled work hours in excess of 40 hours per week. The amount of leave does not change if there are multiple births from a single pregnancy.
  - (b) Postpartum recovery leave begins on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.
  - (c) An employee may not use postpartum recovery leave intermittently.
  - (d) Postpartum recovery leave runs concurrently with leave under the Family Medical Leave Act.
  - (e) Management may not charge postpartum recovery leave against any accrued leave balance on the employee's record.
  - (f) To request postpartum recovery leave, the employee or an appropriate spokesperson notifies management of the need for leave:
    - (i) thirty days in advance; or
    - (ii) as soon as practicable in emergencies.
- (3) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.

**KEY: holidays, leave benefits, vacations**  
**Date of Enactment or Last Substantive Amendment:** ~~August 21, 2020~~**2021**  
**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~~**63A-17-106; 63A-17-504; 63A-17-505**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-8	Filing No. 53454

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-8. Working Conditions
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>F) Compliance costs for affected persons:</b>
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 34A-2-114	Section 63A-17-106	Section 63A-17-602
Section 20A-3-103		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-8. Working Conditions.**

**R477-8-1. Workweek.**

(1) The state's standard workweek begins Saturday at 12:00 a.m. and ends the following Friday at 11:59 p.m. FLSA non-exempt employees may not deviate from this workweek.

(2) State offices are typically open Monday through Friday from 8:00 a.m. to 5:00 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. ~~An~~When an employee ~~who~~ is late, regardless of the reason, including inclement weather, ~~shall, with~~ management ~~approval, account for the lost time by using~~ may require the employee to use accrued leave, leave without pay, or adjust~~ing~~ their work schedule to account for the lost time.



(5) An employee's time worked ~~[shall be]~~ is 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. Tele~~commuting~~work.**

Tele~~commuting~~work is an agency option, not a universal employee benefit. Agencies utilizing a tele~~commuting~~work program shall:

- (1) establish a written policy governing tele~~commuting~~work;
- (2) enter into a written agreement with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
- (3) ~~[not allow]~~require participating employees to ~~[violate]~~comply with overtime rules;
- (4) ~~[not compensate]~~prohibit compensation for normal commute time; and
- (5) document tele~~commuting~~work authorization.

#### **R477-8-3. Lunch, Break and Exercise Release Periods.**

(1) ~~[Each]~~Management may require each full time work day ~~[may]~~to include a minimum of 30 minutes non-compensated lunch period~~[- at the discretion of agency management].~~ An employee's lunch period may not be at the beginning or end of their work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked. Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) ~~[Compensated]~~Management may allow 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]~~Management shall document authorization for exercise time~~[- shall be documented]~~ in the Utah Performance Management system.

(5) As requested and after consultation with an employee, ~~management shall grant~~ 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. Management shall provide:

(a) ~~[A]~~a private location, other than a restroom~~[- shall be provided.]; and~~

(b) ~~[Appropriate]~~appropriate temporary storage~~[- shall be provided]~~ for expressed milk.

#### **R477-8-4. Overtime Standards.**

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq., 29 CFR Parts 500 to 899(2002), and Section ~~[67-19-6-7]~~63A-17-502.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

- (a) prior supervisory approval for any overtime worked;
- (b) recordkeeping guidelines for any overtime worked; and

(c) verification ~~[that there are]~~of sufficient ~~[funds]~~funding in the budget to compensate ~~employees~~ for overtime worked.

(2) Overtime compensation designations are identified for each job title in the human resource information system as either FLSA non-exempt or FLSA exempt. 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 ~~[67-19-3-1]~~63A-17-602, 67-19a-301, and Title 63G, Chapter 4, Administrative Procedures Act may not be applied for FLSA appeals purposes.

(3) An FLSA non-exempt employee may not work more than 40 hours a week without management approval. Overtime ~~[shall accrue]~~accrues 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]~~are not 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 Non-Exempt Employees.**

(1) An FLSA non-exempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA non-exempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the ~~[Executive]~~Division 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, ~~management shall pay any additional overtime[- shall be paid]~~ on the payday for the period in which it was earned.

(b) ~~[Compensatory]~~Management shall pay compensatory time balances for an FLSA non-exempt employee~~[- shall be paid]~~ down to zero at the rate of pay in the old position in the same pay period that the employee is:

- (i) transferred from one agency to a different agency; or
- (ii) promoted, reclassified, reassigned, or transferred to an FLSA exempt position.

#### **R477-8-6. Compensatory Time for FLSA Exempt Employees.**

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time ~~[shall accrue]~~accrues 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]~~are not 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]~~accrues 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]~~Division Director, DHRM, and the

NOTICES OF PROPOSED RULES

Director of Finance, Department of ~~[Administrative Services]~~Government Operations, will establish the date for the agency as 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]~~Division 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]~~change in FLSA status to non-exempt; or
- (iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

**R477-8-7. Non-Exempt Public Safety Personnel.**

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall ~~[meet the following criteria]~~:

- (a) be a uniformed or plain clothes sworn officer;
- (b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;
- (c) have the power to arrest;
- (d) be POST certified or scheduled for POST training; and
- (e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA non-exempt and covered under this rule:

- (a) 171 hours in a work period of 28 consecutive days; or
- (b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees:

- (a) 212 hours in a work period of 28 consecutive days; or
- (b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (a) Section 207(k), Fair Labor Standards Act;
- (b) 29 CFR 553.230;
- (c) the state's payroll period; and
- (d) the approval of the ~~[Executive]~~Division 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]~~Management may discipline an employee who fails to accurately record time~~[may be disciplined]~~.

(3) ~~[Time]~~An agency may not develop and use time records ~~[developed by the agency shall]~~ unless the records have the same elements of the state approved time record and ~~[be]~~are approved by the Department of ~~[Administrative Services]~~Government Operations, Division of Finance.

(4) ~~[A Supervisor]~~Management may discipline 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 non-exempt employee shall be compensated for any hours worked. ~~[An]~~Management may discipline an employee who works unauthorized overtime~~[may be disciplined]~~.

(a) Any time that an FLSA non-exempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities ~~[is counted towards]~~counts as 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) Management may direct an employee to be available for on-call work.

~~(a) Management shall compensate an~~~~[An]~~ FLSA non-exempt employee ~~[required by agency management to be available for on-call work shall be compensated]~~ for on-call time at a rate of one hour for every 12 hours the employee is on-call. ~~[A]~~

~~(b) Management may compensate an~~ FLSA exempt employee ~~[required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed]~~ at a rate ~~[of]~~equal to or less than one hour for every 12 hours the employee is on-call.

~~([2])~~2 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.

~~([3])~~3 Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

~~([3])~~4 On-call status shall be designated by a supervisor ~~[be]~~ in writing ~~[and]~~ and be documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell

phone ~~[shall]~~does not constitute on-call time without this written agreement.

(4)~~5~~ 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.

(5)~~6~~ 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.

(6)~~7~~ An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay ~~[shall be]~~are 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.

(8) Management may not compensate on-call employees less than outlined in Subsections (1) through (7) but may provide additional compensation as permitted by budgets and consistent applications of rules, policies, and discretion.

#### **R477-8-11. Stand-by Time.**

(1) ~~[An]~~Management shall pay an employee restricted to stand-by at a specified location ready for work~~[shall be paid]~~ full-time or overtime, as appropriate. ~~[An]~~Management shall pay 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]~~are 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]~~is 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]~~is hours worked.

(3) Time an employee spends traveling on a special one-day assignment ~~[shall count towards]~~is 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]~~is not 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]~~is hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal periods not required by federal law as implemented in Subsections (4) and (5).

#### **R477-8-13. Excess Hours.**

An employee may use excess hours the same way as annual leave.

(1) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(2) An employee may not use any leave time, other than holiday, military, and jury leave, that results in the accrual of excess hours.

(3) An employee may not accumulate more than 80 excess hours.

- (4) Agency management shall pay out excess hours:
- (a) for any hours accrued above the limit set by DHRM;
  - (b) when an employee is assigned from one agency to another; and
  - (c) upon separation.
- (5) Agency management may pay out excess hours:
- (a) automatically in the same pay period accrued;
  - (b) at any time during the year as determined appropriate by a state agency or division; or
  - (c) upon request of the employee and approval by the agency head or designee.

#### **R477-8-14. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule, is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status for any non-primary position shall be the same as the primary position.

(4) Leave accrual shall be based on the total number of hours the employee works during a pay period and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status ~~[is prohibited from accruing]~~may not accrue excess hours in either the primary or secondary positions. ~~[Any]~~Management shall pay out any excess hours earned~~[shall be paid]~~ at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, an employee in dual employment status may not accrue compensatory hours and the employee's overtime or comp selection shall be paid as overtime~~[paid]~~ regardless of FLSA status.~~[An employee may not accrue comp hours while in dual employment status.]~~

(7) Overtime ~~[shall be]~~is 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 employee and supervisor shall complete and sign the Accepting Terms of Dual Employment form~~[shall be completed, signed by the employee and supervisor, and placed]~~and place it 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 Subsection R477-9-2(1).

#### **R477-8-15. Reasonable Accommodation.**

~~[Employees]~~The agency ADA coordinator shall evaluate each request for reasonable accommodation from 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]Management may require a fitness for duty medical evaluation[s 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 including[. Time spent on such an assignment may be counted as leave for purposes of Subsection R477-7-1(10)].

~~(2) Temporary transitional assignments may also be part of any of the following:~~

- (a) when management determines that there is a direct threat to the health or safety of self or others;
- (b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
- (c) where there is a bona fide occupational qualification for retention in a position; or
- (d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

(2) Time spent in a temporary transitional assignment may be counted as leave for purposes of Subsection R477-7-1(11).

**R477-8-18. Change in Work Location.**

[An involuntary]Management may not change [in]an employee's work location [shall not be permitted if this]if the change requires the employee to commute or relocate 50 miles or more, one way, beyond the current one-way commute, unless:

- (1) the employee agrees to the change;
- (2) the change in work location is communicated to the employee at appointment to the position requiring the change in location;~~or~~
- ~~(2)3~~ (3) the agency[.either] pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03[.]; or
- (4) the agency reimburses commuting expenses up to the cost of a move.

**R477-8-19. Agency Policies and Exemptions.**

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 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]that 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 employing agency bears 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 non-compliance with Title 34A, Chapter 2, [~~Worker's~~Workers' Compensation Act or Title 34A, Chapter 3, Utah Occupational Disease Act, or testifies or intends to testify in a workers' compensation proceeding.

**KEY: breaks, telecommuting, overtime, dual employment**

**Date of Enactment or Last Substantive Amendment:** [~~July 1, 2020~~2021]

**Notice of Continuation:** April 27, 2017

**Authorizing, and Implemented or Interpreted Law:** 34A-2-114; [~~67-19-6; 67-19-6.7~~63A-17-106; 63A-17-602; 20A-3-103]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-9	Filing No. 53455

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-9. Employee Conduct
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

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

**A) State budget:**

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

**B) Local governments:**

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

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

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

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

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

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63G-7-2	Section 63A-17-106	Section 63A-17-904
5 U.S.C. 1502(a)(3)		

**Public Notice Information**

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

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

<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	07/01/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-9. Employee Conduct.**

**R477-9-1. Standards of Conduct.**

An employee shall comply with the standards of conduct established in ~~these rules~~ R477-1 through R477-101 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. An employee shall:

- (a) comply with the standards established in the individual performance plans;
- (b) maintain an acceptable level of performance and conduct on any other verbal and written job expectations;
- (c) report conditions and circumstances, including impairment caused by an employee's use of illicit drugs, controlled substances, alcohol, or other intoxicant, that may prevent the employee from performing their job effectively and safely; and
- (d) 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~~ Management shall take administrative action in accordance with Section R477-10-2, Rule R477-11, and Rule R477-14 when an employee ~~who~~ reports for duty, ~~or~~ attempts to perform the duties of the position, or drives a state vehicle while under the influence of alcohol or another intoxicant, including use of illicit drugs, non-prescribed controlled substances, and misuse of volatile substances, ~~shall be subject to administrative action in accordance with Section R477-10-2, Rules R477-11, and R477-14.~~

(4) The agency may decline to defend and indemnify an employee found violating this rule, under Title 63G, Chapter 7, Utah Governmental Immunity Act.

(5) ~~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, under Subsection 63G-7-202(3)(c)(ii), Utah Governmental Immunity Act.~~

~~(6) 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~~ is considered 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~~ is considered 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~~ state.

(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~~ state.

(b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use state time, equipment, property, supplies, or any influence, power, authority, or confidential information received in a state position for private gain.

(3) An employee may not accept economic benefit tantamount to a gift under Section 67-16-5 and the Governor's Executive Order, ~~[1/26/2010]~~ 6/2/2014, 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 Hatch Act of 1939, 5 U.S.C. 1501 et seq.

(1) As modified by Section 1502(a)(3), Hatch Modernization Act of 2012, a state employee whose salary is 100% funded by federal loans or grants may be restricted in political activity.

(a) State employees in positions covered by the Hatch Act may run for public office in non-partisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and non-partisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(a) The agency head shall consult with DHRM.

(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(c) ~~[Employees in violation of]~~ Management may discipline an employee who violates Subsection R477-9-4(1)(b) ~~[may be disciplined]~~ up to dismissal.

(3) ~~[If a determination is made]~~ An employee may not run for partisan political office if an agency head determines that the employee's position is covered by the Hatch Act ~~[, the employee may not run for a partisan political office].~~

(4) If ~~[it is determined that the]~~ an employee's position is covered by the Hatch Act and the employee files for candidacy, the ~~[state]~~ agency head shall dismiss the employee ~~[if the employee files for candidacy].~~

(5) ~~[Any]~~ Management shall grant a leave of absence without pay to any career service employee elected to any partisan or full-time non-partisan political office ~~[shall be granted a leave of absence without pay]~~ for times when monetary compensation is received for service in political office.

(6) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(7) ~~[This rule incorporates by reference the Governor's Amended Executive Order of August 4, 2018, regarding communications with legislators by state employees.~~

~~(8)~~ Decisions regarding employment, promotion, demotion, dismissal, or any other human resource actions may not be based on partisan political activity.

**R477-9-5. Employee Reporting Protections.**

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:

- (1) the waste or misuse of public property, manpower, or funds;
- (2) gross mismanagement;
- (3) unethical conduct;

(4) abuse of authority; or

(5) violation of law, rule, or regulations.

**R477-9-6. Employee Indebtedness to the State.**

(1) ~~[An]~~ The state may withhold non-overtime salary in excess of the minimum federal wage from 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 may not be withheld].~~

(a) ~~[The following three conditions shall be met before withholding of salary may occur.]~~ The state may withhold salary after:

(i) ~~[The debt shall be]~~ validating the debt and specifying 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.]~~ notifying the employee of the debt;

(iii) providing the employee with an opportunity to:

(A) acknowledge the debt; and

(B) provide written authorization to withhold salary; ~~[An employee shall be notified of this rule which allows the state to withhold salary.]~~

(iv) notifying the employee of this rule.

(b) ~~[An]~~ The state may withhold salary from the last paycheck of an employee separating from state service ~~[will have salary withheld from the last paycheck].~~

(c) ~~[An]~~ The state may withhold salary from an employee's last paycheck preceeding a period of leave without pay for more than two pay periods. ~~[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, including reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts; and

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1).

(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.

NOTICES OF PROPOSED RULES

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) ~~[An]Management may discipline an~~ employee who violates the Acceptable Use of Information Technology Resources policy~~[may be disciplined]~~ under Rule R477-11.

**R477-9-8. Personal Blogs and Social Media Sites.**

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the ~~[State of Utah]~~state or an agency;

(b) post the seal of the ~~[State of Utah]~~state, 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]~~state.

(2) An agency may establish ~~[policy]~~policies to supplement this section.

(3) ~~[An]Management may discipline an~~ employee~~[may be disciplined]~~ according to Rule R477-11 for violations of this section or agency policy.

**KEY: conflict of interest, government ethics, Hatch Act, personnel management**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2020]~~2021**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 63G-7-2; ~~[67-19-6; 67-19-19]~~63A-17-106; 63A-17-904; 5 U.S.C. 1502(a)(3); ~~Utah Exec Order No. 2018-1]~~**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-10	Filing No. 53456

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R477-10. Employee Development
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>F) Compliance costs for affected persons:</b>
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.



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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-10. Employee Development.**

**R477-10-1. Performance Evaluation.**

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. 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~~ selects an overall performance rating scale.

(b) [Performance] Management writes performance standards and expectations for each employee ~~shall be specifically written~~ in a performance plan.

(c) ~~[Managers or supervisors shall notify]~~ Management notifies employees when their performance plans are implemented or modified.

NOTICES OF PROPOSED RULES

(d) ~~[Managers or supervisors provide]~~Management provides employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) ~~[Each]~~Management shall evaluate an employee's performance in writing each fiscal year~~[a state employee shall receive a performance evaluation].~~

(a) An employee ~~[shall have the right to]~~may include written comments pertaining to the employee's performance evaluation.

(b) ~~[A]~~Management may issue a written performance evaluation to 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]~~may submit written comment to accompany the performance improvement plan.

(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

- (a) training;
- (b) reassignment; or
- (c) use of appropriate leave~~[;]~~.

(5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

**R477-10-3. Written Warnings.**

Agency management may use written warnings to address performance or conduct problems.

**R477-10-4. Employee Development and Training.**

(1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the ~~[Executive]~~Division 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]~~Division Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The ~~[Executive]~~Division 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]~~Management shall ensure that training is 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) An agency may grant educational assistance when:

(a) the agency has a written policy governing educational assistance;

(b) the employee discloses any scholarships, subsidies, and grant monies received for the educational program; and

(c) the employee's educational program will provide a benefit to the state.

(2) An agency shall require the employee to repay educational assistance when:

(a) the employee fails to successfully complete the required course work or educational requirements of a program; or

(b) the employee leaves the agency within one year of completing the educational work.~~[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)~~(3) 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 any scholarships, subsidies, and grant monies provided to the employee for the educational program.]~~

~~(i)~~(4) ~~[Except]~~Management shall reduce the educational assistance provided by the amount of funding disclosed under Subsection (1)(b) 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 (1)(e)].~~

~~(2)~~(5) Agency management shall be responsible for determining the taxable or non-taxable status of educational assistance reimbursements.

**KEY: educational tuition, employee performance evaluations, employee productivity, training programs**

Date of Enactment or Last Substantive Amendment: ~~July 1, 2020~~ **2021**  
 Notice of Continuation: April 27, 2017  
 Authorizing, and Implemented or Interpreted Law: ~~67-19-6~~ **63A-17-106**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-11	Filing No. 53457

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-11. Discipline
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

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<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
John Barrand, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-17-106	Section 63A-17-306	Section 63G-2-3

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-11. Discipline.**

**R477-11-1. Disciplinary Action.**

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct, and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) the employee no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) ~~[Any disciplinary actions of]~~Disciplinary actions for career service employees ~~[shall be]~~are governed by principles of due process and Section ~~[67-19-18]~~63A-17-306. ~~[The disciplinary process shall include each of the following, except as provided under Subsection 67-19-18(4).]~~When administering a disciplinary action, management shall:

(a) ~~[The agency representative notifies]~~notify the employee in writing of the proposed discipline, the reasons supporting the ~~[intended]~~proposed action, and the right to reply within five working days.

(b) ~~[The employee's reply shall be received within]~~grant the employee at least five working days ~~[in order]~~to reply;

(c) consider any timely reply before imposing discipline; ~~and [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]~~

~~(d) impose any discipline in accordance with these rules.~~

~~(4) After complying with Subsection (3) for a career service employee [has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and been responded to, the agency representative may discipline that employee, or] or for any career service exempt employee not subject to the same procedural rights, [by imposing one or more of the following forms of disciplinary action] management may impose:~~

~~(a) a written reprimand;~~

~~(b) a suspension without pay up to 30 calendar days per incident requiring discipline;~~

~~(c) a demotion as defined in Rule R477-1 and in accordance with Section R477-11-2[, reducing the employee's current actual wage, as determined by the agency head]; or~~

~~(d) a 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] Management shall notify the employee in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline when the discipline is imposed.~~

~~(7) [Imposed] Management shall notify any career service employee that the imposed disciplinary [actions are] action is subject to the grievance [procedure for career service employees] procedures, except under Section 67-19a-402.5.~~

**R477-11-2. Dismissal or Demotion.**

~~[A] Management may dismiss or demote an employee[ may be dismissed or demoted] for cause under Subsection R477-10-2(2)(e) and Section R477-11-1, and through the process outlined in this rule.~~

~~(1) [A] Management 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] An agency head may not dismiss or demote a career service employee from a career service position unless[ the agency head or designee has observed the following procedures.]:~~

~~(a) [The] the agency head or designee [shall notify] notifies the employee in writing of the specific reasons for the proposed dismissal or demotion[-];~~

~~(b) [The] the agency head or designee grants the employee[ shall have] up to five working days to reply[-];~~

~~(c) the agency head considers any reply submitted by the employee before imposing discipline; and[ The employee shall reply within five working days for the agency head to consider the reply before discipline is imposed.~~

~~(e) The employee shall have an]~~

~~(d) the agency head provides the employee an opportunity to be heard by the agency head or designee[-];~~

~~(i) This meeting [shall be strictly] is limited to the specific reasons raised in the notice of intent to demote or dismiss.~~

~~(ii) 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.~~

~~(iii) 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) After complying with Subsection (2), the agency head may dismiss or demote the employee upon a finding of adequate cause or reason. The agency head notifies the employee in writing of the decision and the reasons for the decision.

