

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed April 16, 2022, 12:00 a.m. through May 02, 2022, 11:59 p.m.

Number 2022-10
May 15, 2022

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 Government Operations, 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

Unless otherwise noted, all information presented in this publication is in the public domain and may be reproduced, reprinted, and redistributed as desired. Materials incorporated by reference retain the copyright asserted by their respective authors. Citation to the source is requested.

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

TABLE OF CONTENTS

NOTICES OF PROPOSED RULES	1
AGRICULTURE AND FOOD	
Plant Industry	
R68-9. Utah Noxious Weed Act	2
CAREER SERVICE REVIEW OFFICE	
Administration	
R137-1. Grievance Procedure Rules	7
HEALTH	
Administration	
R380-10. Informal Adjudicative Proceedings	10
Children's Health Insurance Program	
R382-1. Benefits and Administration	13
R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program	15
R382-3. Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program	17
Health Care Financing, Coverage and Reimbursement Policy	
R414-1. Utah Medicaid Program	19
Family Health and Preparedness, Emergency Medical Services	
R426-8. Emergency Medical Services Ground Ambulance Rates and Charges	22
Center for Health Data, Health Care Statistics	
R428-2. Health Data Authority Standards for Health Data	26
GOVERNMENT OPERATIONS	
Human Resource Management	
R477-1. Definitions	31
R477-2. Administration	37
R477-3. Classification	40
R477-4. Filling Positions	42
R477-5. Employee Status and Probation	46
R477-6. Compensation	48
R477-7. Leave	54
R477-8. Working Conditions	63

TABLE OF CONTENTS

R477-9. Employee Conduct.....	69
R477-10. Employee Development.....	72
R477-11. Discipline	75
R477-12. Separations	77
R477-13. Volunteer Programs	80
R477-14. Substance Abuse and Drug-Free Workplace.....	82
R477-15. Workplace Harassment Prevention	85
R477-16. Abusive Conduct Prevention.....	88
R477-101. Administrative Law Judge Conduct Committee	90
HUMAN SERVICES	
Administration, Administrative Hearings	
R497-100. Adjudicative Proceedings.....	95
INSURANCE	
Administration	
R590-102. Insurance Department Fee Payment Rule	100
R590-152. Health Discount Programs and Value Added Benefit Rule	108
R590-243. Commercial Motor Vehicle Insurance Coverage	111
R590-245. Self-Service Storage Insurance	113
PUBLIC SAFETY	
Driver License	
R708-37. Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests	116
R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language	122
TAX COMMISSION	
Motor Vehicle Enforcement	
R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507	125
Property Tax	
R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004	127
TRANSPORTATION	
Administration	
R907-66. Procurement of Consultant Services - Procedures and Contract Administration.....	129

WORKFORCE SERVICES	
Employment Development	
R986-100. Employment Support Programs	134
R986-300-306. Time Limits	137
R986-700. Child Care Assistance	140
Housing and Community Development	
R990-12. State Small Business Credit Initiative Program Fund	145
NOTICES OF 120-DAY (EMERGENCY) RULES	149
WORKFORCE SERVICES	
Employment Development	
R986-300-306. Time Limits	149
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	153
CAPITOL PRESERVATION BOARD	
Administration	
R131-3. Use of Magnetometers on Capitol Hill	153
COMMERCE	
Securities	
R164-26. Consent to Service of Process	154
CORRECTIONS	
Administration	
R251-401. Supervision Fees	154
ENVIRONMENTAL QUALITY	
Water Quality	
R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems	155
INSURANCE	
Administration	
R590-238. Captive Insurance Companies	156
PUBLIC SAFETY	
Administration	
R698-9. Utah Law Enforcement Memorial Support Restricted Account	156
Fire Marshal	
R710-1. Concerns Servicing Portable Fire Extinguishers	157
R710-2. Rules Pursuant to the Utah Fireworks Act	157
R710-3. Assisted Living Facilities	158

TABLE OF CONTENTS

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board	159
R710-7. Concerns Servicing Automatic Fire Suppression Systems	159
R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act	160
PUBLIC SERVICE COMMISSION	
Administration	
R746-313. Electrical Service Reliability	161
R746-400. Public Utility Reports	161
TRANSPORTATION	
Administration	
R907-80. Disposition of Surplus Land	162
Preconstruction	
R930-9. Detection and Elimination of Unauthorized Discharges into Drainage Systems, Enforcement of Water Laws, Sanctions for Violation, and Permitting	163
WORKFORCE SERVICES	
Unemployment Insurance	
R994-404. Payments Following Workers' Compensation	163
R994-406. Fraud, Fault, and Nonfault Overpayments	164
NOTICES OF RULE EFFECTIVE DATES	165

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 16, 2022, 12:00 a.m., and May 02, 2022, 11:59 p.m. are included in this, the May 15, 2022, 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, 2022. 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, 2022, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-9	Filing ID 54541

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	4315 S 2700 W, TSOB, South Bldg, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 146500	
City, state and zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R68-9. Utah Noxious Weed Act
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
Changes are needed to make the text consistent with the Utah Rulewriting Manual.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Language has been changed to make the text consistent with Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

B) Local governments:																				
Local governments do not administer the program and are not regulated under the program and will not be impacted.																				
C) Small businesses ("small business" means a business employing 1-49 persons):																				
There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.																				
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																				
There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.																				
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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.																				
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																				
There should be no change in compliance costs for affected persons because compliance requirements are not changing.																				
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):																				
This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner																				
6. A) 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																				
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0
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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection 4-2-103(1)(i)	Subsection 4-17-115(3)	Section 4-17-103

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Craig W. Butters, Commissioner	Date:	03/18/2022
--	--------------------------------	--------------	------------

R68. Agriculture and Food, Plant Industry.**R68-9. Utah Noxious Weed Act.****R68-9-1. Purpose and Authority.**

(1) Promulgated under authority of Subsections 4-2-[2]103(1)(i), [and] 4-17-[3]115(3), and Section 4-17-103.

(2) This rule establishes the designations for noxious weeds, the designations for noxious weed disseminators, and the prescribed treatment for articles.

R68-9-2. Definitions.

(1) "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food or the commissioner's designee.

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

(3) "EDRR" means early detection and rapid response.

R68-9-[2]3. Designation and Publication of State Noxious Weeds.

(1) Noxious Weed Classes.

(a) Class 1A (EDRR Watch List).

(i) Declared noxious and invasive weeds not native to Utah.

(ii) Declared noxious and invasive weeds not known to exist in the state that pose a serious threat to the state and should be considered as a very high priority.

(b) Class 1B (EDRR).

(i) Declared noxious and invasive weeds not native to Utah.

(ii) Declared noxious and invasive weeds that are known to exist in the state in very limited populations and pose a serious threat to the state and should be considered as a very high priority.

(c) Class 2 (Control).

(i) Declared noxious and invasive weeds not native to Utah, that pose a threat to the state and should be considered a high priority for control.

(ii) Weeds listed in the control list are known to exist in varying populations throughout the state.

(iii) The concentration of these weeds is at a level where control or eradication may be possible.

(d) Class 3 (Containment).

(i) Declared noxious and invasive weeds not native to Utah that are widely spread.

(ii) Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state.

(iii) Weed control efforts may be directed at reducing or eliminating new or expanding weed populations.

(iv) Known and established weed populations, as determined by the County Weed Board, may be managed by any approved weed control methodology.

(v) Class 3 weeds pose a threat to the agricultural industry and agricultural products.

(e) Class 4 (Prohibited for sale or propagation).

(i) Declared noxious and invasive weeds, not native to Utah, that pose a threat to the state through the retail sale or propagation in the nursery and greenhouse industry.

(ii) Prohibited noxious weeds are annual, biennial, or perennial plants that the department designates as having the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property.

[A.](2) [The following weeds are hereby officially designated and published as noxious for the State of Utah, as per the authority vested in the Commissioner of Agriculture and Food under Section 4-17-3:

There are hereby designated five classes of noxious weeds in the state: Class 1A (EDRR Watch List), Class 1 (EDRR), Class 2 (Control), Class 3 (Containment), and Class 4 (Prohibited for sale or propagation). Tables 1, 2, 3, 4, and 5 list the weeds officially designated and published as noxious weeds for Utah. Each county in Utah may have different priorities regarding specific state designated noxious weeds and is therefore able to reprioritize these weeds for their own needs.

[TABLE

Class 1A: Early Detection Rapid Response (EDRR) Watch List
Declared noxious and invasive weeds not native to the state of Utah and not known to exist in the State that pose a serious threat to the state and should be considered as a very high priority.

Common crupina	<i>Crupina vulgaris</i>
African rue	<i>Peganum harmala</i>
Small bugloss	<i>Anchusa arvensis</i>
Mediterranean sage	<i>Salvia aethiopsis</i>
Spring millet	<i>Milium vernale</i>
Syrian beancaper	<i>Zygophyllum fabago</i>
Ventenata (North Africa grass)	<i>Ventenata dubia</i>
Plumeless thistle	<i>Carduus acanthoides</i>
Malta starthistle	<i>Centaurea melitensis</i>

Class 1B: Early Detection Rapid Response (EDRR)
Declared noxious and invasive weeds not native to the State of Utah that are known to exist in the state in very limited populations and pose a serious threat to the state and should be considered as a very high priority.

Camelthorn	<i>Alhagi maurorum</i>
Garlic mustard	<i>Alliaria petiolata</i>
Purple starthistle	<i>Centaurea calcitrapa</i>
Goatsrue	<i>Galoga officinalis</i>
African mustard	<i>Brassica tournefortii</i>
Giant reed	<i>Arundo donax</i>
Japanese knotweed	<i>Polygonum cuspidatum</i>
Blueweed (Vipers bugloss)	<i>Echium vulgare</i>
Elongated mustard	<i>Brassica elongata</i>
Common St. Johnswort	<i>Hypericum perforatum</i>
Oxeye daisy	<i>Leucanthemum vulgare</i>
Cutleaf vipergrass	<i>Scorzonera laciniata</i>

Class 2: Control
Declared noxious and invasive weeds not native to the state of Utah, that pose a threat to the state and should be considered a high priority for control. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication may be possible.

Leafy spurge	<i>Euphorbia esula</i>
Medusahead	<i>Taeniatherum caput medusae</i>
Rush skeletonweed	<i>Chondrilla juncea</i>
Spotted knapweed	<i>Centaurea stoebe</i>
Purple loosestrife	<i>Lythrum salicaria</i>
Squarrose knapweed	<i>Centaurea virgata</i>
Dyers woad	<i>Isatis tinctoria</i>
Yellow starthistle	<i>Centaurea solstitialis</i>
Yellow toadflax	<i>Linaria vulgaris</i>
Diffuse knapweed	<i>Centaurea diffusa</i>
Black henbane	<i>Hyoscyamus niger</i>
Dalmatian toadflax	<i>Linaria dalmatica</i>

Class 3: Containment

Declared noxious and invasive weeds not native to the State of Utah that are widely spread. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations. Known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. These weeds pose a threat to the agricultural industry and agricultural products.

Russian knapweed	<i>Acroptilon repens</i>
Houndstoungue	<i>Cynoglossum officinale</i>
Perennial pepperweed	<i>Lepidium latifolium</i>
— (Tall whitetop)	
Phragmites (Common reed)	<i>Phragmites australis</i> ssp.
Tamarisk (Saltcedar)	<i>Tamarix ramosissima</i>
Hoary cress	<i>Cardaria spp.</i>
Canada thistle	<i>Cirsium arvense</i>
Poison hemlock	<i>Conium maculatum</i>
Musk thistle	<i>Carduus nutans</i>
Quackgrass	<i>Elymus repens</i>
Jointed goatgrass	<i>Aegilops cylindrica</i>
Bermudagrass*	<i>Cynodon dactylon</i>
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense) and Sorghum alnum (Sorghum alnum).
Scotch thistle (Cotton thistle)	<i>Onopordum acanthium</i>
Field bindweed	<i>Convolvulus spp.</i>
— (Wild Morning glory)	
Puncturevine (Goathead)	<i>Tribulus terrestris</i>

* Bermudagrass (*Cynodon dactylon*) shall not be a noxious weed in Washington County and shall not be subject to provisions of the Utah Noxious Weed Law within the boundaries of that county. It shall be a noxious weed throughout all other areas of the State of Utah and shall be subject to the laws therein.

Class 4: Prohibited

Declared noxious and invasive weeds, not native to the state of Utah, that pose a threat to the state through the retail sale or propagation in the nursery and greenhouse industry. Prohibited noxious weeds are annual, biennial, or perennial plants that the commissioner designates as having the potential or are known to be detrimental to human or animal health, the environment, public roads, crops, or other property.

Gogongrass	<i>Imperata cylindrica</i>
— (Japanese blood grass)	
Myrtle spurge	<i>Euphorbia myrsinites</i>
Dames Rocket	<i>Hesperis matronalis</i>
Scotch broom	<i>Cytisus scoparius</i>
Russian olive	<i>Elaeagnus angustifolia</i>

Each county in Utah may have different priorities regarding specific State designated Noxious Weeds and is therefore able to reprioritize these weeds for their own needs.]

TABLE 1
Class 1A (EDRR Watch List)

Weed Name	Binomial Name
Common crupina	<i>Crupina vulgaris</i>
Small bugloss	<i>Anchusa arvensis</i>
Mediterranean sage	<i>Salvia aethiopsis</i>
Spring millet	<i>Milium vernale</i>
Syrian beancaper	<i>Zygophyllum fabago</i>
Plumeless thistle	<i>Carduus acanthoides</i>

TABLE 2
Class 1B (EDRR)

Weed Name	Binomial Name
African rue	<u>Peganum harmala</u>
Camelthorn	<u>Alhagi maurorum</u>
Garlic mustard	<u>Alliaria petiolate</u>
Purple starthistle	<u>Centaurea calcitrapa</u>
Goat's rue	<u>Galega officinalis</u>
African mustard	<u>Brassica tournefortii</u>
Giant reed	<u>Arundo donax</u>
Japanese knotweed	<u>Polygonum cuspidatum</u>
Blueweed (Vipers bugloss)	<u>Echium vulgare</u>
Elongated mustard	<u>Brassica elongate</u>
Common St. Johnswort	<u>Hypericum perforatum</u>
Oxeye daisy	<u>Leucanthemum vulgare</u>
Cutleaf vipergrass	<u>Scorzonera laciniata</u>
Ventenata (North African grass)	<u>Ventenata dubia</u>
Malta starthistle	<u>Centaurea melitensis</u>

TABLE 3
Class 2 (Control)

Weed Name	Binomial Name
Leafy spurge	<u>Euphorbia esula</u>
Medusahead	<u>Taeniatherum caput-edusae</u>
Rush skeletonweed	<u>Chondrilla juncea</u>
Spotted knapweed	<u>Centaurea stoebe</u>
Purple loosestrife	<u>Lythrum salicaria</u>
Squarrose knapweed	<u>Centaurea virgata</u>
Dyers woad	<u>Isatis tinctoria</u>
Yellow starthistle	<u>Centaurea solstitialis</u>
Yellow toadflax	<u>Linaria vulgaris</u>
Diffuse knapweed	<u>Centaurea diffusa</u>
Black henbane	<u>Hyoscyamus niger</u>
Dalmation toadflax	<u>Linaria dalmatica</u>

TABLE 4
Class 3 (Containment)

Weed Name	Binomial Name
Russian knapweed	<u>Acroptilon repens</u>
Houndstounge	<u>Cynoglossum officianale</u>
Perennial pepperweed (Tall whitetop)	<u>Lepidium latifolium</u>
Phragmites (Common reed)	<u>Phragmites australis ssp.</u>
Tamarisk (Saltcedar)	<u>Tamarix ramosissima</u>
Hoary cress (globe-podded)	<u>Lepidium draba (Cardaria draba)</u>
Hoary cress (heart-podded)	<u>Lepidium chalepense (Cardaria chalepensis)</u>
Hoary cress (lens-podded)	<u>Lepidium appelianum (Cardaria pubescens)</u>

<u>Canada thistle</u>	<u>Cirsium arvense</u>
<u>Poison hemlock</u>	<u>Conium maculatum</u>
<u>Musk thistle</u>	<u>Carduus nutans</u>
<u>Quackgrass</u>	<u>Elymus repens</u>
<u>Jointed goatgrass</u>	<u>Aegilops cylindrica</u>
<u>Bermudagrass*</u>	<u>Cynodon dactylon</u>
<u>Perennial Sorghum spp.</u> <u>Including:</u>	
<u>Johnson grass</u>	<u>Sorghum halepense</u>
<u>Columbus grass</u>	<u>Sorghum alnum</u>
<u>Scotch thistle (Cotton thistle)</u>	<u>Onopordum acanthium</u>
<u>Field bindweed (Wild Morning-glory)</u>	<u>Convolvulus spp.</u>
<u>Puncturevine (Goathead)</u>	<u>Tribulus terrestris</u>

* Bermudagrass (Cynodon dactylon) shall not be a noxious weed in Washington County and shall not be subject to Title 4, Chapter 17, the Utah Noxious Weed Act within the boundaries of that county. It shall be a noxious weed throughout any other areas of the state and shall be subject to the laws of the state.

TABLE 5
Class 4 (Prohibited)

Weed Name	Binomial Name
<u>Cogongrass (Japanese blood grass)</u>	<u>Imperata cylindrica</u>
<u>Myrtle spurge</u>	<u>Euphorbia myrsinites</u>
<u>Dames Rocket</u>	<u>Hesperis matronalis</u>
<u>Scotch broom</u>	<u>Cytisus scoparius</u>
<u>Russian olive</u>	<u>Elaeagnus angustifolia</u>

R68-9-[3]4. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.