**R477-11-3. Discretionary Factors.**

When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(1) consistent application of rules and standards;

(a) the agency head or representative need only consider those cases decided under the administration of the current agency head because decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards;

(b) 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;

(2) prior knowledge of rules and standards;

(3) the severity of the infraction;

(4) the repeated nature of violations;

(5) prior ~~[disciplinary/corrective]~~ disciplinary or corrective actions;

(6) previous oral warnings, written warnings, and discussions;

(7) the employee's past work record;

(8) the potential of the violations for causing damage to persons or property;

(9) the strength of the evidence of conduct;

(10) dishonesty or failing to disclose relevant information;

(11) the effect on agency operations, including:

(a) how the wrongdoing relates to the employee's job duties;

(b) the potential of the conduct to adversely affect public confidence in the agency;

(c) the potential of the conduct to adversely affect morale and effectiveness of the agency;

(12) willful or intentional conduct; or

(13) likelihood of recurrence.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

NOTICES OF PROPOSED RULES

Date of Enactment or Last Substantive Amendment: ~~July 1, 2020~~2021  
 Notice of Continuation: April 27, 2017  
 Authorizing, and Implemented or Interpreted Law: ~~67-19-6; 67-19-18~~63A-17-106; 63A-17-306; 63G-2-3

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-12	Filing No. 53458

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-12. Separations
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.

<b>B) Local governments:</b>																												
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.																												
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):																												
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.																												
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<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):																												
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<b>F) Compliance costs for affected persons:</b>																												
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.																												
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																												
<b>Regulatory Impact Table</b>																												
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<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
John Barrand, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-17-106	Section 63A-17-306	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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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, an employee may not withdraw the[withdrawal of a] resignation or retirement [may occur only with the consent of]unless the agency head or designee consents to the withdrawal.

**R477-12-2. Abandonment of Position.**

[~~An~~]Management may consider an employee who is absent from work for three consecutive working days without approval[~~shall be considered~~] to have abandoned the employee's position and[~~to have~~] resigned from the employing agency.

(1) [~~An~~]Management may process appropriate actions to formally separate an employee who has abandoned [~~his~~]their position[~~may be separated~~] from state employment.

(a) Management shall send the employee notice that the agency accepts the employee's resignation to the employee's last known address.

(b) The notice shall grant the employee five working days from receipt, delivery, or attempted delivery of the notice to[~~may~~] request that the agency head reconsider accepting the resignation[~~within five working days of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address~~.

**R477-12-3. Reduction in Force.**

Reductions in force (RIF) [~~shall be~~]are governed by DHRM rules and [~~business practices~~]standard operating procedures.

(1) When management intends to reduce staff[~~will be reduced~~] in one or more categories of work,[~~agency~~] management shall develop a work force adjustment plan (WFAP). [~~A~~]Management may only give formal, written notification to a career service employee[~~shall only be given formal written notification of separation~~] after a WFAP has been reviewed by the [~~Executive~~]Division Director, DHRM, or designee and approved by the Agency Head or designee. The following items shall be addressed in the WFAP:

- (a) the categories of work to be eliminated;
- (b) [~~specifications of measures taken~~]specific measures taken, if any, to facilitate the placement of affected employees through reassignment[~~;~~] or transfer[~~;~~ and relocation] to vacant

NOTICES OF PROPOSED RULES

positions ~~[for which the employee qualifies]~~ the employee is qualified to fill:

(c) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(d) when more than one employee is affected, employees shall be listed in order of retention points.

(2) ~~[Eligibility for RIF.]~~ Management may RIF a career service employee, including an employee covered by USERRA, only when the employee has been identified in a WFAP and notified of the RIF in accordance with Subsection (5).

~~[(a) Only career service employees who have been identified in an approved WFAP may be RIF'd.~~

~~[(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.]~~

(3) ~~[Retention]~~ Management shall calculate retention points ~~[shall be determined]~~ when more than one employee is affected within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) ~~[Performance]~~ Management may consider performance evaluations and performance information for the past three years ~~[may be taken into account for]~~ when assessing job proficiency.

(b) ~~[Seniority shall be determined by]~~ Management shall calculate seniority as the length of the most recent continuous career service which commenced in a career service position for which the probationary period was successfully completed.

~~[(i)]~~ Exempt service time subsequent to attaining career service status with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, ~~[agency]~~ management shall ~~[develop]~~ specify the criteria they will use for determining retention points.

(i) ~~[Agency]~~ Management shall consult with ~~[Executive]~~ the Division Director, DHRM, or designee.

(ii) Agency ~~[plans]~~ WFAPs shall comply with current DHRM ~~[business practices]~~ standard operating procedures.

(4) ~~[The order of separation shall be]~~ Management shall separate employees in the following order:

(a) first, temporary employees in schedule IN or TL positions;

(b) second, probationary employees; ~~then~~ and

(c) third, career service employees with the lowest retention points.

(5) ~~[An]~~ When an employee, including one covered under USERRA, ~~[who]~~ is identified for separation due to a RIF, ~~[shall receive]~~ management shall provide the employee written notification of:

(a) the pending RIF; and

(b) final written notification of separation due to a RIF on the day of separation.

(6) ~~[An]~~ Management shall notify a career service employee separated due to a RIF that they may appeal to the agency head by submitting a written notice of appeal within 20 working days after the date of separation. When an employee submits such an appeal, the agency head shall notify the employee that they may appeal the agency head's decision according to the grievance procedures

~~[(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]~~ is 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 any accumulated annual and converted sick leave that was cashed out when RIF'd.]~~ When a career service employee who is separated in a RIF applies for a career service position, management shall give preferential consideration to the individual's application score when developing the hiring list as outlined in DHRM standard operating procedures until the individual accepts a career service position.

(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. An agency may allow an individual rehired to a career service position to buy back any accumulated annual and converted sick leave that was cashed out at the time the individual was separated from employment through a RIF.

**KEY: administrative procedures, employees' rights, grievances, retirement**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2020]~~ 2021**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: ~~[67-19-6; 67-19-18]~~ 63A-17-106; 63A-17-306**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-13	Filing No. 53459

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov



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

**General Information**

<b>2. Rule or section catchline:</b>
R477-13. Volunteer Programs
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>F) Compliance costs for affected persons:</b>

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

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
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Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
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**H) Department head approval of regulatory impact analysis:**

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-17-106	Section 67-20-3	Section 67-20-4
Section 67-20-8		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-13. Volunteer Programs.**

**R477-13-1. Volunteer Programs.**

- (1) Agency management may establish a volunteer program.
  - (a) A volunteer program shall include:
    - (i) documented agreement of the type of work and duration for which the volunteer services will be provided;
    - (ii) orientation to the conditions of state service and the volunteer's specific assignments;
    - (iii) adequate supervision of the volunteer; and
    - (iv) documented hours worked by a volunteer.

(2) A volunteer may not donate any service to an agency unless the volunteer's services are approved by the agency head or designee, and by DHRM.

(a) ~~[Agency management shall approve any work programs for volunteers before volunteers]~~Volunteers may not serve the state or any agency or subdivisions of the state until agency management approves work programs for volunteers.

(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment if properly licensed and authorized to do so, and liability protection and indemnification.

(4) State employees who volunteer for any state agency may only perform services that are distinctly different from their primary work activities.

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

**KEY: personnel management, administrative rules, rules and procedures, volunteers**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2020]~~2021

**Notice of Continuation:** April 27, 2017

**Authorizing, and Implemented or Interpreted Law:** ~~[67-19-6]~~63A-17-106; 67-20-3; 67-20-4; 67-20-8

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-14	Filing No. 53460

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2100
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W
<b>City, state:</b>	Salt Lake City, UT 84129

Contact person(s):		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R477-14. Substance Abuse and Drug-Free Workplace
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.

**4. Summary of the new rule or change:**  
 This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

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

**A) State budget:**

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

**B) Local governments:**

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

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

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

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

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

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
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State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63G-2-3	Section 63A-17-106	Section 63A-17-306
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Sections 63A-17-1001 through 63A-17-1006		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	07/01/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.  
R477-14. Substance Abuse and Drug-Free Workplace.  
R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, this rule implements the federal Drug-Free Workplace Act of 1988, 41 USC 8101, et seq., the Omnibus Transportation Employee Testing Act of 1991, 49 U.S.C. 5331, et seq., and Section ~~[67-19-36]~~ 63A-17-1004 authorizing drug and alcohol testing, in order to:

(a) provide a safe, productive work environment that is free from the effects of drug and alcohol abuse;

(b) identify, correct and remove the effects of drug and alcohol abuse on job performance; and

(c) assure the protection and safety of employees, the public, and property.

(2) State employees should report to work fit for duty and able to safely and effectively perform job functions.

(a) State employees are not prohibited from lawful use and possession of prescribed or over-the-counter medications unless the medication adversely affects their ability to safely or effectively perform their job duties. Any employee taking prescribed or over-the-counter medications ~~[will be]~~ is responsible for consulting the prescribing physician or pharmacist to ascertain whether the medication may interfere with safe performance of job functions. If

the use of a medication could compromise the safety of employees, the public, or property it is the employee's responsibility to avoid unsafe workplace practices by using appropriate personnel procedures such as calling in sick, using leave, requesting a change of duty, notifying a supervisor, or notifying ~~[human resources]~~ DHRM.

(b) The illegal or unauthorized use of prescription drugs is prohibited. It is a violation of this rule to intentionally misuse or abuse prescription medication. ~~[Appropriate]~~ Management may take appropriate personnel action, up to and including dismissal from employment, ~~[may be taken]~~ if job performance deteriorates or other accidents occur.

(3) Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, state employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(4) Employees shall follow Subsection R477-14-1(2) outside of work if the activity:

(a) directly affects the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more; or

(b) prevents the employee from performing job duties safely or effectively.

(5) ~~[Any]~~ Management shall conduct any drug or alcohol testing ~~[shall be done]~~ in compliance with applicable federal and state regulations and policies.

(6) ~~[Any]~~ Management shall ensure that any drug or alcohol testing ~~[shall be]~~ is conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(7) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(8) ~~[Final]~~ Management may require final applicants ~~[ ]~~ who are not current employees ~~[may be subject]~~ to submit to pre-employment drug testing ~~[at agency discretion, except as required by law]~~.

(9) ~~[Employees are subject to one or more of the following]~~ Management may conduct drug or alcohol tests for the following reasons:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

(10) ~~[Final]~~ Management may require final candidates for transfer or promotion to a highly sensitive position ~~[are subject]~~ to submit to pre-employment drug testing ~~[at agency discretion, except as required by law]~~.

~~[ ] (a) An employee transferring or promoting from one highly sensitive position to another highly sensitive position is subject to pre-employment drug testing at agency discretion except as required by law.]~~

~~[(b)]~~ Management may not require an employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position ~~[is not subject]~~ to submit to pre-employment drug testing.

~~[(14)]~~ Management may require employees in highly sensitive positions, as designated by DHRM, ~~[are subject]~~ to submit to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of

employees in highly sensitive positions ~~[shall be]~~is conducted at the discretion of the employing agency.

~~(12)13~~ This rule incorporates by reference the requirements of 49 CFR 40.87.

~~(13)14~~ ~~[This]~~The state will use a blood alcohol concentration level of .04 for safety sensitive positions and .05 for any other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

~~(14)15~~ Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation.

~~(15)16~~ ~~[Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.~~

~~(16)~~ ~~Employees]~~When an employee in a federally regulated ~~[positions]~~position ~~[whose]~~has a confirmation test for alcohol results ~~[are at or exceed]~~at or in excess of the applicable federal cut off level when tested before, during, or after performing ~~[highly]~~safety sensitive duties, ~~[are subject to disciplinary action]~~management:

~~(a)~~ shall remove the employee from duty according to the applicable federal regulations; and

~~(b)~~ may discipline the employee which may include dismissal.

**R477-14-2. Management Action.**

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of ~~[these rules]~~this rule shall take immediate action.

(2) Except as provided in Title 26, Chapter 61a, Utah Medical Cannabis Act, management may take disciplinary action which may include dismissal if:

(a) there is a verified positive test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the result of a chemical test is reported negative;

(d) an employee refuses a request to submit to testing under this policy;

(e) an employee substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so; or

(f) an employee violates any other portion of this rule.

(3) ~~[An]~~When an employee ~~[who]~~ has a verified positive test for use of a controlled substance or alcohol in violation of these rules, management may ~~[be required]~~require the employee to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection ~~[67-19-38]~~63A-17-1006(3). If this is required, the following shall apply.

(a) ~~[An]~~Management shall grant a leave of absence using accrued leave or leave without pay to an employee participating in a rehabilitation program ~~[shall be granted accrued leave or leave without pay]~~ for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state

agency and the inpatient or outpatient rehabilitation program provider.

(c) Any communication ~~[shall be]~~is classified as private in accordance with Section 63G-2-302.

(d) ~~[An]~~Management may require an employee ~~[may be required]~~ to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) ~~[An]~~Management shall reinstate an employee ~~[upon successful completion of]~~ who successfully completes a rehabilitation program ~~[shall be reinstated]~~ to work in the previously held position, or a position with a comparable or lower salary range.

(f) ~~[An]~~Management shall discipline an employee who fails to complete the prescribed treatment without a valid reason ~~[shall be subject to disciplinary action]~~.

(4) ~~[An]~~Management may require an employee who has a verified positive test for use of a controlled substance or alcohol ~~[is subject]~~to submit to follow up testing.

(5) An employee who is convicted of manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, under federal or state criminal law, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(6) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice of a conviction under Subsection (5) from:

(a) the judicial system;

(b) other sources; or

(c) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

**R477-14-3. Drug and Alcohol Test Records.**

(1) ~~[A]~~DHRM shall maintain and store a separate confidential file of drug and alcohol test results and documents related rehabilitation ~~[shall be maintained and stored]~~ in the agency human resource field office.

(2) ~~[Test]~~DHRM shall retain test results ~~[shall be retained]~~ in accordance with the retention schedule.

**KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees**

**Date of Enactment or Last Substantive Amendment: ~~[July 1, 2020]~~2021**

**Notice of Continuation: October 31, 2016**

**Authorizing, and Implemented or Interpreted Law: 63G-2-3; ~~[67-19-6; 67-19-18; 67-19-33; 67-19-34; 67-19-35; 67-19-36; 67-19-37; 67-19-38]~~63A-17-106; 63A-17-306; 63A-17-1001 through 63A-17-1006**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R477-15</b>	<b>Filing No. 53461</b>
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**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2100

<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-15. Workplace Harassment Prevention
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.

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

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Section 63A-17-306	Section 63G-2-305
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-15. Workplace Harassment Prevention.**

**R477-15-1. Policy.**

It is the policy of this state to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state or federal law. This policy seeks to regulate behaviors that are harassing, discriminatory, or retaliatory regardless of whether the behavior would constitute a violation of applicable state or federal laws.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment; ~~and~~or

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) ~~An~~Management may discipline an employee ~~may be subject to discipline~~ for violating workplace policies, even if:

(a) the conduct occurs outside of scheduled work time or work location; or

(b) the conduct is not sufficiently severe to constitute a violation of law.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

**R477-15-2. Retaliation.**

No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing, or is otherwise engaged in protected activity.

**R477-15-3. Complaint Procedure.**

Management shall permit employees who allege workplace harassment or retaliation to file complaints and engage in a review process free from bias, collusion, intimidation, or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) ~~Employees~~An employee who ~~feel~~feels they are being subjected to workplace harassment or retaliation should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify witnesses, if applicable.

(2) An employee may file an oral or written complaint of workplace harassment or retaliation with their immediate supervisor, any other supervisor within their direct chain of command, or the ~~Department~~Division of Human Resource Management, including the agency human resource field office.

(a) ~~Complaints may be submitted by any employee, witness, volunteer, or other individual.~~Any employee, witness, volunteer, or other individual may submit a complaint.

(b) ~~Complaints~~A complaint may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-4 and R477-15-5.

NOTICES OF PROPOSED RULES

(c) Any supervisor who has knowledge of workplace harassment or retaliation shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) ~~Any~~ Management shall act on any complaints of workplace harassment or retaliation ~~shall be acted upon~~ following receipt of the complaint.

(4) If management determines that an immediate investigation by agency management is ~~deemed~~ unwarranted, management shall notify the complainant ~~shall be notified~~.

**R477-15-4. Investigative Procedure.**

(1) When warranted, investigations shall be conducted based on DHRM standards ~~and business practices~~.

(2) Results of Investigation.

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment or retaliation allegations, the agency head or ~~Executive~~ Division Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

**R477-15-5. Workplace Harassment Records.**

(1) ~~A~~ DHRM shall maintain and store a separate, confidential file of any workplace harassment and retaliation complaints ~~shall be maintained and stored~~ in the agency human resource field office, or in the possession of an authorized official.

~~(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.~~

~~(b)~~ Files shall be retained in accordance with the retention schedule after the active case ends.

~~(e)~~ Any information contained in the complaint file shall be classified as protected under Section 63G-2-305.

~~(d)~~ ~~Information~~ No person may release information contained in the workplace harassment and retaliation file ~~shall only be released by~~ unless the agency head or ~~Executive~~ Division Director, DHRM, ~~when~~ determines the release is required by law.

(2) ~~Supervisors~~ A supervisor may not keep separate files related to complaints of workplace harassment or retaliation.

(3) ~~Participants~~ Any participant in any workplace harassment or retaliation proceeding shall treat any information pertaining to the case as confidential.

**R477-15-6. Training.**

(1) DHRM shall provide employees training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by the Division of Risk Management.

(b) ~~Agencies~~ An agency shall ensure employees complete workplace harassment prevention training upon hire and at least every two years thereafter.

(c) ~~Training~~ An agency shall submit training records ~~shall be submitted~~ to DHRM including who provided the training, who attended the training, and when they attended it.

**KEY: administrative procedures, hostile work environment**  
**Date of Enactment or Last Substantive Amendment: ~~July 1, 2020~~ 2021**

Notice of Continuation: April 27, 2017

Authorizing, and Implemented or Interpreted Law: ~~67-19-6; 67-19-18~~ 63A-17-106; 63A-17-306; 63G-2-305; E.O. No. 2019-1 "Prohibiting Unlawful Workplace Harassment, Discrimination, and Retaliation and Ordering a Mandatory Supervisor Training Program"

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-16	Filing No. 53462

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	2100	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Salt Lake City, UT 84129	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-16. Abusive Conduct Prevention
<b>3. Purpose of the new rule or reason for the change:</b>
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
<b>4. Summary of the new rule or change:</b>
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.



<b>B) Local governments:</b>			
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.			
<b>F) Compliance costs for affected persons:</b>			
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

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

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.

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

John Barrand, Executive Director

**Citation Information**

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

Section 63A-17-106	Section 67-26-101	
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 07/01/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.**

**R477-16. Abusive Conduct Prevention.**

**R477-16-1. Policy.**

It is the policy of this state to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

- (a) was intended to cause intimidation, humiliation, or unwarranted distress;
- (b) exploits a known physical or psychological disability;
- or
- (c) results in substantial physical or psychological harm caused by intimidation, humiliation, or unwarranted distress.

(2) The following actions do not constitute abusive conduct unless they are especially severe and egregious:

- (a) a single act;
- (b) appropriate disciplinary or administrative actions;
- (c) appropriate coaching or work-related feedback;
- (d) reasonable work assignments or job reassignments; or
- (e) reasonable differences in styles of management, communication, expression, or opinion.

(3) ~~[An]Management may discipline an employee[ may be subject to discipline]~~ under this rule even if the conduct occurs outside of scheduled work time or work location.

(4) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

**R477-16-2. Complaint Procedure.**

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation, or retaliation.

(1) ~~[Employees]~~An employee who ~~[feel]feels~~ they are being subjected to abusive conduct should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify witnesses, if applicable.

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the ~~[Department]~~Division of Human Resource Management, including the agency human resource field office.

(a) ~~[Complaints may be submitted by any]~~Any employee, witness, volunteer, or other individual may submit a complaint.

(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]~~Division Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, management shall ensure that the appropriate parties ~~[shall be]~~are notified of investigative findings and the procedure to request an administrative review of findings pursuant to Section 67-19a-501.

(3) Participants in any abusive conduct investigation shall treat any information pertaining to the case as confidential.