~~A. As provided in Section 4-17-3, t)(1) The following articles are designated and published [by the Commissioner] as capable of disseminating noxious weeds:~~

- ~~1. (a) [M]achinery and equipment, particularly combines and hay balers[-];~~
- ~~2. (b) [F]arm trucks and common carriers[-];~~
- ~~3. (c) [S]eed[-];~~
- ~~4. (d) [S]creenings sold for livestock feed[-];~~
- ~~5. (e) [L]ivestock feed material[-];~~
- ~~6. (f) [H]ay, straw, or other material of similar nature[-];~~
- ~~7. (g) [M]anure[-];~~
- ~~8. (h) [S]oil, sod, and nursery stock[-];~~
- ~~9. (i) [N]oxious weeds distributed or sold for any purpose[-]; and~~
- ~~10. (j) [L]ivestock.~~

R68-9-[4]5. Prescribed Treatment for Articles.

~~A. As provided in Section 4-17-3, the Commissioner has determined that t)(1) The following treatments shall be [considered] the minimum treatment required to prevent dissemination of noxious~~

weed seeds or ~~[such]~~ parts of noxious weed plants that could cause new growth by contaminated articles:

~~[4-](a)~~ Machinery and Equipment.

~~[a-](i)~~ ~~[It shall be unlawful for any]~~ Any person, company, or corporation ~~[to]~~ shall not:

~~[(4)](A)~~ bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners or other farm vehicles or machinery into the state without ~~[first-]~~ cleaning ~~[such]~~ the equipment to ensure it is free from ~~[all]~~ any noxious weed seed and plant parts; or

~~[(2)](B)~~ move any harvesting or threshing machinery, portable feed grinders or portable seed cleaners from any farm infested with any noxious weed without first cleaning ~~[such]~~ the equipment to ensure it is free from ~~[all]~~ any noxious weed seed and plant parts.

~~[(a)](ii)~~ Immediately after completing the threshing of grain or seed ~~[which] that~~ is contaminated with noxious weeds, ~~[such] the~~ machine ~~[is to] shall~~ be cleaned by:

~~[(4)](A)~~ removing ~~[all]~~ any loose material from the top and side of the machine by sweeping with a blower;

~~[(2)](B)~~ opening the lower end of elevator, return and measuring device and removing infested material from shakers, sieves, and other places of lodgement;

~~[(3)](C)~~ running the machine empty for ~~[not less than] at least~~ five minutes, alternately increasing and retarding the speed; and

~~[(4)](D)~~ following the manufacturer's detailed suggestions for cleaning the machine.

~~[2-](b)~~ Farm Trucks and Common Carriers.

~~(i)~~ ~~[It shall be unlawful for any]~~ Any person, company, or corporation ~~[to]~~ shall not transport seed, screenings, or feed of any kind containing noxious weed seed over or along any highway in this ~~[S]~~ state or on any railroad operating in this ~~[S]~~ state unless the ~~[same] seed, screenings, or feed containing noxious weed seed~~ is carried or transported in ~~[such-]~~ vehicles or containers ~~[which] that~~ will prevent the leaking or scattering ~~[thereof] of the seed, screenings, or feed containing noxious weed seed.~~

~~(ii)~~ ~~[All] Each~~ common carrier~~[s]~~ shall thoroughly clean and destroy any noxious weed seeds or plant parts in cars, trucks, vehicles, or other receptacles used by them after each load shall have been delivered to a consignee before again placing ~~[such] the~~ car, truck, vehicle, or receptacle into service.

~~[3-](c)~~ Seed.

~~[a-](i)~~ ~~[It shall be unlawful for any]~~ Any person, firm, or corporation ~~[to]~~ shall not sell, offer, or expose for sale or distribute in Utah any agricultural, vegetable, flower, or tree and shrub seeds for seeding purposes ~~[which] that~~ contains any seeds of those weeds declared noxious by ~~[the Commissioner of Agriculture and Food] the~~ department.

~~[b-](ii)~~ ~~[It shall be the duty of t] The~~ ~~[State Agricultural Inspector] department agricultural inspector~~ ~~[to]~~ shall remove from sale any lots of seeds offered for sale ~~[which] that~~ are found to contain noxious weed seeds.

~~(A)~~ ~~[Such] The~~ seed may be recleaned under the supervision of the inspector and, if found to be free from noxious weed seeds, ~~[the same] the seed~~ may be released for sale or distribution; otherwise, ~~[such] the~~ seed shall be:

~~(I)~~ returned to point of origin~~[s];~~

~~(II)~~ shipped to another state where ~~[such] the~~ weed shall be returned to point of origin~~[s];~~

~~(III)~~ shipped to another state where ~~[such] the~~ weed seed is not noxious~~[s];~~ or

~~(IV)~~ destroyed or processed in ~~[such-]~~ a manner as to destroy viability of the weed seeds.

~~[4-](d)~~ Screenings Sold for Livestock Feed.

~~[a-](i)~~ ~~[All] Any~~ screenings or by-products of cleaning grains or other seeds containing noxious weed seeds, when used in commercial feed or sold ~~[as such-]~~ to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy ~~[such] the~~ weed seeds so that the finished product contains ~~[not more than] at most~~ six whole noxious weed seeds per pound.

~~[b-](ii)~~ ~~[All] Each~~ mill~~[s]~~ and plant~~[s]~~ ~~that clean[ing]s~~ or process~~[ing]es~~ any grains or other seeds shall be required to grind or otherwise treat ~~[all] any~~ screenings containing noxious weed seeds ~~[so as-]~~ to destroy ~~[such] the~~ weed seeds to the extent that the ~~[above]~~ stated tolerance in this rule is not exceeded before allowing the ~~[same] grains or other seeds~~ to be removed from the mill or plant.

~~(A)~~ ~~[Such-]~~ Screenings may be moved to another plant for grinding and treatment; provided that~~[-]~~ each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.

~~[5-](c)~~ Livestock Feed Material.

~~[a-](i)~~ ~~[It shall be unlawful for any]~~ Any person, company, or corporation ~~[to]~~ shall not sell or offer for sale, barter, or give away to the ultimate consumer any livestock feed material, including whole grains, ~~[which] that~~ contain more than six whole noxious weed seeds per pound.

~~(A)~~ Whole feed grain ~~[which] that~~ exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers ~~[where] if~~ the manner of processing will reduce the number of whole noxious weed seed to no more than six per pound.

~~[6-](f)~~ Hay, Straw, or ~~[O] other~~ ~~[M] material~~ of ~~[S] similar~~ ~~[N] nature.~~

~~[a-](i)~~ ~~[It shall be unlawful for any]~~ Any person, company, or corporation ~~[to]~~ shall not:

~~(A)~~ sell or offer for sale, barter, or give away any hay, straw, or other material of similar nature, ~~[which] that~~ is contaminated with mature noxious weed seeds or ~~[such-]~~ parts of noxious weed plants ~~[which] that~~ could cause new growth~~[-];~~ or

~~(B)~~ ~~[to-]~~ alter, change, or falsify in any way information contained on a phytosanitary certificate.

~~[7-](g)~~ ~~[Manure-]~~

~~a-]~~ Manure produced from grain, hay, or other forage infested with noxious weeds shall not be applied or dumped ~~[elsewhere than upon] anywhere other than on~~ the premises of the owner ~~[thereof] of the manure.~~

~~[8-](h)~~ Soil, Sod, and Nursery Stock.

~~[a-](i)~~ No soil, sod or nursery stock ~~[which] that~~ contains or is contaminated with noxious weed seeds, or ~~[such-]~~ parts of the plant that could cause new growth, shall be removed from the premises ~~[upon which] where~~ it is located until cleaned of ~~[such-]~~ weed seed or plant parts~~[-except that such-]~~.

~~(ii)~~ ~~[e] Contaminated~~ soil may be used for restrictive non-planting purposes ~~[upon] with~~ permission and under direction of the ~~[e] County [w] Weed [s] Supervisor~~ or a representative of the ~~[Utah Department of Agriculture and Food] department.~~

~~[9-](i)~~ Noxious Weeds Distributed or Sold for Any Purpose.

~~[a-](i)~~ ~~[It shall be unlawful for any]~~ Any person, company, or corporation ~~[to]~~ shall not sell, barter, or give away any noxious weed plants or seeds for any purpose.

~~[40-](j)~~ Livestock.

~~[a-](i)~~ No livestock to which grain, hay, or other forage containing noxious weed seeds has been fed shall be permitted to range or graze upon fields other than those upon which they have been so fed for a period of 72 hours following ~~[such]the~~ feeding. During ~~[such]this~~ period, they shall be fed materials ~~[which]that~~ are not contaminated with noxious weed seeds.

R68-9-~~[5]6~~. Reports ~~[F]from~~ Counties.

~~[A-](1)~~ The Board of County Commissioners of each county, with the aid of their ~~[e]County~~ Weed Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the ~~[Commissioner of Agriculture and Food]~~ commissioner by January 15 of each year, covering the activities of the previous calendar year. A prescribed form for this report shall be supplied by the ~~[Commissioner]~~ department.

R68-9-~~[6]7~~. Notices.

~~[A-](1)~~ General and individual notices pertaining to the control and prevention of noxious and invasive weeds shall be substantially of the types prescribed in this rule ~~[herein]~~, namely~~[7]~~:

~~(a)~~ General Notice to Control Noxious Weeds~~[7]~~;

~~(b)~~ Individual Notice to Control Noxious Weeds~~[7]~~; and

~~(c)~~ Notification of Noxious Weed Lien Assessment.

~~[1-](d)~~ General Notice To Control Noxious Weeds.

~~(i)~~ A general public notice shall be posted by the County Weed Board in at least three public places within the county and be published in one or more newspapers of general circulation throughout the county, on or before May 1 of each year and at any other times the County Weed Board determines.

~~(A)~~ ~~[Such]~~ The public notice shall state that ~~[it is the duty of every]~~ each property owner ~~[to]~~ shall control and prevent the spread of noxious weeds on any land in ~~[his]~~ their possession, or under ~~[his]~~ their control, and shall serve as a warning that if ~~[he]~~ they fail~~[s]~~ to comply with this notice, enforced weed control measures may be imposed at the direction of county authorities.

~~(B)~~ ~~[Such]~~ The general notice shall also include a list of weeds declared noxious for ~~[the State of]~~ Utah and for ~~[said]~~ that county, if any.

~~[2-](c)~~ Individual Notice to Control Noxious Weeds.

~~(i)~~ Following publication of a general notice, if a County Weed Board determines that definite weed control measures are required to control noxious weeds on a particular property, the Country Weed Board shall cause an individual notice to be served upon the owner or the person in possession of ~~[said]~~ the property, giving specific instructions concerning when and how the noxious weeds are to be controlled within a ~~[specified]~~ named period~~[of time]~~.

~~(A)~~ The individual notice shall also inform the property owner or operator of legal action ~~[which]~~ that may be taken against him if ~~[he]~~ they fail~~[s]~~ to comply with ~~[said]~~ the notice.

~~[3-](f)~~ Notification of Noxious Weed Lien Assessment.

~~(i)~~ If it is ~~[deemed]~~ considered advisable, the Board of County Commissioners may cause noxious weeds to be controlled on a particular property and any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property.

~~(A)~~ A notice shall be provided ~~[such]~~ to the person in possession of the property, showing an itemized cost statement of the labor and materials necessarily used in the work of ~~[said]~~ the control measures.

~~(1)~~ This notice shall also state that the expense constitutes a lien against the property and shall be added to the general taxes unless payment is made to the County Treasurer within 90 days.

KEY: noxious weeds, weed classifications, weed control

Date of Last Change: ~~[February 2, 2016]~~ 2022

Notice of Continuation: June 1, 2018

Authorizing, and Implemented or Interpreted Law: ~~[4-2-2; 4-17-3]~~ 4-2-103(1)(i); 4-17-115(3); 4-17-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): **R137-1**

Filing ID
54540

Agency Information

1. Department:	Career Service Review Office	
Agency:	Administration	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Akiko Kawamura	385-346-8552	akawamura@utah.gov
Annette Morgan	385-346-8551	amorgan@utah.gov

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

General Information

2. Rule or section catchline:
R137-1. Grievance Procedure Rules
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This amendment comports with statutory changes made in H.B. 104, passed in the 2022 General Session.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment clarifies to whom an employee can file grievances at each Level of the grievance procedures and clarifies when an employee may skip a Level.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

None--This rule makes procedural changes to the manner in which state executive branch employees may file employee grievances and specifies to whom grievances may be filed. There is no cost for filing grievances and no aggregate costs or savings are anticipated.

B) Local governments:

None--This rule only applies to state executive branch agencies and their employees. Local governments are not impacted by this rule in any manner.

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

None--This rule only applies to state executive branch agencies and their employees. Small businesses are not impacted by this rule in any manner.

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

None--This rule only applies to state executive branch agencies and their employees. No businesses are impacted by this rule in any manner.

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):**

None--This rule only applies to state executive branch agencies and their employees. Other entities or persons are not impacted by this rule in any manner.

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

There is no compliance cost for the Career Service Review Office. These amendments make procedural changes only and no costs will be incurred.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This amendment clarifies the 4 Levels of the Grievance Procedures, including to whom a grievance should be filed. Akiko Kawamura, Administrator

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Administrator of Career Service Review Office, Akiko Kawamura, has reviewed and approved this fiscal analysis.

Citation Information**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 67-19a-202	Section 67-19a-302	Section 67-19a-401
--------------------	--------------------	--------------------

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Akiko Kawamura, Administrator	Date:	04/25/2022
--	-------------------------------	--------------	------------

R137. Career Service Review Office, Administration.**R137-1. Grievance Procedure Rules.****R137-1-11. Issues Applicable to Level 4.**

All grievances shall be reviewed to determine:

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

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

(3) The office may not take jurisdiction of a matter that an employer has not had an opportunity to address.

R137-1-14. Grievance Procedure Levels.

[Persons acting on grievances pursuant to Sections 67-19a-402, and in accordance with these rules, shall conduct their filings through the following levels of increasing accountability:]The administration of all grievances under Subsection 67-19a-202(1) occurs on the following four levels:

Level 1; [A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance is a formal complaint necessitating a response. At all levels of procedure, the parties must comply with the time periods outlined in Sections 67-19a-401 and 67-19a-402. If a supervisor is the subject of a grievance or complaint, the employee may proceed directly to Level 2-]the supervisor;

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

Level 3; [If the grievance is not resolved at Level 2, the employee may advance their grievance to the department head, executive director, or commissioner (or director's designee) at Level 3-]the agency director or the director's designee; and

Level 4; [If the grievance is not resolved at Level 3, the employee may advance their grievance to the CSRO at Level 4.]the office.

Except as provided in these rules, an employee shall file a grievance at the lowest level that has not already issued a decision, taken action, or declined to address the subject of the grievance. An employee may not file a grievance that asks the same manager or a lower-level manager to reconsider a previously made decision.

If a supervisor or division director is a subject of a grievance or complaint, the employee may proceed directly to Level 2 or 3, respectively.

For grievances filed under Subsections 67-19a-202(1) and 67-19a-202(2), the CSRO provides an evidentiary de novo hearing, conducted before a CSRO hearing officer. When the CSRO receives a request for administrative review of an abusive conduct investigation filed under Subsection 67-19a-202(3), no evidentiary hearing is required.

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

KEY: grievance procedures, reconsiderations

Date of Last Change: 2022~~November 7, 2019~~

Notice of Continuation: May 11, 2021

Authorizing, and Implemented or Interpreted Law: 34A-5-106; 67-19-16; 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63G-4 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.):	R380-10	Filing ID	54590
--------------------------------------	----------------	------------------	--------------

Agency Information

1. Department:	Health	
Agency:	Administration	
Building:	Martha Hughes Cannon Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 141000	
City, state and zip:	Salt Lake City, UT 84114-1000	
Contact person(s):		
Name:	Phone:	Email:
Sonia Sweeney	801-538-8241	ssweeney@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

General Information

2. Rule or section catchline:

R380-10. Informal Adjudicative Proceedings

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

With the consolidation of the Department of Health and Human Services (Department), the Department is working to align the administrative hearing procedures. This repeal is to ensure the administrative hearing procedures are established and consolidated for the Department of Health and Human Services. With language changes in the amendment to Rule R497-100, filed consecutively with this repeal, this rule is no longer necessary. (EDITOR'S NOTE: The proposed amendment to Rule R497-100 is under ID 54592 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This repeal, along with the amendment to Rules R497-100, filed consecutively with this repeal, align and consolidate the administrative hearing procedures for the Department of Health and Human Services. This rule is repealed entirely.

Fiscal Information

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

A) State budget:

It is not anticipated that the repeal of this rule will result in a fiscal impact to the state budget. The purpose of this repeal is to align and consolidate the administrative hearing procedures for the newly consolidated Department.

B) Local governments:

The repeal of this rule will not result in a fiscal impact to local governments because this filing does not repeal requirements for local agencies.

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

The repeal of this rule will not result in a fiscal impact to small businesses because this filing does not repeal requirements for small businesses.

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

The repeal of this rule will not result in a fiscal impact to non-small businesses because this filing does not repeal requirements 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**):

The repeal of rule will not result in a fiscal impact to persons other than small businesses, non-small businesses, state, or local government entities because this repeal does not impact requirements for persons other than small businesses, non-small businesses, state, or local government entities.

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

There are no compliance costs associated with this repeal.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-1-7		
----------------	--	--

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/21/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	Date:	05/02/2022
--	----------------------------------	--------------	------------

R380. Health, Administration.

[R380-10. Informal Adjudicative Proceedings.

R380-10-1. Authority and Purpose.

This rule sets forth informal adjudicative procedures for the Department of Health and committees created within the Department under Section 26-1-7. Utah Code Sections 26-1-5, 26-1-17, and 26-1-24, and Title 63G, Chapter 4 authorize it.

R380-10-2. Definitions.

For purposes of this rule, the definitions in Section 63G-4-103 of the Utah Administrative Procedures Act apply, in addition:

(1) "Agency" means the Department of Health bureau, office, or division that most closely administers the program under which the agency action is taken or which is responsible to administer the program that deals with the request for agency action.

(2) "Agency action" means an agency determination after conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102(2).

(3) "Initial agency determination" means a decision without conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102(2).

(4) "Notice of agency action" means the formal notice that meets the requirements of Subsection 63G-4-201(2) which an agency or policy making committee issues to commence an adjudicative proceeding.

(5) "Presiding officer" means the individual designated by the Department or by a policy making committee in accordance with R380-10-5 or by statute to conduct an adjudicative proceeding.

(6) "Policy making committee" means a committee that is created under Section 26-1-7 and to which a statute delegates authority to make rules.

(7) "Request for agency action" means the formal written request that meets the requirements of Subsection 63G-4-201(3) and that clearly expresses a request that the agency commence adjudicative proceedings.

R380-10-3. Form of Proceeding and Applicability.

(1) The Department of Health prefers to resolve disputes at the lowest level. This rule does not foreclose simple resolution through discussion and negotiation between an agency and any person affected by an agency action.

(2) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all Department of Health adjudicative proceedings are informal proceedings.

(3) Unless otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings before any policy making committee and all appeals to the Executive Director are designated as formal proceedings.

(4) The provisions of this rule do not govern actions or proceedings which a federal statute or regulation requires to be conducted solely in accordance with federal procedures. If federal statute or regulation requires a modification to these procedures, the federal procedures prevail.

(5) To the extent that this rule conflicts with a similar rule adopted by an agency within the Department that governs adjudicative proceedings, the conflicting provisions of the other rule govern.

R380-10-4. Adjudicative Authority.

(1) An agency's or policy making committee's authority to decide an adjudicative matter is limited to the specific subject matter of the program that it administers.

(2) If an adjudicative matter is not solely within the program administration of a single agency or policy making committee, the executive director may appoint a presiding officer for the matter.

(3) A committee that is not a policy making committee has no adjudicative authority, except as it may be designated to serve as a presiding officer or to otherwise render a recommended decision.

R380-10-5. Presiding Officer.

The agency head shall serve as the presiding officer for all informal proceedings, except that the agency head may designate a presiding officer as approved by the executive director. A policy making committee may designate as a presiding officer:

- (1) an individual from the committee;
- (2) an individual from Department staff as approved by the executive director;
- (3) some other qualified and experienced person approved by the executive director.

R380-10-6. Commencement of Proceedings, Response.

(1) If a person is aggrieved by an initial agency determination, he may file with the agency a request for agency action within the shorter of 30 calendar days of either receiving the initial agency determination or the agency's mailing of the initial agency determination.

(2) If the informal adjudicative proceeding is commenced by a notice of agency action, all parties in the action, except the agency or policy making committee that initiates the agency action, shall file an answer or other pleading responsive to the allegations contained in the notice of agency action.

(3) If the informal adjudicative proceeding is commenced by a request for agency action, the agency or policy making committee that performed the agency action need not file an answer or other responsive pleading. However, the particular agency or policy making committee must consider the request and grant or deny it or set the request for further proceedings as required by Section 63G-4-201(d).

R380-10-7. Adjudicative Hearings.

(1) The agency or policy making committee before which the matter resides shall hold a hearing if:

- (a) a statute or other rule requires it; or
- (b) another rule permits it and a party requests it with the request for agency action or within 25 calendar days of the mailing of the notice of agency action, or within 25 days of notice of the agency's setting a matter for informal adjudicative proceedings, or within another period as prescribed by rule.

(2) If any party requests a hearing and if there is a disputed issue of fact, the presiding officer shall conduct an evidentiary hearing. In any evidentiary hearing, the parties named in the notice of agency action or in the request for agency action may testify, present evidence, and comment on the issues. If there is no disputed issue of fact, the presiding officer may determine all issues in the adjudicative proceeding based on oral or written argument.

(3) Hearings may be held only after timely notice to all parties.

(4) All hearings are open to all parties, but the hearing officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a party, and protect the confidentiality of records or other information protected by law.

(5) Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

(6) All parties may access information contained in the agency's files and all materials and information gathered in any investigation, to the extent permitted by law.

(7) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or regulation requires that a state permit intervention.

(8) All parties to the proceedings are responsible to assure the appearance of witnesses and for the costs of appearance of witnesses.

(9) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that states the following:

- (a) the decision;
- (b) the reasons for the decision;
- (c) a notice of any right of administrative or judicial review available to the parties; and
- (d) the time limits for filing an appeal or requesting a review.

(10) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(11) The agency shall promptly mail a copy of the presiding officer's order to each party. (12) All hearings shall be tape recorded or recorded by a shorthand reporter at the agency's expense.

(a) If all parties agree, the hearing may be recorded by a certified shorthand reporter at the requesting party's expense. The certified shorthand reporter's transcript is the official transcript of the hearing and is the property of the agency.

(b) Any party, at its own expense, may have a reporter who is approved by the agency prepare a transcript from the agency's record of the hearing; however, the agency's or policy making committee's record of the hearing is the official record of the hearing.

R380-10-8. Presiding Officer's Decision.

In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head and the agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings. If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain revised findings of fact and conclusions of law as needed, based on the record before the presiding officer and as may be supplemented before the agency head.

R380-10-9. Agency Review.

Any party may seek review of an agency action by filing a written request as provided in Section 63G-4-301. For decisions that are appealable to a policy making committee, the party must file the request with the agency that administers the program that deals with the matter. For all other appeals, the party must file the request with the Executive Director.

KEY: administrative procedures, health administration

Date of Last Change: 1993

Notice of Continuation: April 7, 2022

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-17; 26-1-24; 63G-4]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R382-1

Filing ID
54587

Agency Information

1. Department:	Health	
Agency:	Children's Health Insurance Program	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R382-1. Benefits and Administration
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to update and clarify this rule text as needed.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment updates and clarifies terms and entities in the text. It also makes other technical changes.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no impact to the state budget as there are only minor changes and technical updates.
B) Local governments:
There is no impact on local governments as they neither fund nor provide benefits under the Children's Health Insurance Program.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Businesses will see no fiscal impact with these minor changes and technical updates. Nate Checketts, Executive Director

6. A) 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	FY2023	FY2024	FY2025
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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 26-1-5	Section 26-40-103	

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

R382. Health, Children's Health Insurance Program.

R382-1. Benefits and Administration.

R382-1-1. Authority and Purpose.

This rule implements the Children's Health Insurance Program under Title XXI of the Social Security Act, as adopted in the state under Title 26, Chapter 40, Utah Children's Health Insurance Act. It is authorized by Section 26-40-103.

R382-1-2. Definitions.

The definitions found in Title 26, Chapter 40, Utah Children's Health Insurance Act apply to this rule. ~~[In addition,]~~The following definitions also apply.

(1) "Applicant" means a child under ~~[the age of]~~19 years of age on whose behalf an application has been made for benefits under the Children's Health Insurance Program (CHIP), but who is not an enrollee.

(2) "CHIP" means the Children's Health Insurance Program.

(3) "CHIP Beneficiary" means a child under 19 years of age who is determined eligible for the Children's Health Insurance Program.

~~[(2)]~~4 "Department" means the Utah Department of Health and Human Services.

~~[(3)]~~ "Enrollee" means a child under the age of 19 who has applied for and has been found eligible for benefits under CHIP.

R382-1-3. Nature of Program and Benefits.

(1) CHIP provides reimbursement to medical providers for the services they ~~[render]~~give to a child who meets the eligibility and application requirements of Rule R382-10. CHIP provides limited benefits as described in this rule. The Department provides reimbursement coverage under the program only for benefits and levels of coverage for each program benefit:

(a) as provided in rule governing CHIP; and

(b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, April 17, 2009 ed., which is adopted and incorporated by reference.

(2) CHIP is not health insurance. A relationship with the Department as the insurer and the ~~[enrollee]~~beneficiary as the insured does not exist under this program.

R382-1-4. Limitation of Abortion Benefits.

The Department may only cover abortion in accordance with ~~[the provisions of]~~42 U.S.C. Sec. 1397ee.

R382-1-5. Providers.

The Department requires a child to enroll in one of the managed care organizations (MCO) that contracts with the Department under the program.

R382-1-6. Reimbursement.

(1) The Department shall reimburse only for benefits as limited in its contracts with the MCOs.

(2) Payment for services by the contracted MCO and ~~[enrollee]~~the CHIP beneficiary co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered.

R382-1-7. Cost Sharing.

A provider may require ~~[an enrollee]~~a CHIP beneficiary to pay a co-payment equal to that listed in Section 8 of the State Plan for the Children's Health Insurance Program, April 17, 2009 ed., which is adopted and incorporated by reference.

R382-1-8. Agency Conferences, Fair Hearings, and Appeals.

(1) ~~[An]~~A CHIP applicant or ~~[enrollee]~~beneficiary may request an agency conference in accordance with Section R414-301-5 at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act (UAPA).

(2) The CHIP applicant or ~~[enrollee]~~beneficiary, parent, legal guardian, or authorized representative may request an agency action, also called a fair hearing, if ~~[he]~~the individual disagrees with an agency decision regarding the individual's eligibility. The request

for a fair hearing must be in accordance with ~~[the provisions and time limits of]~~ Section R414-301-~~[6]~~7.

(3) The Department of Workforce Services ~~[(DWS)]~~ shall conduct fair hearings on eligibility in accordance with ~~[the provisions of]~~ Section R414-301-~~[6]~~7.

(4) If ~~[an enrollee]~~ a CHIP beneficiary disagrees with a decision of the MCO regarding a covered benefit or service, ~~[the enrollee]~~ the beneficiary may appeal the decision through the MCO.

(a) ~~[An enrollee]~~ A CHIP beneficiary must exhaust grievance remedies with the MCO before ~~[he]~~ the beneficiary requests an agency action from the Department.

(b) The ~~[enrollee]~~ CHIP beneficiary may file an appeal with the Department if the ~~[enrollee]~~ beneficiary disagrees with the MCO's resolution. The ~~[enrollee]~~ beneficiary must file the appeal within 60 days of the date that the MCO sends the resolution notice.

(c) The Department shall conduct a review of the MCO's decision in accordance with ~~[the provisions of]~~ 42 CFR 438.408 and issue a final decision to the ~~[enrollee]~~ CHIP beneficiary and the MCO.

(d) The Department shall conduct all appeals in accordance with UAPA.

(e) The ~~[enrollee]~~ CHIP beneficiary may continue to receive benefits if the ~~[enrollee]~~ beneficiary meets the conditions of 42 CFR 438.420.

KEY: children's health benefits, fair hearings

Date of Last Change: ~~2022 June 16, 2011~~

Notice of Continuation: April 11, 2018

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R382-2	Filing ID 54588
--------------------------------------	---------------	----------------------------------

Agency Information

1. Department:	Health	
Agency:	Children's Health Insurance Program	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this change is to update and clarify this rule text as needed.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment updates and clarifies terms and entities in the text. It also makes other technical changes.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Children's Health Insurance Program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Businesses will see no fiscal impact with these minor changes and technical updates. Nate Checketts, Executive Director

6. A) 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	FY2023	FY2024	FY2025
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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-1-5	Section 26-40-103	
----------------	-------------------	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

R382. Health, Children's Health Insurance Program.

R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program.

R382-2-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-40-103, as last amended by Laws of Utah 2012, Chapters 28 and 369.

R382-2-2. Purpose.

This rule establishes requirements for enrolling Children's Health Insurance Program (CHIP) beneficiaries in the electronic exchange of clinical health information unless the beneficiary or the beneficiary's parent or legal guardian opts the beneficiary out.

R382-2-3. Definitions.

These definitions apply to Rule R382-2:

(1) "Technical [S]pecifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.

(2) "Program website" means the website for the Department of Health and Human Services Division of Integrated Healthcare, and the website for CHIP. ["Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, and the CHIP websites.]

R382-2-4. Enrollment Notification.

(1) [Prior to] Before the enrollment process in the Clinical Health Information Exchange ([e]CHIE), the Department [will] provides [N]notice of [I]intent to enroll a CHIP beneficiary[beneficiaries] in [e]CHIE and includes the right of a beneficiary[beneficiaries] to opt out.

(2) The Department [will] provides additional education regarding the beneficiary's right to opt out on the program websites.

R382-2-5. Enrollment Process.

(1) The Department ~~[will]~~ provides ~~[e]~~CHIE an enrollment file of ~~[all]~~CHIP beneficiaries.

(2) The enrollment file ~~[will]~~ contains the succeeding month's CHIP enrollment.

(3) ~~[e]~~CHIE ~~[will]~~ enrolls a CHIP beneficiary ~~[beneficiaries]~~ on the first day of the succeeding month.

(4) ~~[Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with eHIE.]~~ Technical specifications published by UHIN and the Department's operating agreement with CHIE describe detailed submission procedures and guidelines, including required data elements.

(5) The Department ~~[will]~~ uses a secure format to transfer any enrollment files to ~~[e]~~CHIE.

R382-2-6. Exemptions.

(1) An individual's previous consent status in ~~[e]~~CHIE ~~[will be]~~ is honored by ~~[e]~~CHIE and ~~[will]~~ is not ~~[be]~~ overridden by the CHIP enrollment file.

KEY: CHIP, ~~[e]~~CHIE

Date of Last Change: ~~2022~~ September 1, 2012

Notice of Continuation: July 31, 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R382-3	Filing ID 54589
--------------------------------------	---------------	------------------------

Agency Information

1. Department:	Health	
Agency:	Children's Health Insurance Program	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule or section catchline:**

R382-3. Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this change is to update and clarify this rule text as needed.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment updates and clarifies terms within the text. It also makes other technical changes.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Children's Health Insurance Program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Businesses will see no fiscal impact with these minor changes and technical updates. Nate Checketts, Executive Director

6. A) 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	FY2023	FY2024	FY2025
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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-1-5	Section 26-40-103	
----------------	-------------------	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

R382. Health, Children's Health Insurance Program.

R382-3. ~~Accountable~~ Managed Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program.

R382-3-1. Introduction and Authority.

(1) This rule is established under the authority of Section 26-40-103.

(2) ~~[The purpose of t]~~ This rule ~~[is to]~~ establishes provisions governing ~~[Accountable Care Organization (ACO)]~~ managed care organization (MCO) performance measures for the reduction of non-emergent use of emergency departments by beneficiaries in the Children's Health Insurance Program (CHIP).

R382-3-2. Definitions.

(1) "CHIP Beneficiary" means a child under ~~[the age of]~~ 19 years of age who is determined eligible for the Children's Health Insurance Program under Title XXI of the Social Security Act as adopted in the state under Title 26, Chapter 40, Utah Children's Health Insurance Act.

(2) "Non-emergent medical condition" means a medical condition that does not meet the criteria of an emergency medical condition under 42 U.S.C. 1395dd-(e) of the Emergency Medical Treatment and Active Labor Act.

(3) "Non-emergent medical care" means ~~[]~~ medical care provided in an emergency room for the treatment of a non-emergent medical condition.

~~[(a) Medical care provided in an emergency room for the treatment of a non-emergent medical condition.]~~

(4) "Non-emergent medical care" does not mean:

(a) ~~[M]~~ medical services necessary to conduct a medical screening examination to determine if the CHIP beneficiary has an emergent or non-emergent medical condition; ~~[and] nor~~

(b) ~~[M]~~ medical care provided to a CHIP beneficiary who ~~[using a prudent layperson standard, reasonably believes he]~~ is experiencing an "emergency medical condition" as defined by 42 U.S.C. 1395dd(e) of the Emergency Medical Treatment and Active Labor Act.

R382-3-3. Performance Measures.

(1) An ~~[ACO]~~MCO that contracts with the Department to provide services to CHIP beneficiaries shall report the following information to the Department in accordance with the terms of its contract:

(a) ~~[E]~~emergency room visits with low acuity CPT codes 99281 or 99282;

(b) ~~[A]~~actions the ~~[ACO]~~MCO takes to expand primary care and urgent care for CHIP beneficiaries who are enrolled in the ~~[Accountable]~~managed ~~[C]~~care ~~[P]~~plan;

(c) ~~[A]~~actions the ~~[ACO]~~MCO takes to implement emergency room diversion plans that include:

~~(i) W~~ weekday, evening, and weekend access to primary care providers and community health centers for CHIP beneficiaries; ~~and~~

~~(ii) O~~ other innovations for expanding access to primary care ~~[-]; and~~

(d) ~~[O]~~ other quality of care for CHIP beneficiaries who are enrolled in an ~~[ACO]~~MCO as required by the Department.

KEY: children's health benefits

Date of Last Change: ~~2022~~January 13, 2014

Notice of Continuation: November 14, 2018

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40-103; 26-18-408

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R414-1	Filing ID	54586
--------------------------------------	---------------	------------------	--------------

Agency Information

1. Department:	Health	
Agency:	Health Care Financing, Coverage and Reimbursement Policy	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 143102	
City, state and zip:	Salt Lake City, UT 84114-3102	
Contact person(s):		
Name:	Phone:	Email:
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov

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

General Information

2. Rule or section catchline:

R414-1. Utah Medicaid Program

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

(Why is the agency submitting this filing?):

The purpose of this change is to update and clarify this rule text as needed to coincide with the merger of the Department of Health and the Department of Human Services.