**R477-16-4. Abusive Conduct Training.**

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, options available under this rule, and procedures under Title 67, Chapter 19a, Grievance Procedures.

(b) ~~[Agencies]~~An agency shall ensure employees complete training within a reasonable time after hire and at least every two years thereafter.

(c) ~~[Training]~~Management shall submit 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, 2020]~~2021

**Notice of Continuation:** June 22, 2020

**Authorizing, and Implemented or Interpreted Law:** ~~[67-19-6]~~63A-17-106; 67-26-101

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-101	Filing No. 53463

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Room no.:</b>	2100
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W
<b>City, state:</b>	Salt Lake City, UT 84129

Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule or section catchline:
R477-101. Administrative Law Judge Conduct Committee
3. Purpose of the new rule or reason for the change:
The agency revised text to active voice and updated language to account for S.B. 181 passed in the 2021 General Session.
4. Summary of the new rule or change:
This amendment updates citations, corrects formatting, and makes text revisions for clarity and rules styling.

**Fiscal Information**

5. Aggregate anticipated cost or savings to:
A) State budget:
These amendments are not expected to have any fiscal impact on state government revenues or expenditures because these changes are administrative in nature and do not impact budgets.
B) Local governments:
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
C) Small businesses ("small business" means a business employing 1-49 persons):
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):

These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.

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

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

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Human Resource Management, John Barrand, has reviewed and approved this fiscal analysis.

<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
John Barrand, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 63A-17-701 through 63A-17-710		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	06/14/2021

<b>10. This rule change MAY become effective on:</b>	07/01/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Barrand, Executive Director	<b>Date:</b>	04/28/2021
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**R477. Human Resource Management, Administration.  
R477-101. Administrative Law Judge Conduct Committee.  
R477-101-1. Authority and Purpose.**

This rule is enacted pursuant to Section ~~[67-19e-104]~~63A-17-703, requiring the ~~[Department of Human Resource Management]~~DHRM 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 Section ~~[67-19e-102]~~63A-17-701:

(1) "Administrative Law Judge" (ALJ) includes hearing officers employed or contracted by a state agency that meet the criteria described in Subsection ~~[67-19e-102]~~63A-17-701(1)(a).

(2) "Chair" means the ~~[Executive]~~Division Director, ~~[Department]~~Division of Human Resource Management, or designee.

(3) "Code of ~~[C]~~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 Section 67-19e-108.

(5) "Committee ~~[M]~~meeting" means a proceeding at which a ~~[C]~~complaint is presented to the ~~[C]~~committee by the investigator. ~~[R]~~respondent ALJ shall also have the opportunity to appear and speak regarding the ~~[C]~~complaint and its allegations.

(6) "Complaint" means a written document filed with the Department under Section R477-101-8 alleging ~~[M]~~misconduct by an ALJ.

(7) "~~[Department]~~Division" means the ~~[Department]~~Division of Human Resource Management.

(8) "Final ~~[A]~~agency ~~[A]~~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 ~~[R]~~respondent ALJ may respond, in writing, to specific allegations identified in a ~~[C]~~complaint. A ~~[F]~~full ~~[I]~~investigation may also include~~[, but is not limited to]~~: examination by the ~~[I]~~investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, ~~[R]~~respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides a responsible basis for action or a decision.

(11) "Interested ~~[P]~~party" means an individual or entity who participated in an event or proceeding giving rise to a ~~[C]~~complaint against the ~~[R]~~respondent ALJ.

(12) "Investigator" means a person employed by the ~~[department]~~division to perform investigations mandated under Section ~~[67-19e-107]~~63A-17-707 and present information at the ~~[C]~~committee ~~[M]~~meeting.

(13) "Misconduct" means a violation of the ~~[C]~~code of ~~[C]~~conduct or ~~[Section]~~Sections 67-19e-101~~[, et seq.]~~ and 63A-17-701 through 710.

(14) "Preliminary ~~[I]~~investigation" means that portion of an investigation conducted by the ~~[Department]~~division upon receipt of a Complaint. A ~~[P]~~preliminary ~~[I]~~investigation may include:

- (a) examination of documents or correspondence; and
- (b) interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a ~~[C]~~complaint is filed.

**R477-101-3. Jurisdiction.**

(1) Administrative Law Judges. The [C]committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding [C]complaints filed against ALJs.

(2) Former ALJs. The [C]committee has continuing jurisdiction over former ALJs regarding allegations that [M]misconduct occurred during service as an ALJ if a [C]complaint is received before the ALJ's appointment concludes.

**R477-101-4. Records Classification and Retention.**

(1) Records prepared by and for the [C]committee, including any [C]complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Section 63G-2-305.

(2) ~~[Committee]~~The division shall maintain committee records ~~[shall be maintained by the department]~~ for a period of three years following the conclusion of any [C]committee activity.

**R477-101-5. Committee.**

(1) The ~~[Executive]~~Division Director or designee shall serve as [C]chair of the [C]committee, and appoint four [E]executive [D]directors or their designees to serve on the [C]committee.

(2) Only [E]executive [D]directors of agencies that employ or contract with ALJs may serve on the [C]committee.

(3) If a ~~[Department]~~division investigation establishes a Complaint requires further action, the ~~[Executive Director and]~~ [C]chair shall convene the [C]committee.

(4) An [E]executive [D]director of the agency that employs or contracts with the [R]respondent ALJ may not participate in a [C]committee proceeding involving the [R]respondent ALJ.

(5) After convening the [C]committee, the ~~[Department]~~division shall provide a copy of the [C]complaint and its investigative results to the [C]committee and the [R]respondent ALJ.

(6) Within 30 days of the date the [C]committee is convened on a complaint the [C]committee shall schedule a [C]committee [M]meeting. At the [C]committee [M]meeting the [R]respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a [C]complaint.

(7) Committee members may attend [C]committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the [C]chair.

(8) After consideration of any information provided at the [C]committee [M]meeting, the [C]committee shall dispose of the [C]complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the [C]complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members may not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

**R477-101-6. Duties of the Chair.**

(1) The [C]chair shall:

(a) receive, acknowledge receipt of and review [C]complaints;

(b) notify complainants about the status and disposition of their [C]complaints,

(c) make recommendations to the [C]committee regarding further proceedings or the disposition of a [C]complaint;

(d) stay investigations or committee proceedings pending [F]final [A]agency [A]action of the matter giving rise to the [C]complaint against the [R]respondent ALJ;

(e) maintain records of the [C]committee's operations and actions;

(f) compile data to aid in the administration of the [C]committee's operations and actions;

(g) prepare and distribute an annual report of the [C]committee's operations and actions;

(h) direct the operations of the [C]committee's office, and supervise other members of the [C]committee's staff;

(i) make available to the public the laws, rules, and procedures of the [C]committee and its operations; and

(j) consider requests for extension of time periods and, upon a showing of [G]good [C]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 [C]chair may delegate any of the foregoing duties to other members of the [C]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 [C]code of [C]conduct. Any such addendum or modification ~~[shall be]~~is specific to ~~[their]~~that agency. In addition, an agency may not make any addendum or modification to the [C]code of [C]conduct [must be reviewed and approved by the Committee before being implemented]unless the committee reviews and approves the changes prior to implementation. The chair may convene the [C]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 [C]code of [C]conduct or otherwise has a [C]complaint against an ALJ may file a timely written [C]complaint with the [Department]division. ~~[To be timely]~~An interested party shall file a written [C]complaint[~~must be in writing and filed~~] with the [Department]division within 20 working days of [F]final [A]administrative [A]action in the matter in which the individual is an [I]interested [P]party. Any complaint filed after the 20th working day of the final administrative action is untimely.

(3) ~~[Complaints filed with the Department are deemed filed on the date actually received by the Department.]~~The filing date is the date the division actually receives the complaint. The [Department]division shall date-stamp any [C]complaints on the date received. Any filing and other time periods are based upon the [Department's]division'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.]~~The person filing a complaint or that person's authorized representative shall:

- (a) specify facts and allegations of misconduct;
- (b) sign the complaint; and
- (c) include the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if applicable.

**R477-101-9. Investigation.**

(1) Preliminary [F]investigation.

(a) The [Department]division shall review any timely filed [C]complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a [P]preliminary [F]investigation.

(b) If the [P]preliminary [F]investigation determines that the [C]complaint is untimely, frivolous, without merit, or if the [C]complaint merely indicates disagreement with the [R]respondent ALJ's decision, without further alleged [M]misconduct, the [C]complaint may be[~~similarly~~] dismissed without further action.

(c) If, after a [P]preliminary [F]investigation is completed, there is a reasonable basis to find [M]misconduct occurred, the [F]investigator shall initiate a [F]full [F]investigation.

(2) Full [F]investigation.

Within ten days after a determination to conduct a [F]full [F]investigation is made, the [F]investigator shall notify the [R]respondent ALJ that a [F]full [F]investigation is being conducted. The notice shall:

(a) inform the [R]respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the [R]respondent ALJ that the investigation may be expanded if appropriate;

(c) invite the [R]respondent ALJ to respond to the [C]complaint in writing within 10 working days;

(d) include a copy of the [C]complaint, [the]any [P]preliminary [F]investigation [report(s)]reports, and any other documentation reviewed in determining whether to authorize a [F]full [F]investigation; and

(e) [unless continued by the Chair,]inform the respondent ALJ that a [F]full [F]investigation[s] shall be completed within three months of the determination to conduct a [F]full [F]investigation unless continued by the chair.

**R477-101-10. Full Investigative Findings.**

[Results]The investigator shall provide the results of the investigation[~~shall be provided~~] to the [C]chair, who shall determine whether to convene a [C]committee [M]meeting.

**R477-101-11. Notice.**

(1) If after review of the [F]full [F]investigative result and findings the [C]chair determines the [C]complaint is factually or legally insufficient to establish [M]misconduct, the [C]chair shall[~~similarly~~] dismiss the [C]complaint and take no further action.

(2) If after review of the [F]full [F]investigative result and findings the [C]chair determines the [C]complaint requires further action, the [C]chair shall convene the [C]committee and order a [C]committee [M]meeting be scheduled.

(3) After convening the [C]committee the [C]chair shall provide [R]respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the [C]committee [M]meeting. The [C]chair shall also provide the [R]respondent ALJ with a copy of the [C]complaint and the results of the [Department's]division's investigation.

(4) ~~[Notice]~~The chair shall delivery notice that a [C]committee has been convened and a [C]committee [M]meeting ordered[~~shall be made~~] by personal service or certified mail upon the [R]respondent ALJ or the [R]respondent ALJ's representative. Service of any other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the [C]chair that a [C]committee has been convened the [R]respondent ALJ may provide the [C]committee a written response to the [C]complaint.

(6) After receipt of the [R]respondent ALJ's response or after expiration of the time to respond the [C]committee shall, in consultation with the ALJ, schedule a [C]committee [M]meeting. The [C]committee shall notify the ALJ in writing of the date, time, and place of the [C]committee [M]meeting. Unless continued for [G]good [C]cause, [C]committee [M]meeting[s] shall be held within four months of the date a [C]committee is convened on a [C]complaint.

(7) No later than 20 days before the scheduled [C]committee [M]meeting the [C]chair shall provide the [R]respondent ALJ with copies of any documents proposed for use at the [C]committee [M]meeting or to be relied upon in making its report and recommendation.

(8) [R]respondent ALJ [~~shall be~~]is entitled to representation at every stage of the [C]committee proceedings or the [C]committee [M]meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in [C]committee proceedings.

**R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.**

If the [R]respondent ALJ resigns or retires during the proceedings, the [C]committee shall determine whether to proceed or dismiss the proceedings.

**R477-101-13. Committee Meetings.**

(1) The [C]chair shall rule on any motions or objections raised during a [C]committee [M]meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The [C]chair may limit the time allowed for the presentation of information, may bifurcate any issues to be considered, and may make any other rulings regarding any [C]committee proceeding or [C]committee [M]meeting.

(2) To hold a [C]committee [M]meeting there must be at least 3 members of the [C]committee present.

(3) The [R]respondent ALJ [~~shall be permitted to~~]may present information to, make statements, and produce witnesses for the [C]committee's consideration.

(4) Committee members may ask questions of any witness including the [R]respondent ALJ.

(5) Immediately following the conclusion of the [C]committee [M]meeting, the [C]committee shall deliberate and decide whether there is sufficient evidence the [R]respondent ALJ violated the [C]code of [C]conduct or otherwise engaged in [M]misconduct. Any such decision shall require a majority vote of the participating [C]committee members.

(6) [Committee decisions shall be supported by a]The committee shall use the preponderance of the evidence standard when making decisions.

(7) Within 30 days of the conclusion of the [C]committee [M]meeting, the [C]chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action,

and shall forward the decision and recommendation to the [R]respondent ALJ and the agency head of the [R]respondent ALJ.

(8) After deliberation, if the [C]committee finds insufficient evidence or reason to determine [M]misconduct occurred, the complaint shall be dismissed.

**R477-101-14. Discipline.**

(1) At any time after the commencement of a [F]full [H]investigation and before any [C]committee action, the ALJ may admit to any of the allegations in exchange for a stated sanction. The committee shall make a recommendation based on the admission [shall be submitted to the Committee for a recommendation].

(2) ~~Any corrective or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or any~~ An employing agency shall comply with applicable division or state rule governing discipline when taking any corrective action or disciplinary action against a career service employee.

**R477-101-15. Reinstatement of Proceedings.**

(1) Reinstatement upon [R]request by [C]complainant.

(a) If a [C]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 [C]committee reinstate the [C]complaint. ~~The [request shall include the specific]~~ complainant shall specify the grounds upon which reinstatement is sought in the written request.

(b) ~~The [request shall be presented to the Committee]~~ committee shall consider the written request and determine whether to reinstate the complaint at the next available [M]meeting of the [C]committee[, at which time the Committee shall determine whether to reinstate the Complaint].

(c) A determination not to reinstate the [C]complaint is not reviewable.

(2) Reinstatement by the [C]chair.

(a) If the [C]committee dismisses a [C]complaint, the [C]chair may, at any time upon the receipt of newly discovered evidence, request that the [C]committee reinstate the [C]complaint. ~~The [request shall include the specific]~~ chair shall specify the grounds upon which the reinstatement is sought in the request.

(b) ~~The [request shall be presented to the Committee]~~ committee shall consider the request and determine whether to reinstate the complaint at the next available [M]meeting of the [C]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 each ALJ:

(a) ~~The~~ an ALJ ~~shall have no~~ may not have more than one agency disciplinary action or one [C]committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) ~~The~~ an ALJ shall receive a satisfactory rating on the survey. A satisfactory rating is achieved when an average of at least 65% of collected responses to survey questions for an ALJ is "Agree". Any survey question with a response of "Not enough information to respond" will not be used when calculating the rating.

(2) For any question that does not use the "Agree"/"Disagree" response option, the [C]committee shall establish the minimum performance standard. Any established

performance standard shall be substantially equivalent to the standard required by Section ~~[67-19e-105]~~ [63A-17-705].

**R477-101-17. Performance Surveys.**

(1) The ~~[department]~~ division shall establish and follow a schedule to survey the performance of each ALJ every four years ~~[-The schedule shall be]~~ in a staggered schedule to survey the performance of approximately one quarter of ALJ's each calendar year.

(2) Survey respondents shall include:

(a) ~~[Attorneys]~~ an attorney who ~~[have]~~ has appeared before the administrative law judge as counsel in the proceeding; and

(b) ~~[Staff]~~ staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including pro se parties and witnesses.

(4) ~~[Survey]~~ The division shall maintain survey results ~~[shall be maintained by the department and shall not be maintained in]~~ separate from the ALJ's personnel file.

(5) ~~[Survey]~~ The division shall make 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]~~ division 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 Section ~~[67-19e-110]~~ [63A-17-710].

(2) Each year that an administrative law judge receives a performance evaluation conducted by the ~~[department]~~ division under this section, the administrative law judge shall complete the procedural fairness training program established by the ~~[department]~~ division.

**R477-101-19. Hiring of Administrative Law Judges.**

(1) Hiring of administrative law judges must comply with Section ~~[67-19e-104.5]~~ [63A-17-704] and Section R477-4-15.

**KEY: administrative law judges, conduct committee**

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2020]~~ [2021]

Notice of Continuation: January 7, 2019

Authorizing, and Implemented or Interpreted Law: ~~[67-19e-104]~~ [63A-17-701 through 63A-17-710] ~~[67-19e-109]~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-200-5	Filing No. 53469

**Agency Information**

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W

<b>City, state:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-200-5. Minimum Standards and General Provisions
<b>3. Purpose of the new rule or reason for the change:</b>
H.B. 207, passed during the 2020 General Session, requires the Insurance Department (Department) to disclose the price of insulin and set the annual calculation that will be used to adjust the caps on the cost of insulin in a health benefit plan. This amendment enacts that requirement.
<b>4. Summary of the new rule or change:</b>
The change adds a new section that provides information about how the Department will publish the price of insulin, and the calculation used to determine the annual inflationary adjustment to the caps of the average wholesale price of insulin sold in Utah.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The cost to publish the price of insulin and the annual calculation used to adjust the caps on the cost of insulin on the Department's website will be negligible and will be assumed into the affected employee's normal duties.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The amendment merely sets the location and format for the Department's publication of the price of insulin and annual calculation used to adjust the caps on the cost of insulin.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The amendment merely sets the location and format for the Department's publication of the price of insulin and annual calculation used to adjust the caps on the cost of insulin.

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

There is no anticipated cost or savings to non-small businesses. The amendment merely sets the location and format for the Department's publication of the price of insulin and annual calculation used to adjust the caps on the cost of insulin.

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

There is no anticipated cost or savings to any other persons. The amendment merely sets the location and format for the Department's publication of the price of insulin and annual calculation used to adjust the caps on the cost of insulin.

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

There are no compliance costs for any affected persons. The amendment merely sets the location and format for the Department's publication of the price of insulin and annual calculation used to adjust the caps on the cost of insulin.

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0



Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Jonathan T. Pike, Commissioner

**Citation Information**

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

Section 31A-2-201	Section 31A-22-626	
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	06/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and

will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/30/2021
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**R590. Insurance, Administration.**

**R590-200. Diabetes Treatment and Management.**

**R590-200-5. Minimum Standards and General Provisions.**

(1) Coverage for the treatment of diabetes is subject to the deductibles, copayments, out-of-pocket maximums and coinsurance of the plan.

(2)(a) All health care insurance policies will cover diabetes self-management training and patient management, including medical nutrition therapy, when deemed medically necessary and prescribed by an attending physician covered by the plan.

(b) The diabetes self-management training services must be provided by a diabetes self-management training program that is accepted by the plan and is:

(i) recognized by the ~~[federal Health Care Financing Administration]~~Centers for Medicare and Medicaid Services; or

(ii) certified by the Utah Department of Health; or

(iii) approved or accredited by a national organization certifying standards of quality in the provision of diabetes self-management education.

(c) Diabetes self-management training programs shall be provided upon a health care insurance policyholder's/dependent's diagnosis with diabetes, upon a significant change in a health care insurance policyholder's/dependent's diabetes related condition, upon a change in a health care insurance policyholder's/dependent's diagnostic levels, or upon a change in treatment regimen when deemed medically necessary and prescribed by an attending physician covered by the plan. The plan must provide no less than the minimum standards required by the selected self-management training services provider program.

(3) All health care policies will cover the following when deemed medically necessary:

(a) blood glucose monitors, including commercially available blood glucose monitors designed for patients use and for persons who have been diagnosed with diabetes;

(b) blood glucose monitors to the legally blind which includes commercially available blood glucose monitors designed for patient use with adaptive devices and for persons who are legally blind and have been diagnosed with diabetes;

(c) test strips for glucose monitors, which include test strips whose performance achieved clearance by the FDA for marketing;

(d) visual reading and urine testing strips, which includes visual reading strips for glucose, urine testing strips for ketones, or urine test strips for both glucose and ketones. Using urine test strips for glucose only is not acceptable as the sole method of monitoring blood sugar levels;

(e) lancet devices and lancets for monitoring glycemic control;

(f) insulin, which includes commercially available insulin preparations including insulin analog preparations available in either vial or cartridge;

(g) injection aids, including those adaptable to meet the needs of the legally blind, to assist with insulin injection;

NOTICES OF PROPOSED RULES

(h) syringes, which includes insulin syringes, pen-like insulin injection devices, pen needles for pen-like insulin injection devices and other disposable parts required for insulin injection aids;

(i) insulin pumps, which includes insulin infusion pumps.

(j) "medical supplies" for use with insulin pumps and insulin infusion pumps to include infusion sets, cartridges, syringes, skin preparation, batteries and other disposable supplies needed to maintain insulin pump therapy;

(k) "medical supplies" for use with or without insulin pumps and insulin infusion pumps to include durable and disposable devices to assist with the injection of insulin and infusion sets;

(l) prescription oral agents of each class approved by the FDA for treatment of diabetes, and a variety of drugs, when available, within each class; and

(m) glucagon kits.