4. Summary of the new rule or change

(What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment updates and clarifies terms and entities within the text, and makes other technical changes.

Fiscal Information

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

A) State budget:

There is no impact to the state budget as there are only minor changes and technical updates.

B) Local governments:

There is no impact on local governments as they neither fund nor provide benefits under the Medicaid program.

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

There is no impact on small businesses as there are only minor changes and technical updates.

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

There is no impact on non-small businesses as there are only minor changes and technical updates.

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

There is no impact to other persons or entities as there are only minor changes and technical updates.

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

There are no compliance costs to a single person or entity as there are only minor changes and technical updates.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Businesses will see no fiscal impact with these minor changes and technical updates to coincide with the Department merger. Nate Checketts, Executive Director

6. A) 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	FY2023	FY2024	FY2025
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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-1-5	Section 26-18-3	
----------------	-----------------	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

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

R414-1. Utah Medicaid Program.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means an aged, blind or disabled individual[s] or family[families] or and child[children]:
 - (a) who is[are] otherwise eligible for Medicaid; and
 - (i) who meets the financial eligibility requirements for Aid to Families with Dependent Children[AFDC] as in effect in the Utah Medicaid State Plan on July 16, 1996; or
 - (ii) who meets the financial eligibility requirements for Supplemental Security Income (SSI) or an optional State supplement, or is[are] considered under [s]Section 1619(b) of the federal Social Security Act to be an SSI recipient[s]; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is at least six years of age, [six]but not yet 18 years of age[-18], or is at least six years of age[-six], but not yet 19 years of age [-19]and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "[~~Client~~Member]" means a person the Division or its [~~duly~~]constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a [~~F~~]federal agency within the United States (U.S.) Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the [~~State~~]Children's Health Insurance Program.

(7) "Department" means the Department of Health and Human Services (DHHS)[~~Department of Health~~].

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Integrated Healthcare within the Department[~~Division of Health Care Financing within the Department~~].

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

- (a) placing the patient's health in serious jeopardy;
- (b) serious impairment to bodily functions;
- (c) serious dysfunction of any bodily organ or part; or
- (d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment [~~rendered~~]given within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means [~~the Department of Health~~]DHHS.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, Medical Assistance Act.

(17) "Medical or hospital assistance" means the service[s] furnished or a payment[s] made to or on behalf of a recipient[s] under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means an aged, blind, or disabled individual[s] or family[ies] or[~~and~~] child[ren] who is[~~are~~] otherwise eligible for Medicaid, who is[~~are~~] not categorically needy, and whose

income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department [~~has~~]implements[ed] a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

[~~The Utah Department of Health~~]DHHS is the [~~S~~]single [~~S~~]state [~~A~~]agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the [~~Utah Department of Health~~]DHHS, the Division of Integrated Healthcare[~~Division of Health Care Financing~~] has been designated as the medical assistance unit.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for any medical provider,~~s and~~ dissatisfied applicant,~~s, clients, and recipients~~ or member that meets all the requirements of 42 CFR[3] Part 431, Subpart E.

R414-1-13. Provider and [~~Client~~]Member Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the [~~client~~]member agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-16. Confidentiality.

~~[State statute,]~~ Title 63G, Chapter 2, Government Records Access and Management Act and Section 26-1-17.5~~;~~ impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning an applicant[s], a [clients] member, and a recipient[s] to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

~~The determination [Determinations of eligibility for] of Medicaid [eligibility under the plan are] is made by the [Department and [Division of Health Care Financing,] the [Utah-] Department of Workforce Services, and the Utah Department of Human Services]. There is a written agreement [among] between the [Utah-] Department [of Health,] and the [Utah-] Department of Workforce Services, and the Utah Department of Human Services]. The agreement defines the relationships and respective responsibilities of the agencies.~~

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to ~~[a] the~~ timeliness requirements ~~[of] found in~~ 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, ~~[clients] members~~ may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) ~~[Introduction and Authority.]~~ A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) ~~[Definitions.]~~ Definitions that have special meaning to the particular rule.

(3) ~~[Client Eligibility.]~~ Categories of Medicaid ~~[clients] members~~ eligible for the service covered by the rule ~~that include [:-C] categorically [N] needy members, [or M] medically [N] needy members, or both. Conditions precedent to the [clients] member's obtaining coverage such as age limitations or otherwise.~~

(4) Program ~~[A] access [R] requirements[-] that include [C] conditions [precedent]~~ external to the ~~[clients] member~~ obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service ~~[C] coverage[-] that [D] details [of-] specific services available under the rule, including limitations, such as number of procedures in a given period [of time-] or otherwise.~~

(6) ~~[Prior Authorization.]~~ As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. ~~[However, p] Prior authorization, however, [must] may not be used as a substitute for regulatory practice that should be in rule.~~

(7) ~~[Other Sections.]~~ As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into Subsections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with ~~[the provisions of-]~~ Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the ~~[client] member~~ ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies ~~[that are-]~~ in place on the date the physician renders services.

KEY: Medicaid

Date of Last Change: 2022~~[November 15, 2021]~~

Notice of Continuation: December 13, 2021

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code R426-8
Ref (R no.):

Filing ID
54578

Agency Information

1. Department:	Health	
Agency:	Family Health and Preparedness, Emergency Medical Services	
Room no.:	2438	
Building:	Cannon Health Building	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 142002	
City, state and zip:	Salt Lake City, UT 84114-2002	
Contact person(s):		
Name:	Phone:	Email:
Guy Dansie	801-560-1544	gdansie@utah.gov

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

General Information

2. Rule or section catchline:

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

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of the change is to reflect fiscal data into a new ground ambulance base rate and mileage rate.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Section 26-8a-403 mandates that the Department of Health (Department) to set ground ambulance rates. This is performed annually and made effective on the first day of the new fiscal year (July 1).

Fiscal Information

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

A) State budget:

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) Local governments:

80 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 1.4% based on a gross rate increase of 5% for base rates and mileage rates. 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 Administration, 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 80,964 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. 80,694 (total estimated transports) x \$2.00 (EMS Medicaid assessment rate increase) = \$161,388 (estimated local government costs).

Gross revenues for local governments are estimated from past annual fiscal reports and billing data. Gross revenues estimate from patient transports is \$158,837,214. \$158,837,214 x 1.4% (net effect of 5% raise in rate) = \$2,223,721 increase benefits estimate.

Net revenues for local governments are calculated as follows: \$2,223,721 (gross revenue increase estimate) - \$161,388 (Medicaid assessment increase) = \$2,062,333 (net revenue or benefit for local governments).

C) Small businesses ("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 1.4% 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 revenues estimate from patient transports is \$743,500. \$734,500 x 1.4% (net effect of 5% raise in rate) = \$10,283 increase benefit estimate.

Net revenues for small businesses are calculated as follows: \$10,283 (gross revenue increase estimate) - \$746 (Medicaid assessment increase) = \$9,537 (net revenue or benefit for small businesses).

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

There are nine non-small businesses including one for profit and eight 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 1.4% 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 60,099 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. 60,099 (total estimated transports) x \$2 (EMS Medicaid assessment rate increase) = \$120,198 (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 is \$117,416,286. \$117,416,286 x 1.4% (net effect of 5% raise in rate) = \$1,643,828 increase benefit estimate.

Net revenues for non-small businesses are calculated as follows: \$1,643,828 (gross revenue increase estimate) - \$106,168 (Medicaid assessment increase) = \$1,537,660 (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**):

Costs will increase proportionately due to ground ambulance base rates and mileage rates increases. Federal payments, private insurance payments, and individuals will be required to pay the increased costs estimated at \$3,609,530.

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

Compliance costs remain unchanged.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

Fiscal impacts including new revenues for businesses are approved. Nate Checketts, Executive Director

6. A) 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	FY2023	FY2024	FY2025
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$3,609,530	\$3,609,530	\$3,609,530
Total Fiscal Cost	\$3,609,530	\$3,609,530	\$3,609,530
Fiscal Benefits			
State Government	\$0	\$0	\$0

Local Governments	\$2,062,333	\$2,062,333	\$2,062,333
Small Businesses	\$9,537	\$9,537	\$9,537
Non-Small Businesses	\$1,537,660	\$1,537,660	\$1,537,660
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$3,609,530	\$3,609,530	\$3,609,530
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Subsection 26-8a-403		
----------------------	--	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

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 Subsections R426-8-200(6) through (10)

(2) Net income and subsidies for a licensed ground ambulance provider shall not exceed ~~[ten percent]~~ 10% 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 - ~~[\$951.00]~~ \$1,000 per transport;

(b) Advanced EMT ground ambulance license level - ~~[\$1,256.00]~~ \$1,320 per transport;

(c) Advanced EMT ground ambulance license level, who ~~[prior to]~~ before June 30, 2016 was licensed as an EMT-IA ground licensed ambulance provider - ~~[\$1,547.00]~~ \$1,625 per transport;

(d) Paramedic ground ambulance license level - ~~[\$1,838.00]~~ \$1,930 per transport; and

(e) Any EMT or AEMT level licensed ground ambulance provider with a paramedic on-board - ~~[\$1,838.00]~~ \$1,930 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]~~ online 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 ~~[\$36.90]~~ \$38.75 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 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

(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]~~ before 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: September 24, 2020

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R428-2

Filing ID
54579

Agency Information

1. Department:	Health	
Agency:	Center for Health Data, Health Care Statistics	
Room no.:	106	
Building:	Cannon	
Street address:	288 N 1460 W	
City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	PO 144004	
City, state and zip:	Salt Lake City, UT 84114-4004	
Contact person(s):		
Name:	Phone:	Email:
Carl Letamendi	801-538-7052	cletamendi@utah.gov
Stephanie Saperstein	801-538-6430	stephaniesaperstein@utah.gov
Mike Martin	801-538-9205	mikemartin@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R428-2. Health Data Authority Standards for Health Data
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This filing clarifies whether data from the Health Data Committee (HDC) can be used to contact other persons or entities; existing policy is put into rule.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The changes make two primary additions to this rule: a person receiving data from the HDC may not contact or attempt to contact any patient or member included in the data; nor may a person receiving data from the HDC contact or attempt contact any entity or provider included in the data without formal written approval from the HDC. These changes reflect efforts by the HDC for more transparency to data requesters. A few grammatical edits are made, as well in compliance to the Utah Rulewriting Manual.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
The Utah Department of Health (UDOH) determines enactment of the amended version will not create any cost or savings impact to the state budget or UDOH's budget, since the change will not increase workload, can be carried out with existing budget, and has been policy for many years.
B) Local governments:
This filing does not create any direct cost or savings impact to local governments since they are not directly affected by this rule; nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no impact on small businesses because this change only clarifies a prior expectation when requesting data from the Office of Health Care Statistics (OHCS).
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There is no impact on non-small businesses because this change only clarifies a prior expectation when requesting data from the OHCS.
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 fiscal impact to persons other than small businesses, non-small businesses, state, or local government entities because this change only clarifies a prior expectation when requesting data from the OHCS.
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs to affected persons. The proposed addition will clarify a long-standing no-contact requirement for recipients of HDC data.
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
There is no fiscal impact on business because the changes implement existing policy and do not affect any current requirements for businesses. Nate Checketts, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Health, Nate Checketts, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 26-33a-104	Section 26-33a-108	
--------------------	--------------------	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Nate Checketts, Executive Director	Date:	04/29/2022
--	------------------------------------	--------------	------------

R428. Health, Center for Health Data, Health Care Statistics.

R428-2. Health Data Authority Standards for Health Data.

R428-2-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Health Data Authority Act.

R428-2-2. Purpose.

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use, and release of data pursuant to Title 26, Chapter 33a, Utah Health Data Authority Act.

R428-2-3. Definitions.

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means any of the following Third Party Payors as defined in Subsection 26-33a-102(16):

(i) an insurer engaged in the business of health care or dental insurance in ~~the state of~~ Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by ~~the state of~~ Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26,

Chapter 18, Medical Assistance Act or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in ~~[sub]~~Section R428-2-3.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for ~~[the purpose of]~~ health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Emergency Room Data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single visit and treatment of a patient in an emergency room into an emergency room data record.

(m) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "Healthcare claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(p) "Healthcare Facility" means a hospital or ambulatory surgical facility.

(q) "Healthcare Facility Data" means ambulatory surgery data, discharge data, or emergency room data.

(r) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(s) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(t) "Hospital" means a general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under ~~[Rule]~~ Title R432.

(u) "Level 1 data element" means a required reportable data element.

(v) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(w) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(x) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(y) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(z) "Patient Social Security number" is the social security number of a person receiving health care.

(aa) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(bb) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying individuals is minimal.

(cc) "Report" means a disclosure of data or information collected or produced by the committee or Office, including ~~[but not limited to]~~ a compilation, study, or analysis designed to meet the needs of specific audiences.

(dd) "Research and Statistical Purposes" means having the objective of creating knowledge or answering questions, including a systematic investigation that includes development, testing, and evaluation; the description, estimation, projection, or analysis of the characteristics of individuals, groups, or organizations; an analysis of the relationships between or among these characteristics; the identification or creation of sampling frames and the selection of samples; the preparation and publication of reports describing these matters; and the development, implementation, and maintenance of methods, procedures, or resources to support the efficient use or management of the data.

(ee) "Research Data Set" means a data extract or subset of a database intended for use by ~~[investigators or researchers]~~ data users for bona fide research or statistical purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(ff) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(gg) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(hh) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(ii) "Submission year" means the year immediately following the covered period.

(jj) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(kk) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(ll) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(mm) "Utah Healthcare Facility Data Submission Guide" means the document referenced in Subsection R428-1-4(1).

(nn) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(2)

(oo) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(3)

(pp) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(4).

R428-2-4. Technical Assistance.

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

R428-2-5. Data Classification and Access.

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a, Utah Health Data Authority Act shall not:

(a) take any action that might provide information to any unauthorized individual or agency;

(b) scan, copy, remove, or review any information to which specific authorization has not been granted;

(c) discuss information with unauthorized persons which could lead to identification of individuals; or

(d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a, Utah Health Data Authority Act shall:

(a) maintain the data in a safe manner which restricts unauthorized access;

(b) limit use of the data to the purposes for which access is authorized; and

(c) ~~[report]~~ immediately report any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services, and data as a consequence of any violation of the responsibilities specified in this section.

R428-2-6. Editing and Validation.

(1) Each data supplier shall review each required record ~~[prior to]~~ before submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

(a) ~~[F]~~ the Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check~~[-]; and~~

(b) ~~[F]~~ the submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within ~~[40]~~ ten business days of the date the Office notified the supplier.

(3) The Office ~~[or its designee]~~ may reject any data submission that fails to conform to the submission requirements. A data supplier whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office or its designee within ~~[40]~~ ten state business days of notice that the data does not meet the submission requirements.

R428-2-7. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-8. Data Disclosure.

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a, Utah Health Data Authority Act.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

(a) ~~[the]~~ name, address, e~~[-]~~mail and telephone number of the requesting organization~~[ee]~~;

(b) a statement of the purpose for which the data will be used; and

(c) agreement to other terms and conditions as deemed necessary by the Office.

(8) As allowed by Section 26-33a-109, the committee may release identified data for research ~~[and]~~ or statistical purposes. A person requesting a research data set must provide:

(a) ~~[the]~~ name of requesting organization, address, e~~[-]~~mail and telephone number of the organization ~~[requester]~~ and for each person who will have access to the research data set;

(b) ~~[a]~~ statement of the purpose for which the research data set will be used;

(c) ~~[the]~~ starting and ending dates for which the research data set is requested;

(d) ~~[an]~~ explanation of why a public use data set could not be used ~~[for]~~ to accomplish the stated research purposes, including a

separate justification for each element containing identified data requested;

(e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;

(f) evidence of competency to effectively use the data in the manner proposed;

(g) ~~[a-]~~satisfactory review from an Office-approved institutional review board;

(h) ~~[a-]~~guarantee that no further disclosure will occur without prior approval of the Office; and

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

(9) A person receiving data from the Health Data Committee shall not contact or try to contact any patient or member included in the data.

(10) A person receiving data from the Health Data Committee shall not contact or try to contact any entity or provider included in the data without formal approval by the Committee.

R428-2-9. Penalties.

(1) The Office may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a, Utah Health Data Authority Act.

(3) Notwithstanding Subsection R428-2-9(2), any person or entity that violates ~~[any provision of]~~ Title R428 may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsections R428-2-9(2) and R428-2-9(3), a data supplier that violates ~~[any provision of]~~ Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) ~~[N]~~not to exceed the sum of \$10,000 per violation

(b) ~~[E]~~each day of violation is a separate violation; and

(c) ~~[D]~~deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) ~~[A-]~~fine of \$250 per violation shall be imposed until the data has been supplied as required;

(b) ~~[The-]~~ fines shall increase to \$500 per violation for each violation when any data supplier that is currently in violation misses another deadline; and

(c) ~~[A]~~after ~~[forty-five-]~~45 consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in Subsection (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) ~~[P]~~prior violation history and history of compliance;

(ii) ~~[G]~~good faith efforts to prevent violations; and

(iii) ~~[The-]~~size and financial capability of the data supplier.

R428-2-10. Exemptions and Extensions.

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the data supplier requests an extension, the data supplier must submit its request no less than seven calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) ~~[The-]~~data supplier's name, mailing address, telephone number, and contact person;

(b) ~~[the-]~~dates the exemption or extension is to start and end;

(c) ~~[a-]~~description of the relief sought, including reference to specific sections or language of the requirement;

(d) ~~[a-]~~statement of facts, reasons, or legal authority in support of the request; and

(e) ~~[a-]~~proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

(6) A stand-alone dental carrier that covers fewer than 20,000 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a stand-alone dental carrier has covered a cumulative total of 20,000 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

R428-2-11. Contractor Liability.