(4)(a) As required by Subsections 31A-22-626(9) and 31A-22-626(10), no later than June 1 each year the department shall publish on the department's website at [www.insurance.utah.gov](http://www.insurance.utah.gov):

(i) the price of insulin available under the discount program described in Section 49-20-421;

(ii) the insulin prescription caps for the following calendar year; and

(iii) the average wholesale price of insulin per milliliter, AWP/mL, for each calendar year 2019 and later.

(b) The insulin prescription caps shall be calculated using data provided by Public Employees Health Plan, PEHP, based on the annual change in the average AWP/mL.

(i) The calculation takes into account the following initial reference values:

(A) PEHP's average insulin AWP/mL in 2019 of \$40.18, Base AWP/mL;

(B) the 2021 insulin prescription cap in Subsection 31A-22-626(4)(a) of \$30, Base Low Cap; and

(C) the 2021 insulin prescription cap in Subsection 31A-22-626(6)(b) of \$100, Base High Cap.

(ii) The insulin prescription cap will be rounded to the nearest dollar.

(c) The insulin prescription cap formula for years after 2021 for Subsection 31A-22-626(4)(a) is: Year X low cap = (Average AWP/mL for Year X-2 / Base AWP/mL) \* (Base Low Cap) rounded to the nearest dollar.

(d) The insulin prescription cap formula for years after 2021 for Subsection 31A-22-626(6)(b) is: Year X high cap = (Average AWP/mL for Year X-2 / Base AWP/mL) \* (Base High Cap) rounded to the nearest dollar.

(e) The adjusted insulin prescription cap posted on June 1 takes effect for a policy issued or renewed on or after January 1 of the following calendar year.

**KEY: insurance law**

**Date of Enactment or Last Substantive Amendment:** ~~2021 April 30, 2001~~

**Notice of Continuation:** February 25, 2021

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-22-626

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-254	Filing No. 53467

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-254. Annual Financial Reporting Rule
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended to add an internal audit requirement for Utah insurance companies with more than \$500,000,000 in annual premiums. This will help ensure that large insurance companies doing business in Utah appropriately mitigate risk by having an independent internal audit function.
<b>4. Summary of the new rule or change:</b>
The change adds a section requiring internal audits for large Utah insurance companies. It also makes several changes to bring this rule in alignment with current rulewriting standards and updates the severability language.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The amendment affects only insurance companies, most of which already have internal audit functions or are exempt because they do not meet the premium threshold described in this rule.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The amendment affects only insurance companies.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>

There is no anticipated cost or savings to small businesses. The affected insurance companies are all non-small companies with more than 50 employees.

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

There is no anticipated cost or savings to non-small businesses. For an insurance company to comply with this rule, they would only need to form an internal audit committee of existing employees, which would not result in an added cost.

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

There is no anticipated cost or savings to any other persons. The amendment affects only insurance companies.

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

There are no expected compliance costs for any affected persons. The majority of insurance companies active in Utah are either exempt from this amendment because they don't meet the premium threshold, or they already have an independent internal audit function. A company that does not meet either of those exceptions would need to form an internal audit committee, which could be comprised of the existing board of directors or current employees, and would not result in an added cost.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0

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

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

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.

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

Jonathan T. Pike, Commissioner

**Citation Information**

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

Section 31A-2-201	Subsection 31A-2-203(6)(b)(ii)	Subsection 31A-5-412(2)(f)
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**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 06/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the

date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/30/2021
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**R590. Insurance, Administration.**  
**R590-254. Annual Financial Reporting Rule.**  
**R590-254-1. Authority.**

This rule is promulgated by the Insurance Commissioner pursuant to [~~Utah Insurance Code~~]Sections:

- (1) 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A, Insurance Code; and
- (2) 31A-2-203(6)(b)(ii) and 31A-5-412(2)(f), which authorize the commissioner to make rules pertaining to annual financial reporting requirements.

**R590-254-2. Purpose and Scope.**

(1) The purpose of this rule is to improve the commissioner's surveillance of the financial condition of insurers by requiring the submission of the following reports and documents:

- (a) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants[;];
- (b) communication of internal control related matters noted in an audit; and
- (c) management's Report of Internal Control over Financial Reporting.

(2) This rule applies to [~~every~~]an insurer, as defined in Section R590-254-3.

(3) An insurer shall be exempt from this rule for the calendar year if an insurer:

- (a) has direct written premium of less than \$1,000,000 written in this state in any calendar year; and
- (b) less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year.

(4) The exemption under [~~R590-254-2~~]Subsections (3)(a) and (3)(b) shall apply unless:

- (a) the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities; or
- (b) the insurer has assumed premiums pursuant to contracts and treaties, or both, of reinsurance of \$1,000,000 or more.

(5) A foreign or alien insurer filing an audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements in this rule, is exempt from Sections R590-254-4 through R590-254-13 [~~Sections 4 through 13~~] if:

- (a) a copy of the audited financial report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections R590-254-4, R590-254-11, and R590-254-12 [~~Sections 4, 11 and 12~~], respectively; or

(b) a Canadian insurer may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada; and

(c) a copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section R590-254-10.

(6) A foreign or alien insurer required to file a Management's Report of Internal Control over Financial Reporting in another state is exempt from filing the Report in this state provided the other state has:

- (a) substantially similar reporting requirements; and
- (b) the report is filed with the commissioner of the other state within the time specified.

(7) This rule [~~shall~~]may not prohibit, preclude, or in any way limit the commissioner from ordering or conducting or performing examinations of insurers under the rules, practices, and procedures of the department.

**R590-254-3. Definitions.**

The terms and definitions contained in this rule are intended to provide definitional guidance as the terms are used within this rule. In addition to the definitions in Section[s] 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing:

(a) with the American Institute of Certified Public Accountants (AICPA); and

(b) in all states in which [~~he or she~~]the accountant or independent certified public accountant is licensed to practice;

(c) for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers.

(a) The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this rule at the election of the controlling person pursuant to Subsection R590-254-14(6).

(b) If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in Section R590-254-5.

(5) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(6) "Independent board member" has the same meaning as described in Subsection R590-254-14(4).

(7) "Insurer" means a licensed insurer [~~as defined in Subsections 31A-1-301(90)(a) and 31A-1-301(98)~~]or an authorized insurer as defined in [~~Sub~~]Section 31A-1-301[~~(163)(b)~~].

(8) "Group of insurers" means those licensed insurers:

(a) included in the reporting requirements of Chapter 31A-16, Insurance Holding Companies; or

(b) a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements [~~, i.e., these items~~] specified in Subsections R590-254-5(2)(b) through R590-254-5(2)(g) and includes those policies and procedures that:

(a) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements [~~, i.e., these items~~] specified in Subsections R590-254-5(2)(b) through R590-254-5(2)(g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements [~~, i.e., these items~~] specified in Subsections R590-254-5(2)(b) through R590-254-5(2)(g).

(10) "SEC" means the United States Securities and Exchange Commission.

(11) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(12) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in [~~R590-254-3~~] Subsection (1).

(13) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, [~~all~~] each of the following provisions:

(a) the preapproval requirements of Section 201 of the Sarbanes-Oxley Act of 2002, under Section 10A(i) of the Securities Exchange Act of 1934,

(b) the audit committee independence requirements of Section 301 of the Sarbanes-Oxley Act of 2002, under Section 10A(m)(3) of the Securities Exchange Act of 1934; and

(c) the internal control over financial reporting requirements of Section 404 of the Sarbanes-Oxley Act of 2002, under Item 308 of SEC Regulation S-K.

#### **R590-254-4. General Requirements Related to Filing and Extensions for Filing of an Annual Audited Financial Report and Audit Committee Appointment.**

(1) [~~All~~] An insurer[s] shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for 30 day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date in sufficient detail to permit the

commissioner to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with the provisions in [~~R590-254-4~~] Subsection (2), a similar extension of 30 days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(4) [~~Every~~] Each insurer required to file an annual audited financial report pursuant to this rule shall designate a group of individuals as constituting its audit committee, as defined in Section R590-254-3. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this rule at the election of the controlling person.

#### **R590-254-5. Contents of an Annual Audited Financial Report.**

(1) An annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) report of independent certified public accountant;

(b) balance sheet reporting admitted assets, liabilities, capital, and surplus;

(c) statement of operations;

(d) statement of cash flow;

(e) statement of changes in capital and surplus;

(f) notes to financial statements:

(i) these notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual; and

(ii) the notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Sections 31A-4-113 and 31A-4-113.5 with a written description of the nature of these differences; and

(g) the financial statements included in the audited financial report[~~s~~];

(i) the statements shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and

(ii) shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31, except that [~~:-~~]

~~(A)~~ the comparative data may be omitted in the first year in which an insurer is required to file an audited financial report.

#### **R590-254-6. Designation of Independent Certified Public Accountant.**

(1) Each insurer required by this rule to file an annual audited financial report must within 60 days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this rule.

(2) [~~4~~] Any insurer[s] not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(3) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the rules of the insurance

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department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express ~~his or her~~ an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as ~~he or she~~ the accountant may believe appropriate.

(4) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall:

(a) within five business days notify the commissioner of this event;

(b) furnish the commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused ~~him or her~~ the accountant to make reference to the subject matter of the disagreement in connection with ~~his or her~~ an opinion:

(i) the disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction~~[-]; and~~

(ii) disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report~~[-]; and~~

(c) in writing, request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which ~~he or she~~ the accountant does not agree; ~~and~~ the insurer shall furnish the response letter from the former accountant to the commissioner together with its own.

**R590-254-7. Qualifications of Independent Certified Public Accountant.**

(1) The commissioner ~~shall~~ may not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(a) is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

(2) Except as otherwise provided in this rule, the commissioner shall recognize an independent certified public accountant as qualified as long as ~~he or she~~ the accountant conforms to the standards of ~~his or her~~ the profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Utah Division of Occupational and Professional Licensing for Accountancy, or similar code.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Chapter 31A-27a, Insurer Receivership Act, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4)(a) The lead, or coordinating, audit partner, having primary responsibility for the audit, may not act in that capacity for more than five consecutive years.

(i) The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years.

(ii) An insurer may ~~make application~~ apply to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances.

(iii) This application should be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

(A) number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(B) premium volume of the insurer; or

(C) number of jurisdictions in which the insurer transacts business.

(b)(i) The insurer shall file, with its annual statement filing, the approval for relief from ~~R590-254-7~~ Subsection (4)(a) with the states that it is licensed in or doing business in and with the NAIC.

(ii) If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(5) The commissioner ~~shall~~ may neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:

(a) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

(b) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

(6) The commissioner, as provided in Subsection 31A-2-201(4), may, as provided in Subsection 31A-2-201(5), hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing ~~his or her~~ an opinion on the financial statements in the annual audited financial report made pursuant to this rule and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this rule.

(7)(a) The commissioner ~~shall~~ may not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

(i) bookkeeping or other services related to the accounting records or financial statements of the insurer;

(ii) financial information systems design and implementation;

(iii) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements~~[-]~~ except that:

(A) ~~[F]~~the accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements~~[-]; and~~

(B) ~~[A]~~an accountant's actuary may also issue an actuarial opinion or certification "opinion" on an insurer's reserves if the following conditions have been met:

(I) neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(II) the insurer has competent personnel, or engages a third~~]~~-party actuary, to estimate the reserves for which management takes responsibility; and

(III) the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(v) internal audit outsourcing services;

(vi) management functions or human resources;

(vii) broker or dealer, investment adviser, or investment banking services;

(viii) legal services or expert services unrelated to the audit;

or

(ix) any other services that the commissioner determines, by rule, are impermissible.

(b) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The accountant:

(i) cannot function in the role of management~~[-];~~

(ii) cannot audit ~~[his or her]~~the accountant's own work; and

(iii) cannot serve in an advocacy role for the insurer.

(8) Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from ~~[R590-254-7]Subsection (7)(a).~~

(a) The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions.

(b) If the commissioner finds, upon review of this statement, that compliance with this rule would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(9) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in ~~[R590-254-7]Subsection (7)(a)~~ ~~[-]or~~ that do not conflict with ~~[R590-254-7]Subsection (7)(b)~~, only if the activity is approved in advance by the audit committee, in accordance with ~~[R590-254-7]Subsection (10).~~

(10)(a) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee.

(b) The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

(i) the aggregate amount of all such non-audit services provided to the insurer constitutes not more than 5% of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(ii) the services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(iii) the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by

the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(11)(a) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by ~~[R590-254-7]Subsection (10).~~

(b) The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(12)(a)(i) The commissioner ~~[shall]~~may not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due.

(ii) This section shall only apply to partners and senior managers involved in the audit.

(iii) An insurer may ~~[make application]~~apply to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(b)(i) The insurer shall file, with its annual statement filing, the approval for relief from ~~[R590-254-7]Subsection (12)(a)~~ with the states that it is licensed in or doing business in and the NAIC.

(ii) If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

#### **R590-254-8. Consolidated or Combined Audits.**

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

(2) amounts for each insurer subject to this section shall be stated separately;

(3) noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) explanations of consolidating and eliminating entries shall be included; and

(5) a reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

#### **R590-254-9. Scope of Audit and Report of Independent Certified Public Accountant.**

(1) Financial statements furnished pursuant to Section R590-254-5 shall be examined by the independent certified public accountant.

(2) The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards.

(3) In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit.

(4) To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Section R590-254-17, the independent certified public accountant should consider, as that term is defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements.

(5) Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

**R590-254-10. Notification of Adverse Financial Condition.**

(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of ~~[the Utah]~~ Title 31A, Insurance ~~[e]Code~~, as of that date.

(a) An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner.

(b) If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with ~~[the above paragraph]~~ Section R590-254-10 if the statement is made in good faith in compliance with ~~[R590-254-10]~~ Subsection (1).

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this rule, becomes aware of facts that might have affected ~~[his or her]~~ a report, the commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

**R590-254-11. Communication of Internal Control Related Matters Noted in an Audit.**

(1) In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit.

(a) Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness, as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report discussed in Subsection R590-254-4(1), in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements.

(b) If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material

weaknesses, if the actions are not described in the accountant's communication.

**R590-254-12. Accountant's Letter of Qualifications.**

(1) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

~~[(1)]~~ (a) that the accountant is independent with respect to the insurer and conforms to the standards of ~~[his or her]~~ the profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Utah Division of Occupational and Professional Licensing for Accountancy, or similar code;

~~[(2)(a)]~~ (b) the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant~~[-]~~;

~~[(b) Nothing within this rule shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;~~

~~\_\_\_\_\_~~ (3) ~~(c)~~ that the accountant understands the annual audited financial report and ~~[his]~~ that the accountant's opinion thereon will be filed in compliance with this rule and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

~~[(4)]~~ (d) that the accountant consents to the requirements of Section R590-254-13 of this rule and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in Section R590-254-13;

~~[(5)]~~ (e) a representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

~~[(6)]~~ (f) a representation that the accountant is in compliance with the requirements of Section R590-254-7 ~~[of this rule]~~.

(2) Nothing within this rule shall be construed as prohibiting the accountant from utilizing staff as appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

**R590-254-13. Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers.**

(1)(a) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer.

(b) Workpapers~~[s]~~ may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of ~~[his or her]~~ an audit of the financial statements of an insurer and which support the accountant's opinion.

(2)(a) ~~[Every]~~ Each insurer required to file an audited financial report pursuant to this rule, shall require the accountant to make available for review by insurance department examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner.



(b) The insurer shall require that the accountant retain the audit workpapers and communications until the insurance department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(3)(a) In the conduct of the aforementioned periodic review by the insurance department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department.

(b) Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

**R590-254-14. Requirements for Audit Committees.**

(1) This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(2) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this rule. Each accountant shall report directly to the audit committee.

(3) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to ~~R590-254-14~~ Subsection (6) and Subsection R590-254-3(3).

(4) In order to be considered independent for purposes of this section, a member of the audit committee:

(a) may not, other than in ~~his or her~~ the capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity; or

(b) if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(5) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(6) To exercise the election of the controlling person to designate the audit committee for purposes of this rule, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers.

(a) Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election.

(b) The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change.

(c) The election shall remain in effect for perpetuity, until rescinded.

(7)(a) The audit committee shall require the accountant that performs for an insurer any audit required by this rule to timely report

to the audit committee in accordance with the requirements of SAS 61, Communication with Audit Committees, or its replacement, including:

(i) all significant accounting policies and material permitted practices;

(ii) all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(iii) other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance holding company system, the reports required by ~~R590-254-14~~ Subsection (7)(a) may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(8) The proportion of independent audit committee members shall meet or exceed the following criteria:

TABLE	
Prior Calendar Year Direct Written and Assumed Premiums	
\$0 - \$300,000,000	No minimum Requirements. See also Note A and B.
Over \$300,000,000 - \$500,000,000	Majority (50% or more) of members shall be independent. See also Note A and B.
Over \$500,000,000	Super majority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in an RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(9)(a) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may ~~make application~~ apply to the commissioner for a waiver from the ~~R590-254-14~~ requirements of Section R590-254-14 based upon hardship.

(b) The insurer shall file, with its annual statement filing, the approval for relief from Section R590-254-14 with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

**R590-254-15. Internal Audit Function Requirements.**

(1) An insurer is exempt from the requirements of this section if:

(a) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$500,000,000; and

(b) if the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000.

(2)(a) The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls.

(b) The assurance required by Subsection (2)(a) shall be provided by:

(i) performing general and specific audits, reviews, and tests; and

(ii) employing other techniques deemed necessary to:

(A) protect assets;

(B) evaluate control, effectiveness, and efficiency; and

(C) evaluate compliance with policies and regulations.

(3) The internal audit function must be organizationally independent.

(4) The internal audit function may not defer ultimate judgment on audit matters to others.

(5) An individual shall be appointed to head the internal audit function with direct and unrestricted access to the board of directors.

(6) Nothing in Section R590-254-15 precludes dual-reporting relationships.

(7) The head of the internal audit function shall report to the audit committee at least annually on:

(a) the periodic audit plan;

(b) factors that may adversely impact the internal audit function's independence or effectiveness;

(c) material findings from completed audits; and

(d) the appropriateness of corrective actions implemented by management as a result of audit findings.

(8) If an insurer is a member of an insurance holding company system or is included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in Section R590-254-15 at:

(a) the ultimate controlling parent level;

(b) an intermediate holding company level; or

(c) the individual legal entity level.

**R590-254-16. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents.**

(1) No director or officer of an insurer shall, directly or indirectly:

(a) make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this rule; or

(b) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this rule.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this rule if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of ~~[R590-254-15]~~ Subsection (2), actions that, "if successful, could result in rendering the insurer's financial

statements materially misleading" include ~~[-but are not limited to,]~~ actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant:

(a) to issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;

(b) not to perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards;

(c) not to withdraw an issued report; or

(d) not to communicate matters to an insurer's audit committee.

**R590-254-~~16~~17. Management's Report of Internal Control over Financial Reporting.**

(1)(a) ~~[Every]~~ Each insurer required to file an audited financial report pursuant to this rule that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer's or "group of insurers," "internal control" over financial reporting, as these terms are defined in Section R590-254-3.

(b) The report shall be filed with the commissioner along with the Communication of Internal Control Related Matters Noted in an audit described under Section R590-254-11.

(c) Management's Report of Internal Control over Financial Reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in ~~[R590-254-16]~~ Subsection (1)(a), the commissioner may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in Section 31A-27a-207 and the NAIC Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

(3)(a) An insurer or a group of insurers that is:

(i) directly subject to Section 404;

(ii) part of a holding company system whose parent is directly subject to Section 404;

(iii) not directly subject to Section 404 but is a SOX Compliant Entity; or

(iv) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity;

(b) may file its or its parent's Section 404 Report and an addendum in satisfaction of ~~[R590-254-16]~~ Subsection (1), provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements, as included in Subsections R590-254-5(2)(b) through R590-254-5(2)(g), were included in the scope of the Section 404 Report.

(i) The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements, as included in Subsections R590-254-5(2)(b) through R590-254-5(2)(g), excluded from the Section 404 Report.

(ii) If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those

internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file:

- (A) a Section R590-254-[46]17 report[;]; or
- (B) the Section 404 Report[;] and

~~\_\_\_\_\_~~(4) a Section R590-254-[46]17 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's Report of Internal Control over Financial Reporting shall include:

(a) a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(d) a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e)(4) disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding[-];

~~[(ii) Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;~~

~~\_\_\_\_\_~~(f) a statement regarding the inherent limitations of internal control systems; and

(g) signatures of the chief executive officer and the chief financial officer, or equivalent position[title].

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in [R590-254-16]Subsection (4), are made.

(a) Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities.

(b) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost[-]effective manner and, as such, may include assembly of or reference to existing documentation.

(c) Management's Report on Internal Control over Financial Reporting, required by [R590-254-16]Subsection (1), and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the department.

(d) Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting.

**R590-254-[47]18. Exemptions and Implementation Dates.**

(1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this rule if the commissioner finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer.

(a) An exemption may be granted at any time and from time to time for a specified period or periods.

(b) Within 10 days from a denial of an insurer's written request for an exemption from this rule, the insurer may request in writing a hearing on its application for an exemption.

(c) The hearing shall be held in accordance with the rules of the department pertaining to administrative hearing procedures.

~~(2) [Domestic insurers retaining a certified public accountant on the effective date of this rule who qualify as independent shall comply with this rule for the year ending December 31, 2010 and each year thereafter unless the commissioner permits otherwise.~~

~~(3) Domestic insurers not retaining a certified public accountant on the effective date of this rule who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:~~

~~(a) as of December 31, 2010, file with the commissioner an audited financial report; and~~

~~(b) for the year ending December 31, 2010 and each year thereafter, such insurers shall file with the commissioner all reports and communication required by this rule.~~

~~(4) Foreign insurers shall comply with this rule[for the year ending December 31, 2010 and each year thereafter, unless the commissioner permits otherwise].~~

~~[(5) The requirements of R590-254-7(4) shall be in effect for audits of the year beginning January 1, 2010 and thereafter.~~

~~(6) The requirements of R590-254-14 are to be in effect January 1, 2010.~~

~~\_\_\_\_\_~~(3)(a) An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium, shall have one year following the year the threshold is exceeded[but not earlier than January 1, 2010,] to comply with the independence requirements.

(b) An insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

~~[(7) The requirements of R590-254-16 except for R590-254-14 covered above, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter.~~

~~\_\_\_\_\_~~(4)(a) An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold, and subsequently becomes subject to the reporting requirements, shall have two years following the year the threshold is exceeded[but not earlier than December 31, 2010,] to file a report.

(b) An insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

**R590-254-[48]19. Canadian and British Companies.**

(1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

NOTICES OF PROPOSED RULES

(2) For such insurers, the letter required in Subsection R590-254-6(3) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to Section R590-254-4 and shall affirm that the opinion expressed is in conformity with those requirements.

**R590-254-~~19~~20. Penalties.**

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-254-~~20~~21. Enforcement Date.**

The commissioner will begin enforcing this rule on the effective date of the rule.

**R590-254-~~21~~22. Severability.**

~~[If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~If any provision of this rule, Rule R590-254, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

**KEY: insurance company financial reporting**

**Date of Enactment or Last Substantive Amendment:** ~~2021~~July 8, 2009

**Notice of Continuation:** June 26, 2019

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-2-203; 31A-5-412

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R746-8-301	Filing No. 53438

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Yvonne Hogle	801-530-6709	yhogle@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R746-8-301. Calculation and Application of UUSF Surcharge
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule amendment is to decrease the monthly Utah Universal Public Telecommunications Service Support Fund (UUSF) remittal amount from \$0.54 to \$0.36 per access line to ensure the UUSF remains at a manageable level to meet the fund's statutory obligations and does not accrue unreasonable balances beyond those obligations. The Public Service Commission (PSC) expresses appreciation to the Division of Public Utilities in the Department of Commerce for providing the analysis necessary to consider and implement this rule amendment.
<b>4. Summary of the new rule or change:</b>
This amendment decreases the monthly UUSF surcharge from \$0.54 to \$0.36 per access line. The amendment makes three textual edits, revising the rule's three references to the \$0.54 surcharge to reflect the new \$0.36 surcharge. As explained in the purpose box above, the decrease in the surcharge is necessary to ensure the UUSF can meet statutory obligations while remaining within policy norms. The amendment also makes two nonsubstantive corrections to a subheading and to an internal cross-reference. Unless public comment convinces the PSC to alter its plans, the PSC anticipates making this rule amendment effective on July 1, 2021.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This surcharge change will reduce the balance accruing in the UUSF, helping maintain the performance objective set by the Utah Legislature to maintain at least three months' worth of fund distributions without accruing an unreasonable balance above that amount. The only other impact on the state budget is the impact on state offices that are telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.
<b>B) Local governments:</b>
The only impact on local governments will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

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

The only impact on small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

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

The only impact on non-small businesses will be in their capacity as telecommunications customers. Because the surcharge is passed on by providers to customers, every telecommunications customer will experience a reduction of \$0.18 in their monthly bill.

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

Affected--All customers who are billed for an access line presently pay \$0.54 per month per access line for the UUSF surcharge. Under the new \$0.36 rate, all such customers will pay \$0.18 less per month per access line. Presently, an average of 3,404,736.67 access lines are assessed the surcharge every month. At the current rate, this results in approximately \$1,838,557.80 being collected from such customers to fund the UUSF on a monthly basis. Under the new rate, these customers will cumulatively pay approximately \$1,225,705.20 per month, generating approximately \$14,708,462.40 per year and \$1,225,705.20 per month as compared to the current rate to fund the UUSF. While the proposed reduction in the rate will result in a reduction of \$612,852.60 per month, or \$7,354,231.21 per year, in the balance of the UUSF, as compared to the current rate to fund the UUSF, this has no fiscal impact on any group. No group will experience a fiscal "benefit" or "savings" because the funds collected, or funds saved, are specifically earmarked for UUSF spending. The PSC presently does not have access to the commercially sensitive information that would be necessary to determine what portion of the access lines paying the surcharge are small businesses, larger businesses, or individuals. However, this decrease should affect all customers and customer classes equally on a per access line basis.

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

All telecommunications customers currently paying this surcharge will experience a reduction of \$0.18 in their monthly bill.

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

**Regulatory Impact Table**

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$7,354,231.21	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$7,354,231.21</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0 (see Box 5E: Other Persons above)</b>	<b>\$0</b>	<b>\$0</b>

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

PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

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

All telecommunications customers in Utah will experience a reduction of \$0.18 in their monthly telecommunications bill. This will better align the Utah Universal Service Fund with the performance goal of maintaining a sufficient balance in the fund to pay three months' worth of disbursements, without accruing an unnecessary balance above that threshold. I appreciate the detailed analysis done by the Division of Public Utilities in the Department of Commerce that provided the PSC the necessary information to consider and implement this surcharge reduction.

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

Thad LeVar, Chair

**Citation Information**

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

Section 54-3-1	Section 54-4-1	Section 54-8b-10
Section 54-8b-15		

**Public Notice Information**

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

**A) Comments will be accepted until:** 06/14/2021

**10. This rule change MAY become effective on:** 06/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	04/28/2021
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**R746. Public Service Commission, Administration.  
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).**

**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 [~~\$0.54~~]\$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) Except as provided in Subsection R746-8-301(1)(e)(ii):

(A) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission [~~\$0.54~~]\$0.36 per month per access line for such service, such as new access lines or connections, or recharges for existing lines or connections, purchased on or after January 1, 2018.

(B) 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).

(C) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.

(ii) The charge described in Subsection R746-8-301(1)(e)(ii)(a) does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Subsection 69-2-405(2)(b). [~~iii~~ ~~\$0.54~~](iii) \$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;

(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 Subsection 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).

**KEY:** Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology  
**Date of Enactment or Last Substantive Amendment:** 2021 [November 23, 2020]  
**Authorizing, and Implemented or Interpreted Law:** 54-3-1; 54-4-1; 54-8b-15; 54-8b-10

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R986-700	Filing No. 53464

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Employment Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R986-700. Child Care Assistance
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule change is to implement changes to Child Care assistance eligibility in accordance with H.B. 277 passed in the 2021 General Session and other Department of Workforce Services (DWS) policy changes made to the Child Care assistance program.
<b>4. Summary of the new rule or change:</b>
During the 2021 General Session, the Legislature passed H.B. 277, Child Care Eligibility Amendments, which directed DWS, Office of Child Care (OCC) to make rule changes to temporarily pay Child Care assistance based on enrollment and waive copayment fees. Additionally, income in-kind is no longer counted as income to the household.
The following OCC policy changes are also being implemented: 1) Allow foster care families to be eligible for Child Care assistance based on income and work requirements.

- 2) Exempt the work requirements for parents enrolled in a formal course of study to obtain a High School diploma or GED.
- 3) Extend the Homeless Child Care assistance program to 12 months to align with federal Child Care and Development Fund (CCDF) regulations regarding the minimum length of time an approved household is eligible for subsidy payments.

This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This proposed rule change is not expected to have any fiscal impact on state government revenues or expenditures because any costs will be paid with funds granted to the state through the federal CCDF. This rule change is not expected to have any fiscal impact on state budget revenues or expenditures that were not already accounted for by H.B. 277 (2021).
<b>B) Local governments:</b>
This proposed rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There are potentially 1,646 small businesses providing child care services (North American Industry Classification System (NAICS) 624410) that could accept subsidy payments in Utah. Subsidy benefits are paid directly to providers for the cost of child care. It is expected that this rule change will result in additional families being eligible for subsidy, which could result in an increase in the enrollment of families in child care. The changes related to H.B. 277 (2021) will stabilize the subsidy payments issued to child care providers without regard to attendance changes on a month-to-month basis, as well as a larger issuance amount that includes CCDF covering the cost of the copayment. The changes related to H.B. 277 (2021) will allow providers to receive up to \$12,000,000 annually in copayments without collecting from households directly. It is estimated that subsidy recipients will receive an additional \$5,450,000 annually for the policy changes made in addition to those required by H.B. 277 (2021).
Providers include both small businesses and non-small businesses. These businesses will receive a portion of the additional annual subsidy payments, which will result in increased revenues each year. There are too many variables to precisely separate the benefits between small and non-small businesses. In the chart below, the benefits

have been listed as benefits to small businesses, since the majority of subsidy payments are made to small-business providers. However, some benefit will go to non-small businesses.

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

There are four non-small businesses providing child care services (NAICS 624410) that could accept subsidy payments in Utah. Subsidy benefits are paid directly to providers for the cost of child care. It is expected that the policy changes will result in additional families being eligible for subsidy, which could result in an increase in the enrollment of families in child care. The changes related to H.B. 277 (2021) will stabilize the subsidy payments issued to child care providers without regard to attendance changes on a month-to-month basis, as well as a larger issuance amount that includes CCDF covering the cost of the copayment. The changes related to H.B. 277 (2021) will allow providers to receive up to \$12,000,000 annually in copayments without collecting from households directly. It is estimated that subsidy recipients will receive an additional \$5,450,000 annually for the policy changes made in addition to those required by H.B. 277 (2021).

Providers include both small businesses and non-small businesses. These businesses will receive a portion of the additional annual subsidy payments, which will result in increased revenues each year. There are too many variables to precisely separate the benefits between small and non-small businesses. In the chart below, the benefits have been listed as benefits to small businesses, since the majority of subsidy payments are made to small-business providers. However, some benefit will go to non-small businesses.

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

It is expected that the rule change will result in additional families being eligible for child care subsidy benefits. In the chart below, the benefits have been listed as benefits to small businesses, since payments are made directly to providers, rather than directly to households. However, households will receive the benefit of the child care services paid for by the subsidy payments.

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

The proposed rule change is not expected to cause any compliance costs for affected persons including those on or those newly eligible for subsidy payments.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$17,450,000	\$17,450,000
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$17,450,000</b>	<b>\$17,450,000</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$17,450,000</b>	<b>\$17,450,000</b>

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

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this fiscal analysis.

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

After a thorough analysis, it was determined that these proposed rule changes will result in a fiscal benefit to businesses.

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

Casey Cameron, Executive Director

**Citation Information**

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

Section 35A-3-203	Section 35A-3-310	Section 53F-5-210
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	6/14/2021
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<b>10. This rule change MAY become effective on:</b>	7/1/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	04/29/2021
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**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-701.1. Definitions and Acronyms.**

(1) The terms used in this rule are defined in Sections 35A-3-102[7] and 35A-3-201.

(2) In addition:

- (a) "ALJ" means Administrative Law Judge.
- (b) "Applicant" means any person requesting CC.

(c) "Approved Provider" means a provider who meets the requirements in Section R986-700-726.

([e]d) "CC" means Child Care assistance or subsidy.

(e) "CCDF" means Child Care and Development Fund.

([d]f) "Certification period" as it relates to a recipient of CC is the period of time for which CC is presumptively approved.

([e]g) "Client" means an applicant for, or recipient of, CC.

(h) "Child" includes children and vice versa.

([f]i) "Child Care Provider" or "Provider" means any person, individual or corporation, institution or organization that provides child care services.

~~(1) "Approved Provider" means a provider who meets the requirements in R986-700-726.~~

([g]j) "Department" means Department of Workforce Services.

([h]k) "DWS" means Department of Workforce Services.

([i]l) "Employment plan" is a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

([j]m) "FEP" means Family Employment Program.

([k]n) "FEPTP" means Family Employment Program Two Parent.

([l]o) "FFN" means Family, Friend and Neighbor provider.

([m]p) "Financial assistance" means payments, other than for SNAP, CC, or medical care, to an eligible individual or household which is intended to provide for the individual's or household's basic needs.

([n]q) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued.

~~(o) "Licensed center provider" means a non-hourly, licensed child care center that is regulated through CCL.~~

([p]r) "IPV" means intentional program violation.

(s) "Licensed-center provider" means a non-hourly, licensed child care center that is regulated through CCL.

([q]t) "Local office" means the Employment Center which serves the geographical area in which the client resides.

([r]u) "Minor child" means[

]a child under the age of 18, or under 19 years of age and in school full time and expected to complete ~~the~~his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

([s]v) "OCC" means Department of Workforce Services, Office of Child Care.

([t]w) "ORS" means Office of Recovery Service, Utah State Department of Human Services.

([u]x) "Parent" ~~includes~~means all natural, adoptive, and stepparents. "Parent" includes "parents" and vice versa.

([v]y) "Recipient" means any individual receiving CC.

([w]z) Review or recertification. Clients who are found eligible for CC are given a date for review or recertification at which point continuing eligibility is determined.

([x]aa) "SSA" means Social Security Administration.

([y]bb) "SSI" means Supplemental Security Insurance.

([z]cc) "TCA" means Transitional Cash Assistance.

([aa]dd) "VA" means US Department of Veteran Affairs.

**R986-700-702. General Provisions.**

(1) Child Care assistance 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 Section R986-700-703 may be authorized in accordance with this rule.

(2) Child Care assistance is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) a parent[s], including a foster care parent who receives foster care reimbursement from the Utah Department of Human Services, Division of Family and Child Care Services (DCFS), or its successor;

(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 years; and

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(b) children up to the age of 18 years if the child;

(i) meets the requirements of Section R986-700-717; or

(ii) is under court supervision.

(5) Clients who qualify for CC 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 Section 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) Child Care assistance 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) Child Care assistance will not be paid for the care of a client's own child during the time the client is working as a caregiver in the same residential setting where care is being provided. Child Care assistance will not be approved where the client is working for an approved child care center and regularly watches the client's own children at the center or has an ownership interest in the child care center. Child Care assistance will not be paid for the care of a client's own child 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 is liable for injuries that may occur when a child is placed in child care even if the parent receives CC 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 each necessary review form to the local office. Each requested verification must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in Subsection R986-700-710(3), the Department may 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 Rule 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 must verify the client's identity. Benefits will not be denied or withheld if a client chooses not to provide a Social Security Number if the client is otherwise eligible. A client is not required to provide a Social Security Number. Social Security Numbers that are supplied will be verified. If a Social Security Number is provided but is not valid, the Department will request further verification to confirm the individual's identity.

(4) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(5) A client is responsible to pay all costs of care charged by the provider. If the CC payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(6) 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 Subsection R986-700-710(3);

(b) when the client no longer needs child care;

(c) a change of address;

(d) a child receiving child care moves out of the home;

(e) a change in the child care provider, including when care is provided at no cost;

(f) when the child has stopped attending child care; and when the child has not attended child care for at least eight hours during the month for which CC was authorized;

(g) when the child is no longer enrolled in child care.

(7) The following are allowable temporary changes:

(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;

(v) a client who has been approved for ongoing Employment Support Child Care assistance at application or recertification and has a permanent loss of employment may remain eligible through the remainder of that certification period; and

(vi) a child has a continued need for child care and remains enrolled in child care with the current provider.

(b) A client who experiences an allowable temporary change after having been approved for ongoing Employment Support Child Care assistance may continue to receive CC at the same level for the remainder of the certification period.

(8) 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 participation 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.

(8)9 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 Department may find that the client and provider may be jointly liable, or responsible, for the overpayment. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9)10 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 CC payment[~~child care subsidy~~] was issued;

(c) the CC payment[~~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)11 If a child is enrolled with a child care provider[~~client uses a child care provider at least eight hours~~] in a[~~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 ~~or~~ and one of the following exceptions also applies:

(a) The child is no longer enrolled with the initial provider, 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 ~~the client's~~ [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.

(e) The Department determines a change in child care providers is necessary due to circumstances related to a pandemic, natural disaster, or other state of emergency.

(f) The parent reported a change in providers prior to monthly issuance for the next month but the change was not processed until after monthly issuance.

#### **R986-700-707. Copayment.**

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent's(=) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for CC[~~child care assistance~~].

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional CC[~~child care~~] and FEP CC as provided in [~~rule~~]Section R986-700-708; or

(c) other households in accordance with CCDF guidance.

#### **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) Employment Support CC is available in the following circumstances:

(a) In a single-parent household, the single parent must be the custodial parent of the eligible child and must be:

(i) employed an average of at least 15 hours per week;

(ii) employed to the single parent's full capacity if the single parent has a disability that has been verified and confirmed by the Department;

(iii) enrolled and participating in either an in-person, formal course of study or online courses with a set class schedule to obtain a high school diploma or equivalent General Education Diploma (GED); or

(iv) employed an average of at least 15 hours per week and participating in education and training activities as defined in Section R986-700-711.

(b) Two-parent households.

(i) In a two-parent household, the parents must be:

(A) employed, with one parent employed an average of at least 30 hours per week and the second parent employed an average of at least 15 hours per week;

(B) employed to both parents' full capacities if one or both parents has a disability that has been verified and confirmed by the Department;

(C) employed, with one parent employed an average of at least 30 hours per week and the second parent employed an average of at least 15 hours per week and participating in education and training activities as defined in Section R986-700-711; or

(D) enrolled and participating in an in-person, formal course of study or online courses with a set class schedule to obtain a high school diploma or GED.

(1) Employment Support CC may be provided when both parents are enrolled and participating in a formal course of study to obtain a high school diploma or GED.

(II) Employment Support CC may be provided when one parent is working and the second parent is participating in the formal course of study to obtain a high school diploma or GED.

(ii) Employment Support CC shall be provided to two-parent households only when neither the parents' work schedules nor course schedules can be changed to provide care for the parents' child.

(c) Self-employed parents.

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(i) Self-employed parents may receive ES CC if they meet the minimum work requirements and earn wages or profit from self-employment at a rate equal to at least minimum wage, calculated by dividing the wage or profit earned through self-employment by the number of hours worked in the timeframe used to determine eligibility.

(ii) A self-employed parent shall submit business records for the most recent three-month period of self-employment to establish that the self-employed parent is earning at least minimum wage.

(iii) An exception to the requirement that a self-employed parent earn at least minimum wage may apply if the self-employed parent has a barrier to other types of employment.

(3) Employment Support CC shall be provided to cover the hours the parent needs child care for employment or approved educational or training activities.

(4) Disability.

(a) A household may verify a disability under this section by establishing:

(i) the disabled parent has an inability to earn a minimum of \$500 per month;

(ii) the disabled parent has a temporary physical, emotional, or mental incapacity expected to last 30 days or longer that has been verified by the household by submitting the following, and the incapacity is confirmed by the Department:

(A) evidence that the disabled parent receives disability benefits from SSA if it proves the incapacity prevents the parent from providing care for the parent's child;

(B) a determination by VA that the parent is 100% disabled if it proves the incapacity prevents the parent from providing care for the parent's child; or

(C) a written statement from a licensed:

(I) medical doctor;

(II) doctor of osteopathy;

(III) Mental Health Therapist as defined in Section 58-60-102;

(IV) Advanced Practice Registered Nurse; or

(V) Physician's Assistant; and

(iii) in a two-parent household, the disabled parent is unable to provide care for the child while the other parent is employed.

(b) A parent who is employed and earning more than \$500 per month or participating in educational or training activities will not be considered disabled under this section unless the Department confirms the disability.

(5) As used in this section the term "employment" does not include:

(a) Americorps\* Vista, Job Corps and other similar training activities; or

(b) Work Study 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.]~~

**R986-700-710. Income and Asset Limits for ES CC.**

(1) Rule R986-200 is used to determine the following:

(a) [w]Who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. [In some circumstances, d]Determining household composition for a ES CC household may be [is] different from determining household composition for a FEP or FEPTP household. Employment Support CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible.

(i) A specified relative may not opt out of the household assistance unit when determining eligibility for CC. [The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.]

(ii) Recipients of SSI benefits are included in the household assistance unit.