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

R428-2-12. Data Supplier Contacts.

(1) Data suppliers required to submit healthcare claims data or healthcare facility data shall provide current contact information to the Office by September 1 of each year using a website provided by the Office for this purpose.

(2) Each data supplier newly required to submit healthcare claims data or healthcare facility data under this rule, including by a change to the rule or because it no longer qualifies for an exemption,

shall provide contact information to the Office within 30 days of learning that they will be required to submit data under this rule.

(3) Each data supplier shall designate a person who is responsible for submitting data and a person who is responsible for communicating with the Office regarding the submission of the data. Each data supplier shall notify the Office of changes in this designation within ~~thirty~~ 30 calendar days.

KEY: health, health policy, health planning

Date of Last Change: 2022|September 19, 2019|

Notice of Continuation: August 13, 2021

Authorizing, and Implemented or Interpreted Law: 26-33a-104

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-1	Filing ID 54556
--------------------------------------	---------------	----------------------------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R477-1. Definitions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for several minor changes to enhance clarity and to account for legislative actions (H.B. 104 passed in the 2022 General Session).
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment adds clarifying language, corrects formatting and grammar, and eliminates content made obsolete through legislative action.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct

effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 63A-17-301	Section 63A-17-306
-----------------------	-----------------------	-----------------------

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply to Title R477 ~~1 through R477-101~~ unless otherwise indicated within the text of each rule.

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

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

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

(4) "Actual Wage" means the employee's assigned wage rate in the central personnel record maintained by the Division of Human Resource Management.

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

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

(7) "Administrative Adjustment" means a DHRM approved adjustment to a job or salary range 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.

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

(9) "Administrative Salary Increase" means an increase in an employee's current actual wage based on special circumstances determined by an agency head.

(10) "Agency" 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 63A, Chapter 17, Utah State Personnel Management Act.

(11) "Agency Head" means the executive director or commissioner of each agency or a designated appointee.

(12) "Agency Human Resource Field Office" means an office of the Division of Human Resource Management located at another agency's facility.

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

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

(1[5]4) "Appeal" means a formal request to a higher level for reconsideration of a grievance decision.

(1[6]5) "Appointing Authority" means the officer, board, commission, person, or group of persons authorized to make appointments in their agencies.

(1[7]6) "Break in Service" means a point at which an individual has an official separation date and is no longer an employee of the State of Utah.

(1[8]7) "Budgeted FTE" means the total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(1[9]8) "Career Mobility" means a temporary assignment of an employee to a different position for professional development or to fulfill specific organizational needs.

([20]19) "Career Service Employee" means an employee who has successfully completed a probationary period in a career service position.

(2[4]0) "Career Service Exempt Employee" means an employee who serves at the pleasure of the appointing authority and may be separated from state employment at any time for any reason or for no reason.

(2[2]1) "Career Service Exempt Position" means a position in state service that is exempt from career service provisions under Section 63A-17-301.

(2[3]2) "Career Service Status" means status granted to an employee who successfully completes a probationary period following appointment to a career service position.

(2[4]3) "Category of Work" means a job series an 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.

(2[5]4) "Change of Workload" 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.

(2[6]5) "Classification Grievance" 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.

(2[7]6) "Classified Service" means positions that are subject to the classification and compensation provisions stipulated in Section 63A-17-307.

(2[8]7) "Classification Study" means a [€]classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(2[9]8) "Compensatory Time" means time off that is provided to an employee in lieu of monetary overtime compensation.

([30]29) "Contractor" 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.

(3[4]0) "Critical Incident Drug or Alcohol Test" 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]~~by management.

(3[2]1) "Demotion" means a disciplinary action resulting in a reduction of an employee's current actual wage.

(3[3]2) "Position Management Report" means a document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(3[4]3) "DHRM" means the Division of Human Resource Management.

(3[5]4) "DHRM Approved Recruitment and Selection System" means the state's recruitment and selection system, which is a centralized and automated computer system administered by the Division of Human Resource Management.

(3[6]5) "Direct Supervisor" 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.

(3[7]6) "Disability" 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.

(3[8]7) "Disciplinary Action" means action taken by management under Rule R477-11.

(3[9]8) "Dismissal" means a separation from state employment for cause under Section R477-11-2.

([40]39) "Dual State Employment" means an employee works for more than one agency and meets the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(4[4]0) "Drug-Free Workplace Act" 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.

(4[2]1) "Employee Personnel Files" means the files or records maintained by DHRM and agencies as required by Section R477-2-5 for purposes of Title 67, Chapter 18, Employees' Personnel Files and Title 63A, Chapter 17, Utah State Personnel Management Act. This does not include employee information maintained by supervisors.

(4[3]2) "Employment Eligibility Verification" 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.

(4[4]3) "Escalator Principle" 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).

(4[5]4) "Excess Hours" 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.

(4[6]5) "Employee's Family Member" means an employee's relative or household member as defined in Section 52-3-1 but also including, stepsiblings, stepparents, and stepchildren [~~step-siblings, step-parents, and step-children~~].

(4[7]6) "Fitness For Duty Evaluation" means evaluation, assessment, or study by a licensed professional to determine if an individual ~~is able to~~ can meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(4[8]7) "FLSA Exempt" means employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(4[9]8) "FLSA Non-Exempt" means employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

([50]49) "Follow Up Drug or Alcohol Test" 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.

(5[1]0) "Furlough" means a temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(5[2]1) "GOPB" means Governor's Office of Planning and Budget.

(5[3]2) "Grievance" 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.

(5[4]3) "Grievance Procedures" 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.

(5[5]4) "Gross Compensation" means an employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(5[6]5) "Highly Sensitive Position" means a position approved by DHRM that includes the performance of:

- (a) ~~[safety-sensitive]~~ 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.

(5[7]6) "Hiring List" 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.

(5[8]7) "Incompetence" means inadequacy or unsuitability in performance of assigned duties and responsibilities.

(5[9]8) "Inefficiency" means wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([60]59) "Intern" means an individual in a college degree or certification program assigned to work in an activity where ~~on the job~~ on the job training or community service experience is accepted.

(6[1]0) "Job" 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.

(6[2]1) "Job Description" means a document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(6[3]2) "Job Family" 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.

(6[4]3) "Job Requirements" means skill requirements defined at the job level.

(6[5]4) "Job Series" 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.

(6[6]5) "Leave Benefit" 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.

(6[7]6) "Legislative Salary Adjustment" means a legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(6[8]7) "Malfeasance" means intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

~~(6[9]8)~~ "Management" means the agency head and any other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

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

(70) "Market Comparability Adjustment" means a legislatively approved adjustment to a salary range 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.

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

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

(7[3]2) "Misfeasance" means the improper or unlawful performance of an act that is lawful or proper.

(7[4]3) "Nonfeasance" means failure to perform either an official duty or legal requirement.

(7[5]4) "Pay for Performance Award" 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.

(7[6]5) "Pay for Performance" 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.

(7[7]6) "Performance Evaluation" means a formal, periodic evaluation of an employee's work performance.

(7[8]7) "Performance Improvement Plan" means a documented administrative action to address substandard performance of an employee under Section R477-10-2.

(7[9]8) "Performance Management" means the ongoing process of communication between the direct supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

~~(80]79)~~ "Performance Plan" 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.

(8[+]0) "Performance Standard" means specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and direct supervisor are committed during an evaluation period.

(8[2]1) "Personnel Adjudicatory Proceedings" 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.

(8[3]2) "Phased Retirement" means employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date where the retiree will receive a reduced retirement allowance.

(8[4]3) "Position" means a unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(8[5]4) "Position Description" means a document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(8[6]5) "Position Identification Number" means a unique number assigned to a position for FTE management.

(8[7]6) "Post Accident Drug or Alcohol Test" 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.

(8[8]7) "Pre-employment Drug Test" 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.

(8[9]8) "Probationary Employee" means an employee hired into a career service position who has not completed the required probationary period for that position.

(89[9]) "Probationary Period" means a period of time 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.

(9[+]0) "Proficiency" means an employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(9[2]1) "Promotion" means an action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(9[3]2) "Protected Activity" 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.

(9[4]3) "Random Drug or Alcohol Test" 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.

(9[5]4) "Reappointment" means return to work of an individual from the reappointment register after separation from employment.

(9[6]5) "Reappointment Register" means a register of individuals who have, ~~[prior to]~~ before 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.

(9[7]6) "Reasonable Suspicion Drug or Alcohol Test" 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.

(9[8]7) "Reassignment" 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.

(9[9]8) "Reclassification" 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.

~~((100)99)~~ "Reduction in Force (RIF)" 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.

(10[4]0) "Reemployment" 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.

(10[2]1) "Salary Range" means established minimum and maximum wage rates assigned to a job.

(10[3]2) "Schedule" means the designation of a position as career service (schedule B) or career service exempt (schedule A) under Title 63A, Chapter 17, Utah State Personnel Management Act.

(10[4]3) "Separation" means an employee's voluntary or involuntary departure from state employment.

(10[5]4) "Settling Period" 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.

(10[6]5) "Structure Adjustment" means a DHRM approved adjustment to a salary range 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.

(10[7]6) "Tangible Employment Action" means a significant change in employment status, such as dismissal, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(10[8]7) "Transfer" 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.

(10[9]8) "Uniformed Services" 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]~~ full time National Guard duty; or absence from work for an examination to determine fitness for any of the ~~[above]~~ types of duty listed in this subsection.

((14)102) "Unlawful Discrimination" 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]~~ antidiscrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(11[4]0) "USERRA" 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.

(11[2]1) "Veteran" means an individual who has separated or retired under honorable conditions following service; ~~[served]~~

(a) on active duty in the armed forces for more than 180 consecutive days; ~~[7]; or~~

(b) [w]as a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. ~~[Individuals must have been separated or retired under honorable conditions.]~~

(11[3]2) "Veteran Employment Opportunity Program (VEOP)" means a program designed to appoint a qualified veteran through an on the job examination period.

(11[4]3) "Volunteer" 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.

(11[5]4) "Wage" means the fixed hourly rate paid to an employee.

(11[6]5) "Work Period" means the maximum number of hours an employee may work ~~[prior to]~~ before accruing overtime or compensatory hours based on variable payroll cycles outlined in Section 63A-17-502 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions

Date of Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106; 63A-17-301; 63A-17-306

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code R477-2

Ref (R no.):

Filing ID

54557

Agency Information

1. Department:	Government Operations
Agency:	Human Resource Management
Room no.:	2100
Building:	Taylorville State Office Building

Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R477-2. Administration
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying change and several minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and clarifies a provision relating to retention of performance records.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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

Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 52-3-1	Section 63G-5-201	Title 63G, Chapter 7
Section 63A-17-106	Section 63A-17-306	Section 63A-17-307

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022
10. This rule change MAY become effective on:	
07/01/2022	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-2. Administration.

R477-2-1. Rules Applicability.

~~[R477-1 through R477-101 apply]~~ Title R477 applies 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 ~~[R477-1 through R477-101]~~ Title R477 are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with ~~[R477-1 through R477-101]~~ Title R477 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 designated by statute to be exempt from ~~[R477-1 through R477-101]~~ Title R477.

R477-2-2. Compliance Responsibility.

~~[Agencies]~~ Management shall comply with ~~[R477-1 through R477-101]~~ Title R477.

(1) Except where prohibited by statute, the Division Director, DHRM, may authorize exceptions to ~~[R477-1 through R477-101]~~ Title R477 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 ~~[R477-1 through R477-101]~~ Title R477, 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]~~ antidiscrimination statutes, political affiliation, military status or affiliation, or any other non-job related factor, except under Subsection 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 timely filing a discrimination complaint in accordance with state or federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) The Governor's Office of Planning and Budget, the Division 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 position management report.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved position management report.

R477-2-5. Records.

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 any records and record series it maintains under the GRAMA statute.

(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]~~ records; 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 employee's electronic or hard copy personnel record by sending a written request to management.

(6) ~~[Agency m]~~ Management shall remove from the employee's personnel file all forms, documents, and records pertaining to a disciplinary action when that action is rescinded or otherwise vacated by proper authority.

(7) DHRM shall retain records according to the applicable record retention schedule.

(8) 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 63G-2-302(2)(a).

(11) If disciplinary action under Subsection R477-11-1(4) has been sustained and all time periods for administrative appeal 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]~~ management and to the Department of 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 under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

[Agency ~~m~~] 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 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 ID 54558
--------------------------------------	---------------	----------------------------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-3. Classification
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying change and two minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state

government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

R477-3. Classification.

R477-3-1. Job Classification Applicability.

(1) The 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 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) DHRM may conduct a formal classification review:
 - (a) as part of a classification study;
 - (b) at the request of agency management, with the approval of the 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) DHRM may not conduct a classification review until after an appropriate settling period following reorganization of an agency or position redesign.
- (4) The 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 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) DHRM shall send formal notification to grievants under this ~~[Subsection]~~ 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 Last Change: 2022~~[July 1, 2021]~~

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 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 ID 54559
--------------------------------------	---------------	----------------------------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-4. Filling Positions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying change and several minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and corrects rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 67-20-8	
--------------------	-----------------	--

Public Notice Information

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

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	07/01/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

R477-4. Filling Positions.

R477-4-1. Authorized Recruitment System.

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

(2) ~~[Agency m]~~Management shall notify DHRM of filling any position at least three working days ~~[prior to]~~before the employee's start date.

R477-4-2. Career Service Exempt Positions.

(1) The Division Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 63A-17-301.

(2) ~~[Agencies]~~Management may use any pre-approved process to select an employee for a career service exempt position. ~~[Agencies]~~Management may make appointments without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave ~~may not be permanent~~~~[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 ~~may not~~~~[must]~~ work ~~[less than]~~ 1560 hours ~~or more~~ per fiscal year; or

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

(5) Management may offer benefits to an employee appointed under Subsection (4) if the employee works a minimum of 40 hours per pay period.

(6) 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.

(7) Only career service exempt appointments made from a hiring list under Section R477-4-8 may be considered for conversion to career service.

(8) ~~[Agency m]~~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 select career service employees according to the following:

(a) DHRM standard operating procedures;

(b) career service principles as outlined in Section 63A-17-305, Rule R477-5, and 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]~~Before initiating a recruitment, ~~[agencies]~~management 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 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 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]~~Management 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:

(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 shall appoint a qualified applicant who meets minimum qualifications from the reappointment register created ~~[prior to]~~before March 2, 2009, before making an appointment from a hiring list of qualified applicants for the position, or from another process pre-approved by the 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]~~Management 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 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 receive their next longevity increase three years from the date they received the most recent increase when all other longevity criteria are met.

(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)~~ time limited (Schedule TL) ~~[for the duration of]~~ during a phased retirement employment period; and

(b) placed at or below the employee's wage ~~[at the time of retirement]~~ when the employee retired. 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]~~ before 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]~~ 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]~~ management may not require the employee to compete for ~~[his]~~ the employee's 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]~~ Management may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An employee or ~~[agency]~~ management 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]~~ management determines a need for the assignment to become permanent.

(4) ~~[Agencies]~~ Management shall use a written career mobility ~~[contract]~~ agreement[s between] with 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 Section 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]~~before a career mobility ~~[program]~~assignment 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]~~schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Division Director, DHRM, to be equivalent to the process prescribed in DHRM Rule[s].

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

(2) An assimilated employee accrues leave based on years of assimilated service plus benefits-eligible state service under Subsection R477-7-3(1).

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

(1) Section 63A-17-704 applies to hiring Administrative Law Judges. Section 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 Division Director, DHRM, or designee; and

(c) the head or designee of another agency, as appointed by the 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 Division Director, DHRM.

(4) 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 Last Change: ~~2022~~July 1, 2021

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106; 67-20-8

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): **R477-5**

Filing ID
54560

Agency Information

1. Department:	Government Operations
Agency:	Human Resource Management
Room no.:	2100
Building:	Taylorsville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorsville, UT 84129-2128
Mailing address:	PO Box 141531
City, state and zip:	Salt Lake City, UT 84114-1531
Contact person(s):	
Name:	Phone: Email:
Bryan Embley	801-618-6720 bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-5. Employee Status and Probation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The agency found a need for two minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes and corrects rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 63A-17-106	Subsection 63A-17-305(5)(b)	
-----------------------	--------------------------------	--

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	07/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

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]~~ before 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]~~ shall provide each employee an opportunity to demonstrate competence in a career service position by establishing a performance plan and giving the employee feedback on performance in relation to that plan.

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

(b) At the end of each employee's probationary period, management shall evaluate the employee's performance. DHRM shall enter the evaluations 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 each career service position consistent with its job.

(a) The probationary period may be extended 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]~~ 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 to another career service position. Each new appointment to a career service position shall include a new probationary period unless ~~[the agency]~~ management 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106; 63A-17-305(b)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-6	Filing ID
		54561

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-6. Compensation

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The agency found a need for minor changes to match definition changes, reorganization for clarity, and implementation of legislative action (H.B. 104 passed in the 2022 General Session).

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes, correct rules styling errors, and implement legislative actions relating to promotional wage increases and Schedule AX employees.

Fiscal Information**5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0

Net Benefits	Fiscal	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:				
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.				

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	07/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-6. Compensation.

R477-6-1. Pay Plans.

With approval of the Governor, the Division Director, DHRM, shall develop salary ranges for pay plans for each job.

(1) DHRM 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%.

(3) Management may not increase an employee's wage above the salary range maximum except for longevity increases under Subsection R477-6-6(3).

(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.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) For each job in classified service, DHRM shall:
(a) assign the job to a salary range and job family;
(b) survey the job in the market in accordance with the benchmark jobs; and

(c) include the job in a market comparability adjustment recommendation if warranted.

(2) DHRM may adjust salary ranges 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]~~ before 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) DHRM shall include market comparability adjustment recommendations in the annual compensation plan and are submitted to the Governor.

(ii) If 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 by relative ranking with the benchmark job.

(3) DHRM may not adjust salary ranges more frequently than on an annual basis unless approved by the Division Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) DHRM shall assign each job in an AD or AR pay plan to a salary range that is no more than 40% above and below the salary range midpoint.

(2) DHRM may adjust salary ranges through:
(a) an administrative adjustment determined appropriate by DHRM for administrative purposes; or

(b) a structure adjustment.
(i) DHRM shall consult with the Governor's Office of Planning and Budget (GOPB) ~~[prior to]~~ before making structure adjustments that require legislative funding. Adjustments that impact deputy directors or issues addressed in state code ~~[must be approved by]~~ require GOPB approval.

(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]~~ before implementation.

(iii) DHRM may include structure adjustment recommendations that require funding 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.

R477-6-4. Pay Plans for Unclassified Employees Designated ~~as~~ As Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ, and ~~employees~~ Employees of the State Board of Education.

(1) For each job exempted from classified service that is identified in positions under Subsection R477-3-1(1), the affected agency's management shall determine a salary range with a beginning and ending salary.

R477-6-5. Appointments.

(1) Management shall assign a newly appointed employee a salary within the DHRM approved salary range for the job.

(2) Management shall place qualifying military service members returning to work under USERRA 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) Management ~~[shall]~~may increase an employee's wage ~~[by at least 5%] when the employee [who is not designated schedule IN or TL,] is promoted [to a job with a salary range maximum exceeding the employee's current salary range maximum].~~

(b) ~~[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)—~~Management may promote an employee when the employee meets the requirements and skills specified in the job description and position specific criteria as determined by ~~[the agency]~~management for the position.

(c) Any wage increase granted under this subsection shall be at least 1/2% or up to the salary range maximum.

(2) Reclassifications.

(a) ~~[Agency m]~~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. Management shall place the employee within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection (3).

(b) Management may not decrease the wage of an employee whose job is reclassified to a job with a lower salary range.

(3) Longevity Salary Increase.

(a) Management shall grant an employee 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 an employee who meets the conditions of Subsection (3)(a) and has received the initial longevity increase 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 each longevity increase.

(d) For an employee with a wage that is above the salary range maximum because of a longevity salary increase:

(i) management may not change the employee's current actual wage when the employee receives an administrative adjustment, 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 is reclassified to a job with a higher salary range maximum if the current actual wage is less than the salary range maximum of the new job.

(A) Any such 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 only 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]~~may be 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 is promoted, reclassified, transferred, reassigned, or receives an administrative adjustment and remains at or above the salary range maximum, management shall grant a longevity salary increase three years from the date the employee received the most recent increase under Subsection (3)(a).

(e) 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 eligible for a longevity salary increase until the employee meets the requirements of Subsection (3)(a).

(f) Management may not grant a longevity increase to an employee in Schedules AB, AN, IN, or TL.

(4) Administrative Adjustment.

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 unless the employee's wage is below the minimum of the new salary range.

(5) Reassignment.

Management may not decrease an employee's current actual wage 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.

Management may reduce the current actual wage of an employee demoted under Section R477-11-2 by at least 1/2%, or

down to the salary range minimum as determined by the agency head or designee.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters.

(a) Any increase shall be at least 1/2% or up to the employee's salary range maximum.

(b) Management may not grant an administrative salary increase unless the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justification for an administrative salary increase 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) Management may grant an administrative salary increase to an employee during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum.

(f) Management may not grant an administrative salary increase to an employee whose wage is at or above the salary range maximum.

(g) DHRM shall process an administrative salary increase 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 below the salary range minimum;

(b) management shall decrease the employee's wage by at least 1/2% or down to the salary range minimum;

(c) justification for an administrative salary decrease shall be:

- (i) in writing;
- (ii) approved by the agency head; and
- (iii) supported by issues such as previous written agreements between ~~[the agency]~~ management 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 rules governing the appropriate underlying action 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 to the employee's previous position or a similar position and grant, at a minimum, the same wage and the same or higher salary range that the employee would have received 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.]~~ Management shall write and publish incentive award and bonus policies before rewarding any employee 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) DHRM shall review agency incentive award policies to ensure that they are consistent with standards established in these rules and the Department of Government Operations, Division of Finance, rules, and procedures.

(b) Management may not grant individual awards greater than \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) ~~[An agency]~~ Management shall include documentation of the work units affected and any cost savings in a request for an exception to Subsection (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]~~ Management may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) To implement a Pay for Performance cash incentive awards program, ~~[an agency]~~ management shall include the program in the agency's incentive awards policy.

(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) 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]~~ Management 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 Government Operations, Division of Finance.

(3) Cost Savings Bonus.

(a) ~~[An agency]~~ Management 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]~~ Management shall document the cost savings involved.

(4) Market Based Bonuses.

~~[An agency]~~Management 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 Division Director or designee.

(a) When requesting market based awards, ~~[an agency]~~management 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]~~Management 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]~~Management may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(iii) Scarce Skills Bonus.

~~[An agency]~~Management may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(iv) Relocation Bonus.

~~[An agency]~~Management may award a bonus to a current employee who ~~[must]~~is required to relocate to accept a position in a different commuting area.

(v) Referral Bonus.

~~[An agency]~~Management may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(vi) Geographic Job Market Bonus.

~~[An agency]~~Management 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]~~management 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 enroll in or decline one of the traditional medical insurance plans within 30 days of the hire date and 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 may change medical plans only during the annual open enrollment period for state employees or following a qualifying life event.

(3) An eligible employee 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. 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 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.

(6) A reemployed veteran under USERRA 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]~~before 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] Status Change.~~

~~(1) [A career service employee in a position meeting the criteria for career service exempt]When management changes an occupied schedule B position to schedule AC, AD, AR, or AS, management shall offer the career service employee in that position the opportunity to convert to the new schedule code. The employee may, within 60 days from the date of offer, elect to convert from career service to career service exempt.~~

~~(a) If the employee chooses to convert, management shall offer the employee:~~

~~([a]i) an administrative salary increase of at least 1/2% or up to the current salary range maximum; and~~

~~([b]ii) 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]b) For an employee at or above the current salary range maximum at the time of conversation, management shall grant, in lieu of the salary adjustment from Subsection (1)(a)(i), a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b).~~

~~([3]c) For an employee electing to convert to career service exempt after the 60 day election period, management may not grant the wage increase, but shall permit the employee to apply for the insurance coverage through the Group Insurance Office.~~

~~([4]d) An employee electing not to convert to career service 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 incumbent is career service exempt.~~

~~(e) Management shall communicate the conditions and limitations of this incentive program to any employees currently or imminently affected by the program.~~

~~([5]2) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. [In this case, an]~~

~~(a) An affected employee:~~

~~([a]i) shall resume career service status if the employee previously earned career service status and had no break in service;~~

(~~b~~)ii) is no longer eligible for severance pay under Section R477-6-10;

(~~e~~)iii) shall accrue annual leave based on service time under Subsection R477-7-3(1); and

(~~d~~)iv) shall work with management and the Group Insurance Office to discontinue exempt life insurance coverage.

(b) Management may not convert a career service exempt employee to career service status unless:

(i) the employee had prior career service status with no break in service; or

(ii) the employee was hired from a hiring list under Subsection R477-4-2(7).

~~(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.~~

~~(7) An agency shall communicate 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]~~Management 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, or AX 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) hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(b) hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance; and

(c) hourly wage \$28.85 or higher shall receive \$200,000 of term life insurance.

(2) The appointing authority may provide these benefits to an employee on schedule AC, AE, or AS.

R477-6-11. Severance Benefit.

(1) For a career service exempt employee on schedule AB, AC, AD, AE, AR, AS, ~~or~~ AT, or AX who is separated from state service through an action initiated by management, to include resignation in lieu of termination, management may offer a severance benefit equal to:

(a) 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, or AX 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]~~when 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.

R477-6-12. Human Resource Transactions.

The 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 Last Change: ~~2022~~December 23, 2021

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 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 ID
54562

Agency Information

1. Department:	Government Operations
Agency:	Human Resource Management
Room no.:	2100
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129-2128
Mailing address:	PO Box 141531
City, state and zip:	Salt Lake City, UT 84114-1531
Contact person(s):	
Name:	Phone: Email:
Bryan Embley	801-618-6720 bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-7. Leave

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The agency found a need for minor changes to match definition changes, additional provisions relating to leave use when an employee is sick, and implementation of legislative actions (H.B. 449, S.B. 63, and S.B. 100 passed in the 2022 General Session).

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes, correct rules styling errors, and implement legislative actions relating to bereavement leave and parental leave.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-7. Leave.

R477-7-1. Conditions of Leave.

(1) An employee is eligible for a leave benefit when:

(a) in a position designated by ~~the agency~~ management 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 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 it is accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) Management may not require employees to maintain a minimum balance of accrued leave.

(7) An employee may not use any type of leave except military and jury leave to accrue excess hours.

(8) Any leave used for purposes described in Subsection R477-7-4(2) is subject to the requirements of Subsections R477-7-4(6) and (7).

(9) An employee transferring from one agency to another retains any accrued annual, sick, and converted sick leave at the new agency.

(10) ~~An agency~~ Management shall make a lump sum payment to an employee separating from state service for:

(a) annual leave hours;

(b) 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.

(1) ~~Management~~ Management may not approve the use of leave after an employee's last day worked except for:

(a) leave without pay;

(b) administrative leave;

(c) leave granted under the FMLA; or

(d) leave granted for other medical or pregnancy related reasons that ~~was~~ management approved ~~prior to~~ before the commencement of the leave period.

(2) Management may separate an employee from employment after 18 workweeks cumulative leave in a 24 month period 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 decision to separate the employee in consultation with DHRM.

(3) ~~An agency~~ Management may not 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) Juneteenth -- observed as follows:

(i) June 19 if that day is on a Monday;

(ii) If June 19 is on a Tuesday, Wednesday, Thursday, or Friday, the holiday is observed on the immediately preceding Monday; or

(iii) If June 19 is on a Saturday or Sunday, the holiday is observed on the immediately following Monday.

(f) Independence Day -- July 4;

(g) Pioneer Day -- July 24;

(h) Labor Day -- first Monday of September;

(i) Columbus Day -- second Monday of October;

(j) Veterans' Day -- November 11;

(k) Thanksgiving Day -- fourth Thursday of November;

(l) Christmas Day -- December 25; and

(m) 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 equivalent time off or excess hours, not to exceed eight hours.

(a) Except as described in Subsection (1)(e), if a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) Except as described in Subsection (1)(e), 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 appropriate holiday leave or excess hours.

(4) Management may not grant holiday pay to a new hire before the employee is in a paid status.

(5) Management may not grant holiday pay to a separating employee unless the employee is in a paid status on or after the holiday.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of ~~[benefits-eligible]~~ benefits eligible state service:

(a) less than ~~[5]~~ five years -- four hours per pay period;
 (b) at least ~~[5]~~ five and less than ~~[10]~~ ten years -- five hours per pay period;

(c) at least ~~[10]~~ ten and less than 20 years -- six hours per pay period; or

(d) 20 years or more -- seven hours per pay period.

(2) The following 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:

(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.

(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-m]~~ Management 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) An employee forfeits unused accrued annual leave time ~~[in excess of]~~ exceeding 320 hours during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee accrues sick leave, not to exceed four hours per pay period. Sick leave accrues without limit.

(2) ~~[Agency-m]~~ 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.

(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]~~ before the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) 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.

(7) Management may require an employee to produce administratively acceptable evidence regardless of the number of ~~[sick]~~ leave hours used for the reasons in Subsection (2) or (3) if there is reason to believe that an employee is using ~~[sick]~~ the leave for reasons not listed in Subsection~~[s]~~ (2) ~~[and]~~ or (3).

(8) An employee separating from state employment forfeits any unused sick leave without compensation unless the leave is utilized for the sick leave retirement benefit under Section R477-7-6.

(a) Management shall reinstate forfeited sick leave when an employee is rehired into a benefits eligible position within one year of separation due to a reduction in force. Sick leave shall be reinstated as Program I, Program II, and Program III as accrued ~~[prior to]~~ before the reduction in force.

(b) Management shall reinstate forfeited sick leave when an employee is appointed to a benefits eligible position within one year of leaving a benefits eligible position for reasons other than a reduction in force. Reinstated sick leave shall be Program III sick leave.

(c) Management may not reinstate forfeited sick leave when an employee retires from state service under Title 49, Utah State Retirement and Insurance Benefit Act and is rehired.

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 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]~~ before 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]~~ when 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 an employee's unused converted sick leave, but not to exceed Internal Revenue Service limitations, in the employee's 401(k) account as an employer contribution.

(a) Management shall place converted sick leave hours from Program II in the 401(k) account before hours from Program I.

(b) The 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. 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 an unused sick leave retirement benefit under Sections 63A-17-507 and 63A-17-508.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system becomes eligible for this benefit when actively retiring under Title 49, Utah State Retirement and Insurance Benefit Act.

(2) An employee in the Tier II defined contribution system 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]~~ before January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006, but before January 4, 2014, shall be Program II sick leave hours.

(c) Sick leave hours accrued on or after January 4, 2014, shall be Program III sick leave hours, which shall have no benefit upon retirement.

(4) ~~[An agency]~~ Management may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. Any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year. If ~~[an agency]~~ management decides to withdraw for the next fiscal year after initially deciding to participate, ~~[the agency]~~ management shall notify its employees at least 60 days before the new fiscal year begins.

(5) The Unused Sick Leave Retirement Options Program I provides an employee in a participating agency 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, in the employee's 401(k) account as an employer contribution.

(b) Management shall place sick leave hours from Program II in the employee's 401(k) account before hours from Program I.

(c) After the 401(k) contribution, management shall use the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) to provide the following benefit:

(i) 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 is the same or lower level than the level[plan] the employee has ~~[at the time of retirement]~~ when they retire pursuant to Section 63A-17-507.

(B) The purchase rate 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) The life insurance provided is the minimum authorized coverage provided for state employees ~~[at the time]~~ when the employee retires.

(ii) When the employee becomes eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) When the employee becomes eligible for Medicare, the employee may purchase a PEHP health insurance policy, or another state approved policy, for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate 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.

(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) In the event an employee is killed in the line of duty, the employee's spouse is eligible to use the employee's available sick leave hours for the purchase of additional medical coverage under Section 63A-17-804.

(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]~~ when they become eligible for retirement.

(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. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) 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, 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) 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 is not eligible for a benefit calculated on any Program II sick leave hours unless:

(i) the employee 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 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 accrues Program III sick leave, which has no benefit upon subsequent retirement.

R477-7-7. Administrative Leave.

(1) Management may grant administrative leave 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]~~ decision-making ~~[prior to]~~ before 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) management may not grant administrative leave ~~[in excess of]~~ exceeding one day without written approval from the agency head;
- (iii) management may not grant more than 40 hours of administrative leave as a reward in lieu of cash;
- (iv) management may grant administrative leave as a reward in lieu of cash to employees of another agency if both agency heads agree in advance; or
- (d) employee education assistance.

(2) Management shall grant an employee 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) 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]~~ shall:

- (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 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 ~~[is entitled to]~~ may 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 to agency finance or agency payroll staff for deposit with the State Treasurer.

(5) An employee may not use work time or witness and jury leave when absent ~~[in order]~~ to litigate matters unrelated to state employment.

R477-7-9. Bereavement Leave.

Management may grant ~~[a maximum of]~~ at least three work days of bereavement leave per occurrence with pay following the death of a member of the employee's immediate family. Management may not charge bereavement leave against an employee's accrued sick or annual leave.

(1) "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 may]~~ Management may grant bereavement leave for other unique family relationships.

(3) Management shall grant at least three work days of bereavement leave to an employee when a pregnancy ends in stillbirth or miscarriage under the conditions set forth in Section 63A-17-106.

R477-7-10. Military Leave.

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. Military leave for part-time employees is prorated 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) An eligible employee may only use accrued sick leave 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 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 employee 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:

- (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:

- (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) 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]~~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 leave from work with pay 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. 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) Management may not dismiss an employee who is absent from or late to work 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.

Management shall grant an employee who serves as a bone marrow or human organ donor paid leave for the donation and recovery as follows:

- (1) up to seven days of paid leave for donation of bone marrow; and
- (2) 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 receive management's approval before taking ~~[a]~~ leave ~~[of Absence]~~ without pay.

(2) Management may not grant leave without pay unless the employee is expected to return to work.

(3) 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 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) Management shall place an employee who returns to work on or before the expiration of leave without pay 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 may]~~ Management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. The agency head shall approve furlough plans subject to the following conditions:

(1) Furlough hours count for purposes of annual, sick, and holiday leave accrual.

(2) ~~[The agency]~~ Management 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 is responsible to pay the employee portion of any benefits. Voluntary benefits remain entirely at the employee's expense.

(4) An employee shall return to the current position.

(5) 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 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 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 continues to receive the same health insurance benefits the employee was receiving ~~[prior to]~~ before the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave 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) An employee is eligible for family and medical leave when the employee:

(a) has been employed by the state for at least 12 months; and

(b) has worked 1,250 hours 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]~~before 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]~~before going into leave without pay status for the family and medical leave period shall notify the ~~[agency]~~direct supervisor.