(iii) Foster care parents may not opt out of the household assistance unit when determining eligibility for CC. The foster care parent's children and foster care children are included in the household size.

(b) ~~What~~ What is counted as income except:

(i) the earned income of a ~~minor~~ child who is not a parent is not counted;

(ii) child support ~~including in kind child support payments~~ is counted as unearned income of the child, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; ~~and~~

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit;

(iv) if both parents are living in the household, the income of both parents is counted;

(v) the income of each specified relative in the household must be counted; and

(vi) the income of each foster parent in the household must be counted.

(c) ~~How~~ How to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in Subsection R986-700-710 ~~paragraph (2)~~ ~~above~~, must be at, or below, a percentage of the state median income as determined by the Department. The Department will ~~make~~ adjust ~~ments to~~ the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at ~~each~~ ~~all~~ local Department office[s].

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the amount the provider reports to the Department as the charge for the child. For example: The provider's monthly charge is \$800 per month. The non-applicant parent pays \$300 directly to the provider. The provider should report the charge of \$500, as that is the portion the applicant parent is responsible to pay. The provider charge of \$500 will be used in the benefit calculation when determining the amount of subsidy. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

**R986-700-711. Employment Support CC to Support Education and Training Activities.**

(1) Child Care assistance may be provided when the client ~~(s)~~ ] is engaged in education or training and employment, provided the client ~~(s)~~ ] meets the work requirements under Section R986-700-709 ~~(s)~~ ].

(2) The work requirement may be waived in accordance with Subsection R986-700-709(2)(a)(iii) or Subsection R986-700-709(2)(b)(i)(C) for a client who is unemployed and is enrolled in a formal course of study to obtain a high school diploma or equivalent (GED).

(a) The 24 calendar month time limit in this section does not apply to high school or GED completion.

(b) The client must provide verification of satisfactory progress to receive continued ES CC beyond 12 months.

(3) The education or training is limited to courses that directly relate to improving the parent ~~(s)~~'s employment skills.

(~~3~~)4) Employment Support CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when ~~(a)~~ the client is meeting the work requirements under Section R986-700-709 and is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent;

(ii) adult basic education ~~and~~; or

(iii) learning English as a second language.

(b) Months during which the client received FEP CC ~~child care~~ while receiving education and training do not count toward the 24-month time limit.

(c) Child Care assistance can ~~not~~ ordinarily be used to support short ~~term~~ workshops unless they are required or encouraged by the employer. If a short ~~term~~ workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 ~~month~~ time limit.

(~~4~~)5) Education or training can only be approved if the client ~~parent~~ can realistically complete the course of study within 24 months and demonstrates progress in the program.

(~~5~~)6) Any CC ~~child care assistance~~ payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(~~6~~)7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(8) Only the last two years of a four-year program may be supported.

(~~7~~)9) Child Care assistance is not allowed to support education or training if the client ~~parent~~ already has a bachelor's degree.

(~~8~~)10) Child Care assistance cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

**R986-700-712. Child Care assistance for Certain Homeless Families.**

(1) Child Care assistance can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of the ~~if~~ family's homeless state. Local offices will provide a list of recognized homeless agencies in the local office area.

(b) ~~The family must show a need for child care to resolve an emergency crisis.~~

(~~e~~)The family must meet ~~all other~~ ES CC relationship and income eligibility criteria. Only the minimum work requirements are waived.

(2) Child Care assistance for homeless families is ~~only available~~ provided for up to ~~three~~ 12 months ~~in any 12 month period~~. ~~When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.~~

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(3) Qualifying families may use CC ~~[child care assistance]~~ for any activity including, but not limited to, employment, job search, training, shelter search, or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

**R986-700-717. Child Care Assistance for Children With Disabilities or Special Needs.**

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires ~~;~~:

- (a) an increase in the amount of care or supervision ~~[and];~~ or
- (b) special care needs, which include ~~[s but is not limited to]~~ the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in Subsection ~~[rule]~~ R986-700-709 ~~(3)(4)(b)a(ii)(C)~~ or one of the following documenting the child's disability and special child care needs ~~;~~:

- (a) Social Security Administration showing that the child is a SSI recipient ~~;~~;
- (b) Division of Services for People with Disabilities ~~;~~;
- (c) Division of Mental Health ~~;~~;
- (d) State Office of Education ~~;~~;
- (e) Baby Watch, Early Intervention Program ~~;~~;
- (f) by submitting a written statement from:
  - (i) a licensed medical doctor;
  - (ii) a licensed Advanced Practice Registered Nurse;
  - (iii) a licensed Physician's Assistant; or
  - (iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following ~~;~~:

- (a) the child's name ~~;~~;
- (b) a description of the child's disability ~~;~~;
- (c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for ~~[child care]~~ CC under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each ~~[child care]~~ CC category is available at any Department office.

**R986-700-722. Ineligible Provider.**

(1) A provider is not eligible for any CC payment if the provider is:

- (a) an undocumented alien; or
- (b) under age 18.

(2) A provider who has been disqualified pursuant to Sections R~~994~~986-700-733 and R~~994~~986-700-734 is not eligible for any CC payment. The disqualification will remain in effect until the disqualification period has run, any related overpayment has been satisfied, and the provider is otherwise eligible.

**R986-700-727. Approved Provider Responsibilities.**

(1) The provider shall assume the responsibility to collect any copayment and any other fee for child care services rendered. Neither

the Department nor the state assumes responsibility for private payment to a provider.

(2) Records. The provider shall keep an accurate record of CC client time and attendance.

(a) A complete time and attendance record for each CC client must be kept for at least three years.

(b) If a provider is not able to produce an accurate time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(c) "Accurate record" means a record that:

- (i) was made at or near the time of the event;
- (ii) was made by, or from information transmitted by, someone with knowledge; and
- (iii) neither the source of information nor the method or circumstances of preparation of the record indicate a lack of trustworthiness.

(d) To receive a CC payment for an eligible household, the provider must contact the Department to report the children in care and their start date in care.

(3) Provider Portal.

(a) The provider has an ongoing responsibility to access the Provider Portal located at the Department website to:

- (i) submit ongoing, monthly certification;
- (ii) submit and manage bank account information, including

to:

- (A) read and agree to the Financial Terms and Conditions contained in the Provider Portal;
- (iii) view CC payment information; and
- (iv) manage Provider Portal user access to ensure only a user with authority to make changes can do so.

(b) The provider is liable for any change made and information provided through the Provider Portal.

(4) Change reporting. Upon knowledge of the following changes, the provider shall report within ten calendar days, or by the 25th of the month, whichever is sooner:

- (a) a reduced or part-time rate for an individual child in care, as applicable;
- (b) any rate change or other update that occurs for each child once a rate has been submitted in the Provider P[ortal];
- (c) a child is no longer enrolled in child care;
- (d) a child is not expected to be enrolled in child care the following month;
- (e) that the provider received a greater CC payment amount than what was charged to the client for the month of service;
- (f) that a child has never attended or attended less than eight hours in the first benefit month a CC payment was issued ~~[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];~~ ~~[or]~~
- (g) the child is enrolled but has not attended within the last 90 days; or
- (h) a change in financial institution account information for direct deposit.

(5) Certification.

(a) A licensed provider shall certify between the 25th of each month and the last day of the month, in a manner specified by the Department, the following:

- (i) the provider has reviewed each child's enrollment and attendance; and

(ii) the provider has reported any reportable change in each child's enrollment or attendance, including any future change known or expected by the provider.

(b) The provider shall certify that the provider agrees to the terms and conditions specified in the most current Provider Guide.

(c) If a provider fails to certify by the last day of the month, CC payment may be withheld until certification is completed pursuant to Section R986-700-729. The Department may also increase monitoring or take other remedial action pursuant to OCC policy to ensure future compliance.

(6) A provider who is assessed an overpayment or IPV pursuant to Sections R986-700-731 or R986-700-732 may be subject to increased monitoring or other remedial action pursuant to OCC policy to ensure future compliance with program rules.

#### **R986-700-728. Appropriate use of CC.**

(1) Child Care assistance is to support an eligible client's monthly employment and any allowed training activity and allows for temporary absences and unforeseen circumstances.

(2) A provider must provide at least eight hours of care during the initial benefit month for which a CC payment was issued~~[month]~~ to be eligible for CC payment.

(a) A provider has the burden of proof to demonstrate the provider provided care to any CC client for which it receives CC payment.

(b) Pursuant to Subsection R986-700-727(2), if a provider is not able to produce a time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(3) Inappropriate use of a CC payment includes:

(a) applying the CC payment to a:

(i) copayment~~[?]~~;

(ii) registration fee~~[?]~~;

(iii) late fee~~[?]~~;

(iv) field trip~~[?]~~; or

(v) client's out of pocket expenses; or

(b) carrying forward the CC payment for future months of service.

(4) An excess CC payment cannot be used to cover an outstanding balance, a copayment, a registration fee, a late fee, a field trip, or future services. If excess funds are issued for a month of service, the excess funds must be returned to the Department. The CC payment for the following month may be reduced to offset the over-issuance.

(5) A provider who receives a CC payment when the child was not enrolled~~[for services which were not provided]~~ is responsible for repayment of the resulting overpayment under Title 35A, Chapter 3, Part 6, Administrative Determination of Overpayment Act, and Sections R986-700-731 and R986-700-731.1, and there may be a disqualification period pursuant to Sections R986-700-733 and R986-700-734, and potential criminal prosecution under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

(6) A provider who provides services for any part of a month and then terminates services with the client or for a child during the month shall reimburse the Department for the days when care was not provided.

(a) 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.

(7) The Department will issue a IRS Form 1099 annually where applicable to each eligible provider who received a CC payment during the year.

(8) A provider who applies CC funds inappropriately may be subject to an overpayment and possible disqualification pursuant to Sections R986-700-731, R986-700-733, and R986-700-734.

#### **R986-700-731. Overpayments.**

(1) An overpayment occurs when:

(a) a client or provider receives CC for which the client was not eligible;

(b) a provider receives a CC payment but does not provide care for at least eight hours during the initial benefit month of CC;

(c) a provider receives a CC payment when a child is no longer enrolled;

(d) a provider fails to report or does not report timely that an enrolled child has not attended in 90 days, which may result in subsequent month CC payments being issued that may be subject to an overpayment if there is no longer a need for CC;

(e) a provider receives a greater CC payment amount than the client is charged for the month of service; or

(f) a provider applies CC to nonallowable costs pursuant to Section R986-700-728.

(2) Pursuant to Section 35A-3-603 of the Administrative Determination of Overpayment Act, any provider, client, or other person who receives an overpayment shall return the overpaid funds to the Department, regardless of fault. The client and provider shall be jointly and severally responsible for repayment of any overpayment except when:

(a) an overpayment is caused by an ~~[Intentional Program Violation - (IPV)]~~ on the part of solely the client or solely the provider; or

(b) a provider receives a CC payment, provides at least eight hours of child care during the month, and provides an attendance record to verify the provision of care, unless the provider terminated services during the month as described in Subsection R986-700-728(6).

(3) A provider who is assessed an overpayment pursuant to this section may be subject to increased monitoring or other remedial action pursuant to Subsection R986-700-727(6).

#### **R986-700-734. Approved Provider Disqualification.**

(1) When determining whether to disqualify a provider from approved provider status the Department may consider:

(a) the seriousness of offense or offenses;

(b) the extent of offense or offenses;

(c) a history of adjudicated overpayments or IPV's;

(d) previous imposition of increased monitoring or remedial action by the Department;

(e) failure to comply with monitoring or remedial action by the Department;

(f) the extent of notice, education, or warning given to the provider by the Department pertaining to the offense or offenses for which the provider is being considered for disqualification;

(g) the adequacy of assurances by the provider that the provider will comply prospectively with each Department and OCC requirement related to the offense; and

(h) whether a lesser sanction will be sufficient to remedy the problem.

(2) Disqualification period.

(a) The first disqualification assessed against a provider shall be 12 months.

(b) The second disqualification assessed against a provider shall be 24 months.

(c) The third disqualification assessed against a provider shall be a lifetime disqualification.

(3) A provider that has been disqualified pursuant to Sections R986-700-733 and R986-700-734:

(a) may not receive an enhanced subsidy grant (ESG), a state-funded grant, or other ~~[Child Care Development Fund]~~ ~~[CCDF]~~ funding during the disqualification period; and

(b) will remain ineligible for any CC payment, ESG, state-funded grant, or other CCDF funding until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full.

(4) A disqualification is effective two benefit months from the date of the ALJ order.

(5) A disqualification will take effect even if the provider files an appeal pursuant to Section 63G-4-402 of the Administrative Procedures Act, Section R986-100-135, and Subsection R986-100-735(3).

(6) Disqualifications run concurrently.

(7) A disqualification assessed to a provider will follow the facility, any successor facility, and a principal of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another; such as 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 liability to the purchaser. It is not necessary to purchase the assets 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" include any property, tangible or intangible, which has value. Assets may 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 the predecessor's assets.

(e) A "principal" is an individual who is responsible for the day to day business of a child care center, if that individual has 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.

**R986-700-740. Child Care Quality System (CCQS) Definitions and Acronyms.**

In addition to the definitions and acronyms ~~[of terms]~~ found in Title 35A, Chapter 3, Employment Support Act, ~~[and]~~ Sections R986-100-103[4], ~~[and the acronyms found in]~~ R986-100-104[3], and R986-700-701.1, the following definitions apply to CCQS:

(1) "CC subsidy" means a Child Care ~~[A]~~ assistance subsidy payment.

~~[(2) "CCDF" means the Child Care and Development Fund.]~~

(3) "CCL" means Utah Department of Health, Child Care Licensing Program.

(4) "Certified quality rating" means the CCQS rating determined by applying the CCQS framework and assigned by OCC.

(5) "Certified Quality Rating Review Committee" or "Review Committee" means a committee consisting of one representative from OCC, one representative from a licensed private ~~[child care]~~ program; and one expert in the field of early childhood education or school-age children, which reviews disputed quality ratings and makes recommendations to the Director of Adjudication concerning final certified quality rating decisions.

~~[(6) "Child care program" or "program" refers to an individual location of a child care business.]~~

(7) "Child Care Quality System" or "CCQS" refers to the comprehensive statewide system administered by OCC that provides quality ratings to eligible programs and supports programs in attaining higher levels of quality.

(8) "CCQS status" means the status assigned by OCC to a program without a default rating or certified quality rating.

(9) "DWS-eligible ~~[child care]~~ program or "eligible provider" means a provider who:

(a) meets CCDF eligibility requirements;

(b) is compliant with CCL licensing requirements;

(c) has followed the CCL process to indicate the program will accept funding from OCC, including funding for children covered by CC subsidy; and

(d) can potentially receive CC subsidy and OCC grants, including ESG, if approved.

(10) "Enhanced Subsidy Grant" or "ESG" refers to monthly payments issued to an eligible program serving children covered by CC subsidies and achieving a rating of High Quality or High Quality Plus.

(11) "License in good standing" means a program is licensed by CCL, but not with a conditional license.

~~[(12) "OCC" means the Department of Workforce Services, Office of Child Care.]~~

(13) "Not participating" is a CCQS Status referring to a program that:

(a) has withdrawn from participation in the CCQS;

(b) does not hold a center license in good standing from CCL;

(c) is ineligible due to being disqualified by OCC; or

(d) has not applied for a certified quality rating and has not elected to become DWS-eligible.

(14) "Program" refers to an individual location of a child care business.

**R986-700-743. CCQS Rating Administrative Review.**

(1) A ~~[child care]~~ program may request a review of a certified quality rating following the process established by OCC policy.

(2) A review request shall be submitted within 30 calendar days of the date of the certified rating award notice except where there is good cause for failing to request a review within this timeframe.

(a) Good cause for failing to timely request review is limited to circumstances that are:

(i) beyond the party's control, or;

(ii) compelling and reasonable.

(b) Good cause excludes ordinary illness, lack of transportation and temporary absences.

(3) Quality Rating Pending Review. The certified quality rating issued in the quality rating award notice shall be published by OCC and remain published until the review is complete. Issuance of an ESG shall be temporarily suspended until the review is complete.

(4) OCC Review. ~~[A]~~ Each request[s] for review submitted to OCC shall be subject to an OCC review. Upon final determination of the OCC review, a notice of determination shall be sent to the program.



(5) If a program does not agree with the OCC review determination, the program may request a review by the Certified Quality Rating Review Committee.

(a) A review request shall be submitted within 30 calendar days of the date of the OCC review determination, except where there is good cause for failing to request a review within this timeframe pursuant to Subsection R[994]986-700-742(2).

(b) A review by the Review Committee is an informal adjudicative proceeding under the Utah Administrative Procedures Act.

(c) A review may:

(i) include an OCC staff member to present the conclusions of the OCC review;

(ii) provide an opportunity for the program to present their reasons and evidence for the review request; and

(iii) include witnesses or legal representatives, as applicable; and

(iv) a request for any additional documentation relevant to the review, from either OCC or the program.

(d) Failure by the program to respond to any request by the Review Committee shall result in a dismissal of the review request.

(e) The Review Committee will issue a recommendation to the Department of Workforce Services Director of Adjudication once the review process is complete.

(6) The Director of Adjudication will make a final certified quality rating decision based upon the recommendation of the Review Committee. The Director of Adjudication decision is the final agency action pursuant to the Utah Administrative Procedures Act.

**R986-700-770. Provider Grant Eligibility.**

To be eligible for a [Child Care Development Fund (CCDF)]-funded OCC grant from the Department a provider must:

(1) meet each CCDF requirement;

(2) participate in CCQS, if applicable;

(3)(a) have no outstanding overpayment pursuant to Section R986-700-731[7]; or

(b) have an established repayment plan or recoupment with the Department and be current in repayment pursuant to Section R986-700-731.1;

(4) hold a license in good standing from CCL;

(5) not have a pending referral from the Director of OCC for an administrative disqualification hearing pursuant to Sections R986-700-733 and R986-700-734; and

(6) not be disqualified from receiving CC payment pursuant to Sections R986-700-733 and R986-700-734.

**KEY: child care, grant programs**

**Date of Enactment or Last Substantive Amendment:** ~~[April 22, 2021]~~

**Notice of Continuation:** August 28, 2020

**Authorizing, and Implemented or Interpreted Law:** 35A-3-203~~(42)~~; 35A-3-310; 53F-5-210

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R990-8	Filing No. 53437

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Housing and Community Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance

<b>3. Purpose of the new rule or reason for the change:</b>
The proposed rule change implements 2020 Legislative Audit recommendations for the Permanent Community Impact Fund Board (Board) and subsequent policy changes outlining procedures for Community Impact Fund Board Application Lists. This change will increase operational efficiency and enhance payment security and timeliness. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

<b>4. Summary of the new rule or change:</b>
The proposed rule amendment changes the names of the CIB Capital Improvement List to CIB Application List and the Rural Planning Group to Community Development Office. It clarifies the CIB Application List procedures. The proposed amendment also updates several statutory references and explains that the Permanent Community Impact Fund Board may conduct electronic meetings without an anchor location pursuant to Section 52-4-207.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any significant fiscal impact on state government revenues or expenditures, as it makes minor modifications to an existing program.

<b>B) Local governments:</b>			
This rule change is not expected to have any significant fiscal impact on local governments' revenues or expenditures as it involves only minor, technical changes to the application process for local governments.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There will be no fiscal impact from the proposed amendment on small businesses. Small businesses are ineligible for financial assistance from the Board.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There will be no fiscal impact from the proposed amendment on non-small businesses. Non-small businesses are ineligible for financial assistance from the Board.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There will be no fiscal impact from the proposed amendment on other persons. Such persons are ineligible for financial assistance from the Board.			
<b>F) Compliance costs for affected persons:</b>			
This rule change is not expected to cause compliance costs for affected persons because it makes minor modifications to an existing program and merely clarifies the application process. Existing contracts will not be affected by the rule change. The Board has additionally taken steps to educate applicants about and assist applicants with the application process, including by providing tutorials and posting directions on the Board's website.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Workforce Services, Casey R. Cameron, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After a thorough analysis, it was determined that this proposed rule change will not result in a measurable fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Casey R. Cameron, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 35A-8-305	Section 35A-8-306	Section 35A-8-307

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
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<b>A) Comments will be accepted until:</b>	06/14/2021
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<b>10. This rule change MAY become effective on:</b>	06/22/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	4/26/2021
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**R990. Workforce Services, Housing and Community Development.**

**R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.**

**R990-8-3. Application Requirements.**

A. Applicants shall submit ~~their~~ funding requests on the Board's most current application form, furnished by the Housing and Community Development Division (HCDD). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications ~~that~~ which have been accepted for processing will be placed on one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit ~~its~~ their review. The Board will not act on any drinking water or sewer project unless ~~it~~ they receives such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant. Planning assistance requests shall be reviewed ~~and~~ or provided by the ~~Rural Planning Group~~ Community Development Office.