(b) If an employee fails to notify the ~~[agency]~~direct supervisor under this ~~[Subsection]~~subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

(i) first, Program III sick leave;

(ii) second, compensatory time, excess leave, or annual leave; and

(iii) 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]~~management 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]~~management may recover, with certain exceptions under 29 CFR 825.213, the health insurance premiums paid by ~~[the agency]~~management 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) When leave is taken after childbirth or placement of a healthy child for adoption or foster care, an employee may not take leave intermittently or on a reduced leave schedule unless the employer agrees.

(12) Medical records created for purposes of FMLA and the Americans with Disabilities Act, 42 U.S.C. 12102 are subject to the confidentiality requirements 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.

(b) An employee may not use accrued leave to supplement the workers' compensation benefit 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) 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 count for purposes of annual, sick, and holiday leave accrual while the employee is receiving a workers' compensation ~~[time-loss]~~time-loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits continue for an employee on leave without pay while receiving workers' compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee ~~[is able to]~~can return to work in the employee's regular position, ~~[the agency]~~management shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If an employee ~~[is unable to]~~cannot 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]~~management may separate the employee from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(6) Management shall take disciplinary action under Rule R477-11 when an employee files a fraudulent workers compensation claim.

R477-7-17. Long Term Disability Leave.

(1) Upon approval of an LTD claim:

(a) ~~[An agency]~~Management shall ~~[cease]~~stop biweekly salary payments to the employee.

(b) ~~[An agency]~~Management 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 unless the employee requests in writing to receive it upon separation from state employment. Upon return to work from an approved leave of absence, the employee may buy back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance ~~[at the time of]~~when they are approved for LTD ~~[eligibility]~~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]~~when they are approved for LTD ~~[eligibility]~~.

(d) An employee who has been separated from state employment but retires under Title 49, Utah State Retirement and Insurance Benefit Act while receiving LTD may utilize unused sick leave for health and life insurance under Section R477-7-6 when the employee is otherwise eligible for the sick leave retirement benefit.

(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) When a law enforcement officer or state correctional officer, as defined in Section 63A-17-512, is injured in the course of employment, as defined in Section 63A-17-512, management shall approve a leave of absence with 100% of the officer's regular monthly salary and benefits:

(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]~~management 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]~~Management shall apply Section R477-7-16, workers compensation leave, and Section R477-7-17, long term disability leave rules first. ~~[The agency]~~Management then ~~[must consider]~~adds 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]~~management 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]~~management 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.

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) A statement that access to the leave bank is not an employee right and shall be authorized at management's discretion.

(b) A requirement that any application for leave from the leave bank be supported by administratively acceptable medical documentation.

(c) A provision prohibiting leave donors, supervisors, managers, or management teams from reviewing any employee's medical certifications or physician statements.

(d) A requirement that an employee may not receive donated leave until any individually accrued leave is exhausted.

(e) A statement that leave is accrued if an employee receives sick leave donated from an approved leave bank program.

(f) A requirement that employees using donated leave request and receive written consent from the agency head to work a second job.

(g) 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) A statement that only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program and only if both agencies agree to allow the donation.

(2) Any medical records created for 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.]~~

R477-7-20. Parental and Postpartum Recovery Leave.

~~(1) An employee is eligible for parental or postpartum recovery leave when the employee:~~

~~(a) is eligible for benefits under Subsections R477-6-8(1) and R477-7-1(1);~~

~~(b) is not reemployed post retirement as defined in Section 49-11-1202; and~~

~~(c) is not an employee of:~~

~~(i) the State Board of Education; or~~

~~(ii) an independent entity as defined in Section 63E-1-102.~~

(2) An employee or a spokesperson shall notify management of their plan to use parental or postpartum recovery leave:

(a) thirty days in advance; or

(b) as soon as practicable in emergencies.

(3) Management may not charge parental or postpartum recovery leave against any accrued leave balance on the employee's record.

(4) No person may interfere with an employee's intent to use parental or postpartum recovery leave or retaliate against an employee who receives parental or postpartum recovery leave.

(5) Parental leave is administered as follows:

(a) An employee is qualified for parental leave when the employee:

(i) is a birth parent as defined in Section 78B-6-103;

(ii) legally adopts a minor child, unless the employee is the spouse of the pre-existing parent;

(iii) is the intended parent of a child born under a validated gestational agreement; or

(iv) is appointed the legal guardian of a minor child or incapacitated adult.

(b) Management shall grant up to three weeks of paid parental leave to an employee who gives notice that they intend to use paid parental leave.

(c) Management calculates the amount of leave for each employee based on the number of hours the employee would have worked per week if they had not taken parental leave.

(d) An employee may use parental leave within the six months immediately following the qualifying event from Subsection (5)(a).

(e) An employee may use parental leave intermittently when:

(i) the employee and management have written mutual consent for intermittent use; or

(ii) a health care provider certifies the need for intermittent leave due to the child's serious health condition.

(f) Parental leave:

(i) runs concurrently with leave under the FMLA;

(ii) runs consecutively with postpartum recovery leave pursuant to Subsection (6)(f)(ii);

(iii) is limited to three weeks within any 12-month period;

(iv) does not increase when:

(A) more than one child is born from the same pregnancy;

(B) more than one child is adopted;

(C) the employee is appointed legal guardian of more than one minor child or incapacitated adult.

(6) Postpartum recovery leave is administered as follows:

(a) An employee is qualified for postpartum recovery leave when the employee gives birth.

(b) Management shall grant up to three weeks of paid postpartum recovery leave to an employee who gives notice that they intend to use paid postpartum recovery leave.

(c) Management calculates the amount of leave for each employee based on the number of hours the employee would have worked per week if they had not taken postpartum recovery leave.

(d) 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.

(e) An employee shall use postpartum recovery leave in a single continuous period.

(f) Postpartum recovery leave:

(i) runs concurrently with leave under the FMLA;

(ii) runs consecutively with parental leave under Subsection (5) with postpartum recovery leave used first pursuant to restrictions in Subsection (d); and

(iii) does not increase when more than one child is born from the same pregnancy.

KEY: holidays, leave benefits, vacations

Date of Last Change: 2022[December 23, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 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 ID
54563

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-8. Working Conditions
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and correct rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive

branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.
R477-8. Working Conditions.

R477-8-1. Workweek.

(1) The state's standard workweek begins Saturday at ~~12:00 a.m.~~ midnight 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]~~ Management may adopt alternative business hours under Section 67-25-201.

(3) ~~[Agency-m]~~ 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]~~ shall work the assigned schedule and be at work on time. When an employee is late, regardless of the reason, including inclement weather, management may require the employee to use accrued leave, leave without pay, or adjust their work schedule to account for the lost time.

(5) An employee's time worked 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. Telework.

Telework is ~~[an agency]~~ a management option, not a universal employee benefit. ~~[Agencies]~~ Management utilizing a telework program shall:

- (1) establish a written policy governing telework;
- (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) require participating employees to comply with overtime rules;
- (4) prohibit compensation for normal commute time; and
- (5) document telework authorization.

R477-8-3. Lunch, Break, and Exercise Release Periods.

(1) Management may require each full time work day to include a minimum of 30 minutes non-compensated lunch period. 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) Management may allow compensated exercise release time up to three days per week for 30 minutes.

(a) ~~Management in participating~~ 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) Management shall document authorization for exercise time in ~~[the Utah Performance Management system]~~ writing.

(5) As requested and after consultation with an employee, management shall grant reasonable, daily break periods 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 private location, other than a restroom; and
- (b) appropriate temporary storage 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 63A-17-502.

(1) Management may direct an employee to work overtime. ~~[Each]~~ Management in each agency shall develop internal ~~[rules]~~ policies 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 of sufficient 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 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 accrues when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period 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-m]~~ 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]~~ 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 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 on the payday for the period in which it was earned.

(b) Management shall pay compensatory time balances for an FLSA non-exempt employee 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 accrues when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period are not hours worked when calculating compensatory time. ~~[Each agency]~~ [Management] shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee accrues an hour of compensatory time.

(a) ~~[Agencies]~~ [Management] 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]~~ [management] fails to establish a uniform overtime year, the Division Director, DHRM, and the Director of Finance, Department of Government Operations, will establish the date for the agency as the last pay period of the calendar year. ~~[An agency]~~ [Management] may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the 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) 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:

(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]~~ [Management] 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]~~ [Management] 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]~~ [Management] 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 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) Management may discipline an employee who fails to accurately record time.

(3) ~~[An agency]~~ [Management] may not develop ~~[and]~~ or use time records unless the records have the same elements of the state approved time record and are approved by the Department of Government Operations, Division of Finance.

(4) Management may discipline a supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the ~~[Executive]~~ [Division] Director, DHRM, or designee.

R477-8-9. Hours Worked.

(1) An FLSA non-exempt employee shall be compensated for any hours worked. Management may discipline an employee who works unauthorized overtime.

(a) Any time that an FLSA non-exempt employee ~~[is required to]~~ waits for an assignment while on duty, before reporting to duty, or before performing activities counts as hours worked.

(b) Time spent waiting after being relieved from duty is not 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 FLSA non-exempt employee for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(b) Management may compensate an FLSA exempt employee at a rate equal to or less than one hour for every 12 hours the employee is on-call.

(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) ~~[Agencies who]~~ Management may not enter into on-call agreements with employees ~~unless the~~~~[shall have an]~~ agency has a policy consistent with this rule and finance policy.

(4) On-call status shall be designated by ~~[a supervisor]~~ management in writing ~~[and be documented in the Utah Performance Management system]~~ on an annual basis. Carrying a pager or cell phone does not constitute on-call time without this written agreement.

(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.

(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.

(7) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay 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) Management shall pay an employee restricted to stand-by at a specified location ready for work ~~[full-time]~~ full time or overtime, as appropriate. Management shall pay an employee for stand-by time if required to ~~[stand-by]~~ 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 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 is not hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule is hours worked.

(3) Time an employee spends traveling on a special one-day assignment is hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight 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 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 in]~~ 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 in]~~ 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)]~~ positions, 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 may not accrue excess hours in either the primary or secondary positions. Management shall pay out any excess hours earned 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 regardless of FLSA status.

(7) Overtime is calculated at straight time or time and ~~[one half]~~ 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 direct supervisors shall complete and sign the Accepting Terms of Dual Employment form 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.

The agency ADA coordinator shall evaluate each request for reasonable accommodation from employees and applicants under state and federal law.

R477-8-16. Fitness ~~For~~ for Duty Evaluations.

Management may require a fitness for duty medical evaluation 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 m]~~Management may place an employee in a temporary transitional assignment when an employee ~~[is unable to]~~cannot perform essential job functions due to temporary health restrictions including:

- (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.

Management may not change an employee's work location if the change requires the employee to commute or relocate 50 miles or more, ~~[one way]~~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;
- (3) ~~[the agency]~~management pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03; or
- (4) ~~[the agency]~~management reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

~~[Each agency]~~Management may write ~~[its own]~~agency policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

~~[In order to]~~To protect the citizens of Utah and state resources, and with the approval of the agency head, ~~[agencies]~~management 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]~~Management at agencies 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.

R477-8-21. Workers' Compensation Interference Prohibited.

(1) ~~[Agency m]~~Management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) ~~[Agency m]~~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, 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 34A-2-114; 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 ID
54564

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information**2. Rule or section catchline:**

R477-9. Employee Conduct

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):

The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes, corrects a spelling error, and corrects rules styling errors.

Fiscal Information**5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022
10. This rule change MAY become effective on:	07/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-9. Employee Conduct. R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in [R477-1 through R477-10] Title R477 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 their direct 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) Management shall take administrative action in accordance with Section R477-10-2, Rule R477-11, and Rule R477-14 when an employee reports for duty, 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.

(4) [The agency] Management may decline to defend and indemnify an employee found violating this rule, under Title 63G, Chapter 7, Utah Governmental Immunity Act.

(5) An employee shall provide [the agency] management with a current personal mailing address.

(a) The employee shall notify [the agency] management in writing of any change in address.

(b) Mail sent to the current address on record 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 is considered the principal vocation for a [full time] 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.

(c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(3) [Agency m] 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] This section does 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.

(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, 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 or]~~ 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]~~ Before 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) Management may discipline an employee who violates Subsection R477-9-4(1)(b) up to dismissal.

(3) 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.

(4) If an employee's position is covered by the Hatch Act and the employee files for candidacy, the agency head shall dismiss the employee.

(5) Management shall grant a leave of absence without pay to any career service employee elected to any partisan or ~~[full-time]~~ full time non-partisan political office 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) 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]~~ management 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) The state may withhold non-overtime salary ~~[in excess of]~~ over the minimum federal wage from an employee indebted to the state because of an action or performance in official duties.

(a) The state may withhold salary after:

(i) validating the debt and specifying a legitimately owed amount through physical documentation or other evidence;

(ii) 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;

(iv) notifying the employee of this rule.

(b) The state may withhold salary from the last paycheck of an employee separating from state service.

(c) The state may withhold salary from an employee's last paycheck ~~[preceding]~~ preceding a period of leave without pay for more than two pay periods.

(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.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) Management may discipline an employee who violates the Acceptable Use of Information Technology Resources policy 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 or an agency;

(b) post the seal of the 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.

(2) ~~[An agency]~~ Management may establish agency policies to supplement this section.

(3) Management may discipline an employee 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 Last Change: ~~2022~~ July 1, 2021

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63G-7-2; 63A-17-106; 63A-17-904; 5 U.S.C. 1502(a)(3)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-10	Filing ID 54565
-------------------------------	---------	-----------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-10. Employee Development
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1 and to expand the scope of performance management tools to all employees. (EDITOR'S NOTE:

The proposed amendment to Rule R477-1 is under ID 54565 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes, corrects rules styling errors, and eliminates language that limited application of most of the rule to career service employees.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section
63A-17-106

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.**R477-10. Employee Development.****R477-10-1. Performance Evaluation.**

[Agency ~~m~~] 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 ~~m~~] Management selects an overall performance rating scale.

(b) Management writes performance standards and expectations for each employee in a performance plan.

(c) Management notifies employees when their performance plans are implemented or modified.

(d) Management provides employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) Management shall evaluate an employee's performance in writing each fiscal year.

(a) An employee may include written comments pertaining to the employee's performance evaluation.

(b) Management may issue a written performance evaluation to a probationary employee 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]~~ Management 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 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]~~ management shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-3. Written Warnings.

~~[Agency - m]~~ Management may use written warnings to address performance or conduct problems.

R477-10-4. Employee Development and Training.

(1) ~~[Agency - m]~~ 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 - m]~~ Management shall consult with the 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 Division Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Division Director, DHRM, shall work with ~~[agency - m]~~ management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an ~~[agency]~~ management directs an employee to participate in an educational program, ~~[the agency]~~ management shall pay full costs.

(5) ~~[Agencies are]~~ Management shall ~~[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) 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]~~ Management 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]~~ Management 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]~~ Management 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.

(3) Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.

(4) 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 is expected to repay.

(5) ~~[Agency - m]~~ 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R477-11

Filing ID
54566

Agency Information

1. Department:	Government Operations
Agency:	Human Resource Management
Room no.:	2100
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129-2128

Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R477-11. Discipline
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and corrects rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0

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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 63A-17-306	Section 63G-2-3
--------------------	--------------------	-----------------

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	07/01/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

R477-11. Discipline.

R477-11-1. Disciplinary Action.

(1) ~~[Agency m]~~ 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]~~ coworkers, 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 m]~~ Management shall consult with DHRM ~~[prior to]~~ before disciplining an employee.

(3) Disciplinary actions for career service employees are governed by principles of due process and Section 63A-17-306. When administering a disciplinary action, management shall:

(a) notify the employee in writing of the proposed discipline, the reasons supporting the proposed action, and the right to reply within five working days[-];

(b) grant the employee at least five working days to reply;

(c) consider any timely reply before imposing discipline;

and

(d) impose any discipline in accordance with these rules.

(4) After complying with Subsection (3) for a career service employee or for any career service exempt employee not subject to the same procedural rights, 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; or

(d) a dismissal in accordance with Section R477-11-2.

(5) 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.

(6) Management shall notify any career service employee that the imposed disciplinary action is subject to the grievance procedures, except under Section 67-19a-402.5.

R477-11-2. Dismissal or Demotion.

Management may dismiss or demote an employee for cause under Subsection R477-10-2(2)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) Management may dismiss or demote a probationary employee or career service exempt employee for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) An agency head may not dismiss or demote a career service employee from a career service position unless:

(a) the agency head or designee notifies the employee in writing of the specific reasons for the proposed dismissal or demotion;

(b) the agency head or designee grants the employee up to five working days to reply;

(c) the agency head considers any reply submitted by the employee before imposing discipline; and

(d) the agency head provides the employee an opportunity to be heard by the agency head or designee;

(i) This meeting 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.

(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~~ before] 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 actions or [~~corrective actions~~] performance improvement efforts;

(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

Date of Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 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 ID
54567

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-12. Separations

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 63A-17-306	
-----------------------	-----------------------	--

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	07/01/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.**R477-12. Separations.****R477-12-1. Resignation.**

A career service employee may resign or retire by giving written or verbal notice to the direct supervisor or an appropriate representative of ~~[agency]~~ management.

(1) After giving notice, an employee may not withdraw the resignation or retirement unless the agency head or designee consents to the withdrawal.

R477-12-2. Abandonment of Position.

Management may consider an employee who is absent from work for three consecutive working days without approval to have abandoned the employee's position and resigned from the employing agency.

(1) Management may process appropriate actions to formally separate an employee who has abandoned their position from state employment.

(a) Management shall send the employee notice that the ~~[agency accepts the]~~ employee's resignation has been accepted 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 request that the agency head reconsider accepting the resignation.

R477-12-3. Reduction in Force.

Reductions in force (RIF) are governed by DHRM rules and standard operating procedures.