E. The Board requires ~~each~~ AH applicant[s] to have a vigorous public participation effort. ~~Each~~ AH applicant[s] shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if ~~it~~ determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers ~~an~~ the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by ~~the~~ an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits ~~[c]~~ or problems~~[y]~~ to the community and ~~the~~ S state may be submitted with the application.

G. ~~Each~~ AH applicant[s] shall ~~are required to~~ notify in writing the applicable Association of Governments of the ~~[#]~~ applicant's intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. ~~It is the intent of t~~ The Board ~~to~~ encourages regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires ~~all~~ state agencies, before ~~they~~ expending any state funds or approving ~~es~~ any undertaking, to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. ~~In order t~~ To comply with that duty, the Board requires ~~each~~ AH applicant[s] to provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide ~~the~~ SHPO with descriptions of applications which may have potential historic preservation concerns for ~~the~~ SHPO's review and comment in compliance with the Community Impact Board and [r]SHPO Programmatic Agreement. The state historic preservation officer's [SHPO] comments on individual applications will be provided to the Board as part of the review process outlined in R990-8-4. ~~Additionally the Board requires that i~~ If during the construction of the project the applicant discovers any cultural ~~[r]~~ or paleontological resources, the applicant shall cease project activities which may affect or impact the cultural ~~[r]~~ or paleontological resource, notify the Board and ~~the~~ SHPO of the discovery, allow the Board to take into account the effects of the project on cultural ~~[r]~~ or paleontological resources, and not proceed until further approval is given by the Board.

I. ~~Each~~ AH applicant[s] must provide evidence and arguments to the Board as to how the proposed funding assistance provides for planning, the construction and maintenance of public facilities, or the provision of public services.

J. ~~Each~~ AH applicant[s] must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. ~~Each~~ AH applicant[s] must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. ~~In addition, t~~ The applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own, and lease the proposed project. In the case of a request for an interest ~~[-]~~ bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. ~~Each~~ AH applicant[s] shall certify to the Board that ~~the~~ y applicant will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964, ~~[c]~~ 42 USC 2000d ~~[e]~~ et seq. ~~[, as amended],~~

which prohibit[s] discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin.[s] ~~[and further agree to abide by]~~ Each applicant shall comply with 41 CFR 60-1 (July 1968) [Executive Order No. 11246, as amended], which prohibits discrimination on the basis of sex; 45 CFR 90 (June 1979) ~~[as amended]~~, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and 28 CFR 35 (July 1991) ~~[as amended]~~, which prohibit discrimination on the basis of disability[ies]; and the Utah Anti-~~Discrimination~~ Act, Section 34A-5-101 ~~[et seq.]~~ through 34A-5-112, which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap. ~~[and to]~~ Each applicant shall certify compliance with the Americans with Disabilities Act to the Board on an annual basis and upon completion of the project.

**R990-8-5. ~~Local Capital Improvement Lists~~ Community Impact Board (CIB) Application Lists.**

A. A consolidated list of the anticipated capital needs for eligible entities, the CIB application list, shall be submitted ~~[from]~~ by each county area, or in the case of state agencies, ~~[from]~~ by HCDD. This list shall be produced as a cooperative venture of ~~[all the]~~ eligible entities within ~~[each]~~ a county area.

B. The CIB application list shall contain a one-year short- ~~[term (one year) component, which shall be submitted to the Board, and a five-year medium-~~ ~~[term (five year) component, which shall be maintained by the Association of Governments responsible for the CIB application list.~~

C. The CIB application list shall contain the following items: statement of jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for the ~~[#]~~ ~~[own]~~ applicant's projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of ~~[all]~~ eligible entities within a county area.

D. Projects not identified in a county area's or HCDD's CIB application list ~~[s]~~ will not be funded by the Board, unless the ~~[y]~~ project addresses a bona fide public safety or health emergency, or for other compelling reasons.

E. ~~[An up-dated]~~ The CIB application list shall be submitted to the Board annually and no later than ~~[April]~~ May 1st of each year. The ~~[up-dated]~~ annual list shall be submitted in the uniform format required by the Board.

F. If the ~~[consolidated]~~ CIB application list from a county area does not contain the information required in Subsection R990-8-5-~~(C)~~, or is not in the uniform format required in Subsection R990-8-5-~~(E)~~, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable ~~local capital improvement~~ CIB application list. ~~[Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.]~~

H. ~~[The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.~~

~~I.] The regional Association of Governments ~~[are]~~ is the compiler[s] of the ~~capital improvement~~ CIB application list[s] for each region and may not amend the annual CIB application list, unless the CIB application list submitted to the Board is incomplete or in the incorrect format as provided in Subsection R990-8-5(F), then the Association of Governments may amend the CIB application list to submit the required information in the uniform format. ~~[The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.]~~~~

~~[J]. [Notwithstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.] An applicant whose project addresses a bona fide public safety or health emergency, or who presents other compelling reasons for project funding, may request "Special Consideration" to have the project placed on a Board agenda.~~

J. "Special Consideration" projects on a Board agenda will be considered by the Board only if the Board passes a motion to consider the project.

**R990-8-7. Procedures for Electronic Meetings.**

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-~~[7-8]~~ 207.

B. If one or more members of the Board or one or more applicant agencies may participate electronically or telephonically, public notices of the meeting shall so indicate. ~~[In addition, t]~~ The notice shall specify the anchor location where the members of the Board ~~[CIB]~~ not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting. The Board may convene and conduct an electronic meeting without an anchor location in compliance with Subsection 52-4-207(4).

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meeting[s].

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. ~~[In addition, t]~~ The notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

E. When notice is given of the possibility of a member of the Board appearing electronically or telephonically, any member of the Board may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board. At the commencement of the meeting, or at such time as any member of the Board initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Board who are not at the anchor ~~[physical]~~ location of the meeting shall be confirmed by the Chair.

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. ~~[In addition, t]~~ The anchor location must have ~~[has]~~ space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY:** grants

**Date of Enactment or Last Substantive Amendment:** ~~2021~~ ~~March~~  
~~10, 2015~~

**Notice of Continuation:** July 6, 2017

**Authorizing, and Implemented or Interpreted Law:** 35A-8-  
~~305(1)(a), (b), and (c)]; 35A-8-306; 35A-8-307(1)(a)~~

**End of the Notices of Proposed Rules Section**



## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R68-29	Filing No. 53465

### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	Ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	Kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R68-29. Quality Assurance Testing on Cannabis
<b>3. Effective Date:</b>
04/29/2021
<b>4. Purpose of the new rule or reason for the change:</b>
A clarification is needed in this rule to ensure that a cannabis testing laboratory is not required to test for all of the microbial contaminants listed in Table 2. Due to laboratory equipment shortages testing for some of the specific microbials listed in Table 2 is not currently possible.
<b>5. Summary of the new rule or change:</b>
Language has been added to Section R68-29-8, Microbial Standards, to clarify that specific microbial testing requirements will be at the discretion of the Department of Agriculture and Food (Department). The requirement for microbial testing generally and the limitations in Table 2 will remain in place.
<b>6. Regular rulemaking would:</b>
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;

cause an imminent budget reduction because of budget restraints or federal requirements; or
place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>
If this rule is not clarified, the Department may not be able to allow cannabis products to be sold because all required testing cannot be performed. This could cause imminent financial harm to the cannabis industry and limit their ability to sell the products they have produced. It could also threaten the health and welfare of the public because patients will have less access to the medically prescribed cannabis products they need.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There would be an anticipated savings to the state budget due to less required testing. The Department estimates that this would amount to a savings of \$50 per sample and a reduction in the cost of testing 900 samples per year, for a total of \$45,000. There would also be a reduction in fee revenue collected at an estimated \$50 per sample and 900 samples per year, or \$45,000. This reduced fee revenue would be due to the department charging \$70 per sample rather than \$120 due to reduced testing requirements given this change.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments because they do not operate as cannabis licensees or laboratories.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There would be a savings to small businesses due to the reduced cost of testing in the Department cannabis laboratory, from \$120 per sample to \$70 per sample. The Department estimates that 75% of the samples tested per year are tested for small businesses, for a total savings of \$33,750 (675 samples at a savings of \$50 per sample).
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There would be a savings to non-small businesses due to the reduced cost of testing in the Department cannabis laboratory, from \$120 per sample to \$70 per sample. The Department estimates that 25% of the samples tested per year are tested for non-small businesses, for a total savings of \$11,250 (225 samples at a savings of \$50 per sample).
<b>8. Compliance costs for affected persons:</b>

Compliance costs for affected persons would be reduced due to the reduced cost of testing a cannabis sample. Cost would go from \$120 per sample to \$70 sample for a reduction of \$50 per sample.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
This rule change should positively impact businesses in the short term by reducing the amount they spend on cannabis testing.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Craig W. Butters, Commissioner

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Subsection 4-41a-701(3)

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Butters, Commissioner	<b>Date:</b>	04/29/2021
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**R68. Agriculture and Food, Plant Industry.**

**R68-29. Quality Assurance Testing on Cannabis.**

**R68-29-1. Authority and Purpose.**

1) Pursuant to Subsection 4-41a-701(3), this rule establishes the standards for cannabis and cannabis product potency testing and sets limits for water activity, foreign matter, microbial life, pesticides, residual solvents, heavy metals, and mycotoxins.

**R68-29-2. Definitions.**

1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to health, including:

- a) pesticides;
- b) heavy metals;
- c) solvents;
- d) microbial life;
- e) toxins; or
- f) foreign matter.

2) "Analyte" means a substance or chemical component that is undergoing analysis.

3) "Batch" means a quantity of:

a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which the same lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

c) cannabis flower from a single strain and growing cycle packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

4) "Cannabinoid" means any:



- a) naturally occurring derivative of cannabigerolic acid (CAS 25555-57-1); or
- b) any chemical compound that is both structurally and chemically similar to a derivative of cannabigerolic acid.
- 5) "Cannabis" means any part of the marijuana plant.
- 6) "Cannabis concentrate" means the product of any chemical or physical process applied to cannabis biomass that concentrates or isolates the cannabinoids contained in the biomass.
- 7) "Cannabis cultivation facility" means a person that:
  - a) possesses cannabis;
  - b) grows or intends to grow cannabis; and
  - c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.
- 8) "Cannabis cultivation byproduct" means any portion of a cannabis plant that is not intended to be sold as a cannabis plant product.
- 9) "Cannabis derivative product" means a cannabis product made using cannabis concentrate.
- 10) "Cannabis plant product" means any portion of a cannabis plant intended to be sold by a medical cannabis pharmacy in a form that is recognizable as a portion of a cannabis plant.
- 11) "Cannabis processing facility" means a person that:
  - a) acquires or intends to acquire cannabis from a cannabis production establishment;
  - b) possesses cannabis with the intent to manufacture a cannabis product;
  - c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or cannabis concentrate; and
  - d) sells or intends to sell a cannabis product to a medical cannabis pharmacy.
- 12) "Cannabis product" means a product that:
  - a) is intended for human use; and
  - b) contains cannabis or delta 9-tetrahydrocannabinol.
- 13) "CBD" means cannabidiol (CAS 13956-29-1).
- 14) "CBDA" means cannabidiolic acid, (CAS 1244-58-2).
- 15) "Certificate of analysis" (COA) means a document produced by a testing laboratory listing the quantities of the various analytes for that testing was performed.
- 16) "Department" means the Utah Department of Agriculture and Food.
- 17) "Final product" means a reasonably homogenous cannabis product in its final packaged form created using the same standard operating procedures and the same formulation.
- 18) "Foreign matter" means:
  - a) any matter that is present in a cannabis lot that is not a part of the cannabis plant; or
  - b) any matter that is present in a cannabis or cannabinoid product that is not listed as an ingredient.
- 19) "Industrial hemp" means a cannabis plant that contains less than 0.3% total THC by dry weight.
- 20) "Industrial hemp waste" means:
  - a) a cannabinoid extract derived from industrial hemp with greater than 0.3% THC by mass; or
  - b) industrial hemp biomass with a THC concentration of less than 0.3% by dry weight.
- 21) "Lot" means the quantity of:
  - a) flower from a single strain of cannabis and growing cycle produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
  - b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.
- 22) "Pest" means:

- a) any insect, rodent, nematode, fungus, weed; or
  - b) any other form of terrestrial or aquatic plant or animal life, virus, bacteria, or other microorganisms that are injurious to health or to the environment or that the department declares to be a pest.
  - 23) "Pesticide" means any:
    - a) substance or mixture of substances, including a living organism, that is intended to prevent, destroy, control, repel, attract, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed, or other forms of plant or animal life that are normally considered to be a pest or that the commissioner declares to be a pest;
    - b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and
    - c) any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, or emulsifying agent with deflocculating properties of its own used with a pesticide to aid in the application or effect of a pesticide.
  - 24) "Sampling technician" means a person tasked with collecting a representative sample of a cannabis plant product, cannabis concentrate, or cannabis product from a cannabis production establishment who is:
    - a) an employee of the department;
    - b) an employee of an independent cannabis laboratory that is licensed by the department to perform sampling; or
    - c) a person authorized by the department to perform sampling.
  - 25) "Standard operating procedure" (SOP) means a document providing detailed instruction for the performance of a task.
  - 26) "THC" means delta-9-tetrahydrocannabinol (CAS 1972-08-3).
  - 27) "THCA" means delta-9-tetrahydrocannabinolic acid (CAS 23978-85-0).
  - 28) "Total CBD" means the sum of the determined amounts of CBD and CBDA.
  - 29) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).
  - 30) "Unit" means each individual portion of an individually packaged product.
  - 31) "Water activity" is a dimensionless measure of the water present in a substance that is available to microorganisms; calculated as the partial vapor pressure of water in the substance divided by the standard state partial vapor pressure of pure water at the same temperature.
- R68-29-3. Required Cannabis and Cannabis Product Tests.**
- 1) Prior to the transfer of cannabis biomass from a cannabis cultivation facility to a cannabis processing facility, the cultivation facility must make a declaration to the department that the biomass to be transferred is either a cannabis plant product or a cannabis cultivation byproduct.
  - 2) A cannabis cultivation facility may not transfer a cannabis plant product to a cannabis processing facility unless an independent cannabis testing laboratory has tested a representative sample of the cannabis to determine:
    - a) the water activity of the sample;
    - b) the amount of total delta-9-THC and total CBD present in the sample; and
    - c) the presence of adulterants in the sample, as specified in table 1.
  - 3) Cannabis cultivation byproduct shall either be:
    - a) chemically or physically processed to produce a cannabis concentrate for incorporation into cannabis derivative product; or

NOTICES OF 120-DAY (EMERGENCY) RULES

- b) destroyed pursuant to Section 4-41a-405.
- 4) Prior to its incorporation into a cannabis derivative product, cannabis concentrate shall be tested by an independent cannabis testing laboratory to determine:
  - a) the amount of total THC and total CBD present in the sample; and
  - b) the presence of adulterants in the sample, as specified in table 1.
- 5) Prior to the transfer of a cannabis product to a medical cannabis pharmacy a representative sample of the product shall be tested by an independent cannabis testing laboratory to determine:
  - a) the water activity of the sample, as determined applicable by the department;
  - b) the quantity of any cannabinoid or terpene to be listed on the product label; and
  - c) the presence of adulterants in the sample, as specified in table 1.
- 6) Testing results for cannabis plant product and cannabis concentrate may be applied to cannabis product derived therefrom, provided that the processing steps used to produce the product are unlikely to change the results of the test, as determined by the department.
- 7) Mycotoxin testing of a cannabis plant product, cannabis concentrate, or cannabis product may be required if the department has reason to believe that mycotoxins may be present.
- 8) A cannabis plant product, cannabis concentrate, or cannabis product that fails any of the required adulterant testing standards may be remediated by a cannabis cultivation facility or cannabis processing facility after submitting and gaining approval for a remediation plan from the department.
- 9) A remediation plan shall be submitted to the department within 15 days of the receipt of a failed testing result.
- 10) A remediation plan shall be carried out and the cannabis plant product or cannabis concentrate shall be prepared for resampling within 60 days of department approval of the remediation plan.
- 11) Resampling or retesting of a cannabis lot or batch that fails any of the required testing standards is not allowed until the lot or batch has been remediated.
- 12) A cannabis lot or cannabis product batch that is not or cannot be remediated in the specified time period shall be destroyed pursuant to Section 4-41a-405.
- 13) In the event that tests results cannot be retained in the Inventory Control System, the laboratory shall:
  - a) keep a record of test results;
  - b) issue a certificate of analysis for required tests; and
  - c) retain a copy of the certificate of analysis on the laboratory premises.
- 14) Industrial hemp waste purchased by a cannabis cultivation facility in the form of a plant product or a concentrate must meet department cannabis testing standards as determined by an independent cannabis testing laboratory prior to its transfer to a cannabis cultivation facility.
- 15) Industrial hemp waste that is transferred to a cannabis cultivation facility shall be considered to be cannabis for all testing and regulatory purposes of the department.

TABLE 1  
Required Tests by Sample Type

Test	Cannabis Plant Product	Cannabis Concentrate	Cannabis Product
Moisture Content	Required	X	X
Water Activity	Required	X	X

Foreign Matter	Required	Required	Required
Potency	Required	Required	Required
Microbial	Required	Required	Required
Pesticides	Required	Required	Required
Residual Solvents	X	Required	Required
Heavy Metals	Required	Required	Required
Mycotoxins	X	Required	X

**R68-29-4. Sampling Cannabis and Cannabis Products.**

- 1) The entity that requests testing of a cannabis plant product lot or cannabis concentrate batch, or cannabis product batch shall make the entirety of the lot or batch available to the sampling technician.
- 2) The lot or batch being sampled shall be contained in a single location and physically separated from other lots or batches.
- 3) The sample shall be collected by a sampling technician who is unaffiliated with the entity that requested testing of the cannabis lot or cannabis product batch unless an exception is granted by the department.
- 4) The owner of the cannabis lot or cannabis product batch and any of their employees shall not assist in the selection of the sample.
- 5) The sampling technician shall collect the representative sample in a manner set forth in a SOP, that is ISO 17025 compliant, maintained by the laboratory that will perform the testing.
- 6) When collecting the representative sample, the sampling technician shall:
  - a) use sterile gloves, instruments, and a glass or plastic container to collect the sample;
  - b) place tamper proof tape on the container; and
  - c) appropriately label the sample pursuant to Section R68-30-6.
- 7) For cannabis plant product lots the minimum representative sample shall be taken according to the following schedule:
  - a) 10 subunits with an average weight of one gram each for lots weighing 5 kilograms or less;
  - b) 16 subunits with an average weight of one gram each for lots weighing 5.01-9 kilograms;
  - c) 22 subunits with an average weight of one gram each for lots weighing 9.01-14 kilograms;
  - d) 28 subunits with an average weight of one gram each for lots weighing 14.01-18 kilograms;
  - e) 32 subunits with an average weight of one gram each for lots weighing 18.01-23 kilograms.
- 8) For cannabis concentrate the minimum representative sample shall be taken according to the following schedule:
  - a) 10 mL for batches of one liter or less; or
  - b) 20 mL for batches of four liters or less.
- 9) For cannabis products in their final product form the following minimum number of sample units must be taken, the combined total weight of which must be at least 10 grams, not including packaging materials:
  - a) four units for a sample product batch with 5-500 products;
  - b) six units for a sample product batch with 501-1000 products;
  - c) eight units for a sample product batch with 1,001-5,000 products; and
  - d) ten units for a sample product batch with 5,001-10,000 products.
- 10) Additional material may be included in the representative sample if the material is necessary to perform the required testing.

**R68-29-5. Moisture Content Testing and Water Activity Standards.**

- 1) The moisture content of a sample and related lot of cannabis shall be reported on the COA as a mass over mass percentage.

2) A sample and related lot of cannabis fail quality assurance testing if the water activity of the representative sample is found to be greater than 0.65.

3) A sample and related cannabis or cannabinoid product batch intended for human consumption fail quality assurance testing if the water activity of the representative sample is greater than 0.65, unless water is a component of the product formulation and is listed as an ingredient.

**R68-29-6. Foreign Matter Standards.**

1) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing if:

a) the sample contains foreign matter visible to the unaided human eye;

b) the sample is found to contain microscopic foreign matter estimated to comprise greater than 3% of the mass of the representative sample as determined by the testing laboratory; or

c) foreign matter is found that is suspected to have been intentionally added to the sample to increase its visual appeal or market value.

**R68-29-7. Potency Testing.**

1) A lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall have their potency determined and listed on a COA as total delta-9-THC and total CBD.

**R68-29-8. Microbial Standards.**

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for microbiological contaminants if the results exceed the limits as set forth in Table 2.

2) Each sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product shall be tested for total aerobic microbial count and total combined yeast and mold. The specific pathogens listed in Table 2 may be tested for at the discretion of the department.

TABLE 2  
Microbial Analytes and Action Levels

Material	Microbial Limit Requirement (cfu)
Flower	Total Aerobic Microbial Count ≤100,000 Absence of E. Coli and Salmonella spp. Absence of Aspergillus
Concentrated oil	Total Aerobic Microbial Count ≤10,000
Wax	Total Combined Yeast and Mold Count ≤1,000
Resin	Absence of STEC Absence of Pseudomonas Absence of Staph
Tablet	Total Aerobic Microbial Count ≤10,000
Capsule	Total Combined Yeast and Mold Count ≤1,000
Liquid Suspension	Absence of E. Coli and Salmonella spp.
Gelatinous cube	Absence of Staph
Transdermal	Total Aerobic Microbial Count ≤100 Total Yeast and Mold ≤10 Absence of Pseudomonas Absence of Staph

**R68-29-9. Pesticide Standards.**

1) Only pesticides allowed by the department may be used in the cultivation of cannabis.

2) If an independent cannabis laboratory identifies a pesticide that is not allowed under Subsection R68-29-5(1) and is above the action

levels provided in Subsection R68-29-5(3) that lot or batch from which the sample was taken has failed quality assurance testing.

3) A sample and related lot or batch of cannabis, cannabis product, or cannabinoid product fail quality assurance testing for pesticides if the results exceed the limits as set forth in Table 3.

TABLE 3  
Pesticide Analytes and Action Levels

Analyte	Chemical Abstract Service (CAS) Registry number	Action Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Acequinocyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	1
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	1
Cypermethrin	52315-07-8	1
Daminozide	1596-84-5	1
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	1
Fludioxonil	131341-86-1	0.4
hexythiazox	78587-05-0	1
imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4
Malathion	143390-89-0	0.2
Metaxalyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myclobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Paclobutrazol	76738-62-0	0.4
Permethrins	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

4) Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

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5) Pyrethrins should be measured as the cumulative residues of pyrethrin 1 (CAS 121-21-1), cinerin 1 (CAS 25402-06-6), and jasmolin 1 (CAS 4466-14-2).

6) Abamectin is a composite of the amounts of avermectin B1a and avermectin B1b.

**R68-29-10. Residual Solvent Standards.**

1) A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fails quality assurance testing for residual solvents if the results exceed the limits provided in Table 4 unless the solvent is:

- a) a component of the product formulation;
- b) listed as an ingredient; and
- c) generally considered to be safe for the intended form of use.

TABLE 4  
List of Solvents and Action Levels

Solvent	Chemical Abstract Service (CAS) Registry number	Action level ppm
1,2 Dimethoxyethane	110-71-4	100
1,4 Dioxane	123-9	380
1-Butanol	71-36-3	5000
1-Pentanol	71-41-0	5000
1-Propanol	71-23-8	5000
2-Butanol	78-92-2	5000
2-Butanone 78-93-3		5000
2-Ethoxyethanol	110-80-5	160
2-methylbutane	78-78-4	5000
2-Propanol (IPA)	67-63-0	5000
Acetone	67-64-1	5000
Acetonitrile	75-05-8	410
Benzene	71-43-2	2
Butane	106-97-8	5000
Cumene	98-82-8	70
Cyclohexane	110-82-7	3880
Dichloromethane	75-09-2	600
2,2-dimethylbutane	75-83-2	290
2,3-dimethylbutane	79-29-8	290
1,2-dimethylbenzene	95-47-6	See Xylenes
1,3-dimethylbenzene	108-38-3	See Xylenes
1,4-dimethylbenzene	106-42-3	See Xylenes
Dimethyl sulfoxide	67-68-5	5000
Ethanol	64-17-5	5000
Ethyl acetate	141-78-6	5000
Ethylbenzene	100-41-4	See Xylenes
Ethyl ether	60-29-7	5000
Ethylene glycol	107-21-1	620
Ethylene Oxide	75-21-8	50
Heptane	142-82-5	5000
n-Hexane	110-54-3	290
Isopropyl acetate	108-21-4	5000
Methanol	67-56-1	3000
Methylpropane	75-28-5	5000
2-Methylpentane	107-83-5	290
3-Methylpentane	96-14-0	290
N,N-dimethylacetamide	127-19-5	1090
N,N-dimethylformamide	68-12-2	880
Pentane	109-66-0	5000
Propane	74-98-6	5000
Pyridine	110-86-1	100
Sulfolane	126-33-0	160
Tetrahydrofuran	109-99-9	720
Toluene	108-88-3	890
Xylenes	1330-20-7	2170

- 2) Xylenes is a combination of the following:
- a) 1,2-dimethylbenzene;
  - b) 1,3-dimethylbenzene;
  - c) 1,4-dimethylbenzene; and
  - d) ethyl benzene.

**R68-29-11. Heavy Metal Standards.**

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for heavy metals if the results exceed the limits provided in Table 5.

TABLE 5  
Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

**R68-29-12. Mycotoxin Standards.**

A sample and related lot or batch of cannabis plant product, cannabis concentrate, or cannabis product fail quality assurance testing for mycotoxin if the results exceed the limits provided in Table 6.

TABLE 6  
Mycotoxin

Test	Specification
The total of Aflatoxin B1, Aflatoxin B2, Aflatoxin G1, and Aflatoxin G2	<20 ppb of substance
Ochratoxin A.	<20 ppb of substance

**KEY: cannabis testing, quality assurance, cannabis laboratory**  
**Date of Enactment or Last Substantive Amendment: April 29, 2021**  
**Authorizing, and Implemented or Interpreted Law: 4-41a-701(3)**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R357-38	Filing No. 53421

**Agency Information**

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Economic Development	
<b>Building:</b>	World Trade Center	
<b>Street address:</b>	60 E South Temple	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Dane Ishihara	801-538-8664	dishihara@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R357-38. Impacted Small Business Catalyst Grant Program Rule

<b>3. Effective Date:</b>	
04/19/2021	
<b>4. Purpose of the new rule or reason for the change:</b>	
The purpose of this rule filing is to create the Impacted Small Business Catalyst Grant Program to support small businesses and nonprofits that were highly impacted by the COVID-19 pandemic.	
<b>5. Summary of the new rule or change:</b>	
This rule will codify the administration of the Small Business Catalyst Grant Program by establishing definitions, authority, program, and documentation requirements. The program will provide assistance to small businesses and nonprofits that have been highly impacted by the COVID-19 pandemic.	
<b>6. Regular rulemaking would:</b>	
X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or
	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
The Governor's Office of Economic Development (Office) is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. During the 2021 General, the office was provided a supplemental appropriation with the intent to provide assistance to small businesses that experienced a high level of revenue loss. This emergency rule is required so that the funds can be expeditiously awarded to businesses that were highly impacted by the COVID-19 pandemic and are still in need.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>	
<b>A) State budget:</b>	
There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the Impacted Small Business Catalyst Grant Program.	
<b>B) Local governments:</b>	
There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.	

<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):	
Fifteen million dollars in funds were allocated towards the program. The Office anticipates a large portion will be awarded to small businesses in the state. The Office has administered multiple COVID-19 programs similar to the Impacted Small Business Catalyst Grant Program Rule. Historically, 94% of the awards have been to entities with fewer than 50 employees.	
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):	
There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule 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.	
<b>8. Compliance costs for affected persons:</b>	
There are no compliance costs for affected persons because participation in the program is optional.	
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>	
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. The Office hopes this program will help make an impact on small businesses, nonprofits, and organizations who are in need during this time.	
<b>B) Name and title of department head commenting on the fiscal impacts:</b>	
Dan Hemmert, Executive Director	

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section		
63G-3-201(2)(d)		

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Dan Hemmert, Executive Director	<b>Date:</b>	04/19/2021
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**R357. Governor, Economic Development.**

**R357-38. Impacted Small Business Catalyst Grant Program Rule.**

**R357-38-101. Title.**

This rule is known as the "Impacted Small Business Catalyst Grant Program Rule."

**R357-38-102. Definitions.**

The following terms are defined:

(1) "Full-time equivalent employee" means an individual that works:

- (a) 30 or more hours per week;
- (b) 10-29 hours per week are considered one-half of a full-time equivalent employee; or
- (c) less than 10 hours per week are considered quarter-time a full-time equivalent employee.

(2) "Office" means the Governor's Office of Economic Development.

(3) "Profit & loss or equivalent financial statement" means official documents that, at a minimum, establish:

- (a) the business entity's name;
- (b) the timeframe the document represents;
- (c) gross revenue;
- (d) expenses; and
- (e) net income.

**R357-38-103. Authority.**

This rule is adopted by the office under the authority of Section 63G-3-201(2)(d).

**R357-38-104. Documentation Requirements.**

(1) An applicant shall submit to the office:

- (a) a signed W-9 form;
- (b) current balance sheet; and
- (c) if the business entity began operating prior to January

1, 2020 profit & loss or equivalent financial statements for:

- (i) a four consecutive month period in 2019; and

- (ii) the same four consecutive month period in 2020.

**R357-38-105. Program Requirements.**

(1) The office will not issue a grant until all required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.

(2) To qualify for a grant, applicants shall, at a minimum:

- (a) have been highly impacted by COVID-19, as determined by the office;
- (b) have experienced a Utah revenue decline related to COVID-19;
- (c) claim Utah as its principal place of business;
- (d) have fewer than 250 full-time equivalent employees;
- (e) have not initiated bankruptcy proceedings;
- (f) follow best practices to protect the health and safety of employees and customers;

(g) submit to audits and information requests as reasonably requested by GOED or its designee; and

(i) be a for-profit or non-profit business entity properly registered with the Utah Division of Corporations and Commercial Code; or

(ii) a sole proprietor whose primary place of business is located in Utah.

(3) Submitting an application does not guarantee funding.

(4) The office may recapture grant funds if, after an audit, the office determines that the applicant made representations to the office that are not complete, true, and correct.

**KEY: Small Business Catalyst Grant, COVID-19 assistance**

**Date of Enactment or Last Substantive Amendment: April 19, 2021**

**Authorizing, and Implemented or Interpreted Law: 63G-3-201(2)(d)**

**End of the Notices of 120-Day (Emergency) Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R162-2g	Filing No. 53227

### Agency Information

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

### General Information

<b>2. Rule catchline:</b>
R162-2g. Real Estate Appraiser Licensing and Certification Rules
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule was adopted under the statutory provisions of Title 21, Chapter 2g, the Real Estate Appraiser Licensing and Certification Act (Act). Section 61-2g-201 provides that the Utah Real Estate Division (Division) shall adopt, with

the concurrence of the Utah Real Estate Licensing and Certification Board (Board), rules for the administration of Title 21, Chapter 2g, that are not inconsistent with the chapter or the constitution and laws of the or of the United States. Other sections of Title 21, Chapter 2g, which authorize the rulemaking process are Sections 102, 205, 302, 304.5, 306, 311, 313, 403, and 502. Changes and updates to this rule have been made since its adoption. This rule provides direction to Division staff regarding the administration and enforcement of the Act and helps guide registered, licensed, and certified appraisers such that they may comply with the statutory requirements of the Act.

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

This rule has been amended several times since the last five-year review of this rule. Prior to adopting the amendments to this rule, proposed amendments were discussed during public meetings of the Board. Generally, these amendments were completed with no public comment in favor of, or against, the amendments.

The amendment which was effective June 30, 2019 received public comment prior to the amendment being made effective. The comment was received as a request from an appraisal management company (AMC) representative organization that the Board take time for further consideration of the possible consequences of the rule amendment, in particular the restrictions resulting from adding Subsection R162-2g-502a(8) to this rule relative to property inspections in conjunction with the appraisal of real property. The rule amendment was adopted.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

However, after additional comment from the AMC industry, the banking industry, and from appraisers, the Board reconsidered the matter and the rule was again amended, deleting Subsection R162-2g-502a(8) from this rule. Generally, appraisers and organizations representing appraisers favored leaving the property inspection restrictions in place, while the AMCs, organizations representing AMCs, and the banking industry warned of serious consequences if the restrictions in Subsection R162-2g-502a(8) were not removed.

The statutory requirement for this rule as presently constituted, remains in effect. A careful inspection of this rule determined that specific statutory authority for rulemaking does not at this time extend to regulating property inspections and this rule needed to be amended by deleting Subsection R162-2g-502a(8). After considering the various points of view expressed by all those who made public comment, this rule was amended, deleting Subsection R162-2g-502a(8).

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The statutory requirement for this rule remains in effect. The Board and Division have carefully considered all public comments regarding this rule. The Board and Division have not determined the specific merits of the comments for and against Subsection R162-2g-502a(8) as they determined that there is no specific statutory authority at this time to regulate property inspections. All other sections and subsections are authorized by the Act. This rule, as amended, should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jonathan Stewart, Director	<b>Date:</b>	05/03/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-603</b>	<b>Filing No. 52783</b>
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**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state, zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-603. Autism Awareness Restricted Account Distribution

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Section 53F-9-401 which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature; and Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There were no written comments received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule continues to be necessary because it provide procedures, timelines, and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/21/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-604</b>	<b>Filing No. 52638</b>
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**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

accountability system by making assessments available to students who are not funded by the public education system through fair, reasonable, and consistent practices. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/21/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-712</b>	<b>Filing No. 52743</b>
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**General Information**

<b>2. Rule catchline:</b>
R277-604. Private School, Home School, and Bureau of Indian Education (BIE) Student Participation in Public School Achievement Tests
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Section 53E-3-401 which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53E-4-302 which directs the Board to require local education agencies (LEAs) to administer statewide assessments to uniformly measure student performance.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no written comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule continues to be necessary because it provides opportunities for Utah private school students and home school students who are Utah residents, and Utah students attending Bureau of Indian Education or "BIE" schools to participate in statewide assessments; to maintain the integrity and security of statewide assessments and Utah's accountability system; to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, and Utah students attending BIE schools to participate in statewide assessments if they so desire; and to protect the public investment in statewide assessments and Utah's

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-712. Competency-based Grant Programs
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Section 53F-5-502 which requires the Board to define outcome-based measures for each type of grant awarded to local education agencies (LEA's); establish a grant application process; establish a review committee; adopt metrics to analyze the quality of a grant application; and Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There were no written comments received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule continues to be necessary because it defines outcome-based measures for each type of grant awarded to LEA's; establishes a grant application process; establishes a review committee; and adopts metrics to analyze the quality of a grant application. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/21/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-924</b>	<b>Filing No. 52865</b>

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R277-924. Partnerships for Student Success Grant Program
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by the Utah Constitution Article X, Section 3, which vests general control and supervision

over public education in the Utah State Board of Education (Board); Section 53F-5-406 which requires the Board to make rules to administer the Partnerships for Student Success Grant Program; and Subsection 53E-3-401(4) which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There were no written comments received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule continues to be necessary because it provides criteria for evaluating grant applications; and procedures for an eligible partnership to apply to the Board to receive grant money and the evaluation of an eligible partnership's use of grant money. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/21/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-208</b>	<b>Filing No. 51399</b>

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state, zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-208. Uniform Application for Certificates of Authority
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-2-201 authorizes the Insurance Commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-2-202(2)(c) authorizes the Insurance Commissioner to require financial reporting on forms provided by the National Association of Insurance Commissioners (NAIC). The purpose of this rule is to ensure that the Insurance Commissioner's requirement that insurers obtain a certificate of authority in Utah is consistent with requirements of other states by using forms provided by the NAIC.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance (Department) has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
It is important that the Department specify that insurers use the NAIC certificate of authority application to ensure uniform information from all insurers that apply. Using a uniform application makes it easier and less time consuming for insurers to apply for a certificate of authority from more than one state at a time. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/16/2021
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-235</b>	<b>Filing No. 51424</b>

**Agency Information**

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration
<b>Room no.:</b>	Suite 2300
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W
<b>City, state, zip:</b>	Taylorville, UT 84129

<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-235. Medicare Prescription Drug Plan
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 31A-2-201(3) authorizes the Insurance Commissioner to make rules to implement the provisions of Title 31A, Insurance Code. The purpose of this rule is to establish licensing and regulatory requirements for a stand-alone prescription drug plan (PDP). These PDPs provide Medicare Part D benefit plans.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance (Department) has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule establishes standards and requirements that a PDP must meet before selling insurance. These standards are much the same for PDPs as they are for other insurers: they require the submission of quarterly and annual statements, compliance with capital and surplus limits that are set within the rule, and compliance with risk-based capital requirements that are set within the code. Linking these standards and requirements with the PDP allows the Department to assess their financial stability, giving greater assurance to consumers about the PDP's ability to provide benefits within a policy. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/16/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R994-302	Filing No. 53337

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R994-308	Filing No. 52236

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Unemployment Insurance	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

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Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R994-302. Employer Contribution Payments
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 35A-4-302 authorizes the Department of Workforce Services (Department) to make rules to collect contributions.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received in the last five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
In order to effectively and efficiently administer the Unemployment Insurance Fund, the Department must ensure each employer that is subject to the Employment Security Act follows the requirements under the Act for collections of unemployment insurance contributions. Therefore, this rule should be continued.

**General Information**

<b>2. Rule catchline:</b>
R994-308. Bond Requirement
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 35A-4-308 authorizes the Department of Workforce Services (Department) to require any employer, subject to the Employment Security Act, that fails to comply with the contribution requirements of the Act, to post a bond or security with the Department.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received in the last five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
To effectively and efficiently administer the Unemployment Insurance Fund, the Department must have a way to require compliance with the Employment Security Act and to collect unemployment contributions from any subject employer in non-compliance with the Act. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	04/26/2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	04/26/2021
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**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Agriculture and Food

Horse Racing Commission (Utah)  
No. 53286 (Amendment) R52-7: Horse Racing  
Published: 02/15/2021  
Effective: 04/12/2021

### Animal Industry

No. 53299 (Amendment) R58-11: Slaughter of Livestock and Poultry  
Published: 02/15/2021  
Effective: 04/12/2021

### Plant Industry

No. 53328 (New Rule) R68-11: Quarantine Pertaining to the Emerald Ash Borer  
Published: 03/15/2021  
Effective: 04/23/2021

No. 53258 (Amendment) R68-24: Industrial Hemp License for Growers  
Published: 01/15/2021  
Effective: 04/12/2021

### Commerce

#### Real Estate

No. 53227 (Amendment) R162-2g: Real Estate Appraiser Licensing and Certification Rules  
Published: 03/01/2021  
Effective: 4/28/2021

### Environmental Quality

#### Air Quality

No. 53312 (Amendment) R307-101: Version of Code of Federal Regulations Incorporated by Reference  
Published: 03/01/2021  
Effective: 05/06/2021

No. 53313 (Amendment) R307-210: Standards of Performance for New Stationary Sources  
Published: 03/01/2021  
Effective: 05/06/2021

No. 53314 (Amendment) R307-214: National Emission Standards for Hazardous Air Pollutants  
Published: 03/01/2021  
Effective: 05/06/2021

#### Drinking Water

No. 53234 (Repeal and Reenact) R309-405: Compliance and Enforcement: Administrative Penalty  
Published: 02/01/2021  
Effective: 04/23/2021

#### Water Quality

No. 53240 (Amendment) R317-8: Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs)  
Published: 01/01/2021  
Effective: 04/15/2021

No. 53240 (Change in Proposed Rule) R317-8: Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs)  
Published: 03/15/2021  
Effective: 04/15/2021

No. 53244 (Amendment) R317-8: Utah Pollutant Discharge Elimination System (UPDES)  
Published: 01/01/2021  
Effective: 04/15/2021

### Governor

#### Economic Development

No. 53365 (Repeal) R357-2: Targeted Business Tax Credit  
Published: 04/01/2021  
Effective: 05/10/2021

NOTICES OF RULE EFFECTIVE DATES

No. 53364 (Amendment) R357-15a: Targeted Business Tax  
Credit Rule  
Published: 04/01/2021  
Effective: 05/10/2021

Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 53099 (New Rule) R414-12: Laboratory Services  
Published: 10/15/2020  
Effective: 05/01/2021

No. 53099 (Change in Proposed Rule) R414-12:  
Laboratory Services  
Published: 03/15/2021  
Effective: 05/01/2021

Natural Resources

Wildlife Resources

No. 53332 (Amendment) R657-62: Deployed Military  
Published: 03/15/2021  
Effective: 05/04/2021

Pardons (Board of)

Administration

No. 53263 (Amendment) R671-302: News Media and  
Public Access to Hearings  
Published: 01/15/2021  
Effective: 04/26/2021

Workforce Services

Employment Development

No. 53330 (Amendment) R986-700: Unearned Income,  
Pandemic  
Published: 03/15/2021  
Effective: 04/22/2021

Unemployment Insurance

No. 53336 (Amendment) R994-302-102: Due Dates for  
Contribution Payments  
Published: 03/15/2021  
Effective: 04/22/2021

No. 53337 (Amendment) R994-302-103: Employer  
Contribution Payments  
Published: 03/15/2021  
Effective: 04/22/2021

No. 53338 (Amendment) R994-302-104: Due Dates for  
Filing Contribution and Equivalent Reports  
Published: 03/15/2021  
Effective: 04/22/2021

**End of the Notices of Rule Effective Dates Section**