(1) When management intends to reduce staff in one or more categories of work, management shall develop a work force adjustment plan (WFAP). Management may only give formal, written notification to a career service employee after a WFAP has been reviewed by the Division Director, DHRM, or designee and approved by the ~~[A]~~agency ~~[H]~~head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated;

(b) specific measures taken, if any, to facilitate the placement of affected employees through reassignment or transfer to vacant positions 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) 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).

(3) Management shall calculate retention points 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) Management may consider performance evaluations and performance information for the past three years when assessing job proficiency.

(b) 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. Exempt service time ~~[subsequent to]~~ after attaining career service status with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, management shall specify the criteria they will use for determining retention points.

(i) Management shall consult with the Division Director, DHRM, or designee.

(ii) ~~[Agency]~~WFAPs shall comply with current DHRM standard operating procedures.

(4) Management shall separate employees in the following order:

(a) first, temporary employees in schedule IN or TL positions;

(b) second, probationary employees; and

(c) third, career service employees with the lowest retention points.

(5) When an employee, including one covered under USERRA, is identified for separation due to a RIF, 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) 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 of the Career Service Review Office.

(7) A career service employee who is separated in a RIF is governed by the rules in place at the time of separation.

(8) 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) ~~[An agency]~~Management 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]~~when the individual was separated from employment through a RIF.

KEY: administrative procedures, employees' rights, grievances, retirement

Date of Last Change: 2022~~[July 1, 2021]~~

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106; 63A-17-306

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-13	Filing ID 54568
--------------------------------------	----------------	----------------------------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R477-13. Volunteer Programs
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 67-20-3	Section 67-20-4
Section 67-20-8		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-13. Volunteer Programs.

R477-13-1. Volunteer Programs.

(1) [Agency in] 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) 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 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 Last Change: ~~2022~~**July 1, 2021**

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 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 ID
54569

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-14. Substance Abuse and Drug-Free Workplace
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and corrects a rules styling error.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive

branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63G-2-3	Section 63A-17-106	Section 63A-17-306
-----------------	--------------------	--------------------

Sections 63A-17-1001 through 63A-17-1006		
--	--	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.

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 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 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 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. Management may take appropriate personnel action, up to and including dismissal from employment, 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) Management shall conduct any drug or alcohol testing in compliance with applicable federal and state regulations and policies.

(6) Management shall ensure that any drug or alcohol testing 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) Management may require final applicants who are not current employees to submit to pre-employment drug testing.

(9) 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) Management may require final candidates for transfer or promotion to a highly sensitive position to submit to pre-employment drug testing.

(11) Management may not require an employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position to submit to pre-employment drug testing.

(12) Management may require employees in highly sensitive positions, as designated by DHRM, 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 is conducted at the discretion of the employing agency.

(13) This rule incorporates by reference the requirements of 49 CFR 40.87.

(14) 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.

(15) ~~[Agencies]~~Management 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.

(16) When an employee in a federally regulated position has a confirmation test for alcohol results at or in excess of the applicable federal cut off level when tested before, during, or after performing safety sensitive duties, 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 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]~~cannot 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) When an employee has a verified positive test for use of a controlled substance or alcohol in violation of these rules, management may require the employee to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 63A-17-1006(3). If this is required, the following shall apply.

(a) Management shall grant a leave of absence using accrued leave or leave without pay to an employee participating in a rehabilitation program 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 is classified as private in accordance with Section 63G-2-302.

(d) Management may require an employee to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) Management shall reinstate an employee who successfully completes a rehabilitation program to work in the previously held position, or a position with a comparable or lower salary range.

(f) Management shall discipline an employee who fails to complete the prescribed treatment without a valid reason.

(4) Management may require an employee who has a verified positive test for use of a controlled substance or alcohol 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) DHRM shall maintain and store a separate confidential file of drug and alcohol test results and documents related rehabilitation in the agency human resource field office.

(2) DHRM shall retain test results in accordance with the retention schedule.

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Last Change: ~~2022~~ July 1, 2021

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63G-2-3; 63A-17-106; 63A-17-306; 63A-17-1001 through 63A-17-1006

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-15	Filing ID 54570
--------------------------------------	----------------	----------------------------------

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R477-15. Workplace Harassment Prevention
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes and corrects rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 63A-17-106	Section 63A-17-306	Section 63G-2-305
E.O. No. 2019-1		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. 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; or

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) Management may discipline an employee 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) An employee who 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]~~direct supervisor, any other supervisor within their direct chain of command, or the Division of Human Resource Management, including the agency human resource field office.

(a) Any employee, witness, volunteer, or other individual may submit a complaint.

(b) 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.

(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) Management shall act on any complaints of workplace harassment or retaliation following receipt of the complaint.

(4) ~~[If management determines that an immediate investigation by agency management is unwarranted, management shall notify the complainant.]~~Management shall notify the complainant if investigation is unwarranted.

R477-15-4. Investigative Procedure.

(1) When warranted, investigations shall be conducted based on DHRM standards.

(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 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) DHRM shall maintain and store a separate, confidential file of any workplace harassment and retaliation complaints in the agency human resource field office, or in the possession of an authorized official.

(a) Files shall be retained in accordance with the retention schedule after the active case ends.

(b) Any information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(c) No person may release information contained in the workplace harassment and retaliation file unless the agency head or Division Director, DHRM, determines the release is required by law.

(2) A supervisor may not keep separate files related to complaints of workplace harassment or retaliation.

(3) 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) ~~[An agency]~~Management shall ensure employees complete workplace harassment prevention training upon hire and at least every two years thereafter.

(c) ~~[An agency]~~Management shall submit training records to DHRM including who provided the training, who attended the training, and when they attended it.

KEY: administrative procedures, hostile work environment

Date of Last Change: ~~2022~~~~[July 1, 2021]~~

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 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 R477-16
Ref (R no.):

Filing ID
54571

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:

R477-16. Abusive Conduct Prevention

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment revises language to match definition changes.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 63A-17-106	Section 67-26-101	

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	07/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	---------------------------------	--------------	------------

R477. Government Operations, Human Resource Management.**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) Management may discipline an employee 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) An employee who 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~~ direct supervisor, any other supervisor in their direct chain of command, or the Division of Human Resource Management, including the agency human resource field office.

(a) 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.

(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 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 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) ~~An agency~~ Management shall ensure employees complete training within a reasonable time after hire and at least every two years thereafter.

(c) Management shall submit training records 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 Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-106; 67-26-101

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R477-101	Filing ID
		54572

Agency Information

1. Department:	Government Operations	
Agency:	Human Resource Management	
Room no.:	2100	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 141531	
City, state and zip:	Salt Lake City, UT 84114-1531	
Contact person(s):		
Name:	Phone:	Email:
Bryan Embley	801-618-6720	bkembley@utah.gov

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

General Information

2. Rule or section catchline:
R477-101. Administrative Law Judge Conduct Committee
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The agency found a need for a clarifying changes and minor changes to match changes made to definitions in Rule R477-1. (EDITOR'S NOTE: The proposed amendment to Rule R477-1 is under ID 54556 in this issue, May 15, 2022, of the Bulletin.)
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment revises language to match definition changes and corrects rules styling errors.

Fiscal Information

5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):

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) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Division of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 63A, Chapter 17. This act limits the provisions of career service and this rule to employees of the executive

branch of state government. Jenney Rees, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

Citation Information

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

Sections 63A-17-701 through 63A-17-710		
---	--	--

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	John Barrand, Division Director	Date:	04/27/2022
--	------------------------------------	--------------	------------

R477. Government Operations, Human Resource Management. R477-101. Administrative Law Judge Conduct Committee.

R477-101-1. Authority and Purpose.

This rule is enacted pursuant to Section 63A-17-703, requiring the 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 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 63A-17-701(1)(a).

(2) "Chair" means the Division Director, Division of Human Resource Management, or designee.

(3) "Code of conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Section 67-19e-108.

(5) "Committee meeting" means a proceeding at which a complaint is presented to the committee by the investigator. respondent ALJ shall also have the opportunity to appear and speak regarding the complaint and its allegations.

(6) "Complaint" means a written document filed with the Department under Section R477-101-8 alleging misconduct by an ALJ.

(7) "Division" means the Division of Human Resource Management.

(8) "Final agency action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural, or intermediate.

(9) "Full investigation" means an investigation where the respondent ALJ may respond, in writing, to specific allegations identified in a complaint. A full investigation may also include: examination by the investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity, or justice that provides a responsible basis for action or a decision.

(11) "Interested party" means an individual or entity who participated in an event or proceeding giving rise to a complaint against the respondent ALJ.

(12) "Investigator" means a person employed by the division to perform investigations mandated under Section 63A-17-707 and present information at the committee meeting.

(13) "Misconduct" means a violation of the code of conduct or Sections 67-19e-101 and 63A-17-701 through 63A-17-710.

(14) "Preliminary investigation" means that portion of an investigation conducted by the division upon receipt of a [C]complaint. A preliminary 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 complaint is filed.

R477-101-3. Jurisdiction.

(1) Administrative Law Judges. The committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding complaints filed against ALJs.

(2) Former ALJs. The committee has continuing jurisdiction over former ALJs regarding allegations that misconduct occurred during service as an ALJ if a complaint is received before the ALJ's appointment concludes.

R477-101-4. Records Classification and Retention.

(1) Records prepared by and for the committee, including any complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Section 63G-2-305.

(2) The division shall maintain committee records for a period of three years following the conclusion of any committee activity.

R477-101-5. Committee.

(1) The Division Director or designee shall serve as chair of the committee, and appoint four executive directors or their designees to serve on the committee.

(2) Only executive directors of agencies that employ or contract with ALJs may serve on the committee.

(3) If a division investigation establishes a [C]complaint requires further action, the chair shall convene the committee.

(4) An executive director of the agency that employs or contracts with the respondent ALJ may not participate in a committee proceeding involving the respondent ALJ.

(5) After convening the committee, the division shall provide a copy of the complaint and its investigative results to the committee and the respondent ALJ.

(6) Within 30 days of the date the committee is convened on a complaint the committee shall schedule a committee meeting. At the committee meeting the respondent ALJ shall be given the

opportunity to appear, speak, and present documents in response to a complaint.

(7) Committee members may attend committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

(8) After consideration of any information provided at the committee meeting, the committee shall dispose of the complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members may not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

R477-101-6. Duties of the Chair.

(1) The chair shall:

(a) receive, acknowledge receipt of and review complaints;

(b) notify complainants about the status and disposition of their complaints[;];

(c) make recommendations to the committee regarding further proceedings or the disposition of a complaint;

(d) stay investigations or committee proceedings pending final agency action of the matter giving rise to the complaint against the respondent ALJ;

(e) maintain records of the committee's operations and actions;

(f) compile data to aid in the administration of the committee's operations and actions;

(g) prepare and distribute an annual report of the committee's operations and actions;

(h) direct the operations of the committee's office, and supervise other members of the committee's staff;

(i) make available to the public the laws, rules, and procedures of the committee and its operations; and

(j) consider requests for extension of time periods and, upon a showing of good cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the chair may delegate any of the foregoing duties to other members of the committee's staff.

R477-101-7. Code of Conduct.

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) ~~[In order to]~~To suit a specific agency need, ~~[an agency]~~management may make an addendum or modification to the code of conduct. Any such addendum or modification is specific to that agency. In addition, ~~[an agency]~~management may not make any addendum or modification to the code of conduct unless the committee reviews and approves the changes ~~[prior to]~~before implementation. The chair may convene the committee ~~[for the purpose of reviewing]~~to review any proposed addendum or modification.

R477-101-8. Filing Procedure.

(1) ~~[Each]~~Management at each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily

available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the code of conduct or otherwise has a complaint against an ALJ may file a timely written complaint with the division. An interested party shall file a written complaint with the division within 20 working days of final administrative action in the matter in which the individual is an interested party. Any complaint filed after the 20th working day of the final administrative action is untimely.

(3) The filing date is the date the division actually receives the complaint. The division shall date-stamp any complaints on the date received. Any filing and other time periods are based upon the division's working days.

(4) 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 investigation.

(a) The division shall review any timely filed complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a preliminary investigation.

(b) If the preliminary investigation determines that the complaint is untimely, frivolous, without merit, or if the complaint merely indicates disagreement with the respondent ALJ's decision, without further alleged misconduct, the complaint may be dismissed without further action.

(c) If, after a preliminary investigation is completed, there is a reasonable basis to find misconduct occurred, the investigator shall initiate a full investigation.

(2) Full investigation.

Within ten days after a determination to conduct a full investigation is made, the investigator shall notify the respondent ALJ that a full investigation is being conducted. The notice shall:

- (a) inform the respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;
- (b) inform the respondent ALJ that the investigation may be expanded if appropriate;
- (c) invite the respondent ALJ to respond to the complaint in writing within ~~[40]~~ten working days;
- (d) include a copy of the complaint, any preliminary investigation reports, and any other documentation reviewed in determining whether to authorize a full investigation; and
- (e) inform the respondent ALJ that a full investigation shall be completed within three months of the determination to conduct a full investigation unless continued by the chair.

R477-101-10. Full Investigative Findings.

The investigator shall provide the results of the investigation to the chair, who shall determine whether to convene a committee meeting.

R477-101-11. Notice.

(1) If after review of the full investigative result and findings the chair determines the complaint is factually or legally

insufficient to establish misconduct, the chair shall dismiss the complaint and take no further action.

(2) If after review of the full investigative result and findings the chair determines the complaint requires further action, the chair shall convene the committee and order a committee meeting be scheduled.

(3) After convening the committee the chair shall provide respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the committee meeting. The chair shall also provide the respondent ALJ with a copy of the complaint and the results of the division's investigation.

(4) The chair shall delivery notice that a committee has been convened and a committee meeting ordered by personal service or certified mail upon the respondent ALJ or the 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 chair that a committee has been convened the respondent ALJ may provide the committee a written response to the complaint.

(6) After receipt of the respondent ALJ's response or after expiration of the time to respond the committee shall, in consultation with the ALJ, schedule a committee meeting. The committee shall notify the ALJ in writing of the date, time, and place of the committee meeting. Unless continued for good cause, committee meeting shall be held within four months of the date a committee is convened on a complaint.

(7) No later than 20 days before the scheduled committee meeting the chair shall provide the respondent ALJ with copies of any documents proposed for use at the committee meeting or to be relied upon in making its report and recommendation.

(8) respondent ALJ is entitled to representation at every stage of the committee proceedings or the committee meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in committee proceedings.

R477-101-12. Effect of Respondent ALJ's Resignation or Retirement ~~[during]~~During Proceeding.

If the respondent ALJ resigns or retires during the proceedings, the committee shall determine whether to proceed or dismiss the proceedings.

R477-101-13. Committee Meetings.

(1) The chair shall rule on any motions or objections raised during a committee meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The chair may limit the time allowed for the presentation of information, may bifurcate any issues to be considered, and may make any other rulings regarding any committee proceeding or committee meeting.

(2) ~~[To hold a]~~A committee meeting ~~[there must be]~~may not be held unless at least ~~[3]~~three members of the committee present.

(3) The respondent ALJ may present information to, make statements, and produce witnesses for the committee's consideration.

(4) Committee members may ask questions of any witness including the respondent ALJ.

(5) Immediately following the conclusion of the committee meeting, the committee shall deliberate and decide whether there is sufficient evidence the respondent ALJ violated the code of conduct or otherwise engaged in misconduct. Any such decision shall require a majority vote of the participating committee members.

(6) The committee shall use the preponderance of the evidence standard when making decisions.

(7) Within 30 days of the conclusion of the committee meeting, the chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action, and shall forward the decision and recommendation to the respondent ALJ and the agency head of the respondent ALJ.

(8) After deliberation, if the committee finds insufficient evidence or reason to determine misconduct occurred, the complaint shall be dismissed.

R477-101-14. Discipline.

(1) At any time after the commencement of a full investigation and before any committee action, the ALJ may admit to any of the allegations in exchange for a stated sanction. The committee shall make a recommendation based on the admission.

(2) ~~[An]~~ Management at 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 request by complainant.

(a) If a complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the committee reinstate the complaint. The complainant shall specify the grounds upon which reinstatement is sought in the written request.

(b) The committee shall consider the written request and determine whether to reinstate the complaint at the next available meeting of the committee.

(c) A determination not to reinstate the complaint is not reviewable.

(2) Reinstatement by the chair.

(a) If the committee dismisses a complaint, the chair may, at any time upon the receipt of newly discovered evidence, request that the committee reinstate the complaint. The chair shall specify the grounds upon which the reinstatement is sought in the request.

(b) The committee shall consider the request and determine whether to reinstate the complaint at the next available meeting of the committee.

R477-101-16. Performance Standard.

(1) The following minimum performance standards apply to each ALJ:

(a) an ALJ may not have more than one agency disciplinary action or one committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) 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"]~~ open-ended response option, the committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Section 63A-17-705.

R477-101-17. Performance Surveys.

(1) The division shall establish and follow a schedule to survey the performance of each ALJ every four years in a staggered schedule to survey the performance of ~~[approximately] about [one quarter]~~ one-quarter of ALJ's each calendar year.

(2) Survey respondents shall include:

(a) an attorney who has appeared before the administrative law judge as counsel in the proceeding; and

(b) staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including pro se parties and witnesses.

(4) The division shall maintain survey results separate from the ALJ's personnel file.

(5) The division shall make survey results available to the ALJ's direct supervisor for consideration in completing annual performance evaluations.

R477-101-18. Training.

(1) The 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 63A-17-710.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the division under this section, the administrative law judge shall complete the procedural fairness training program established by the division.

R477-101-19. Hiring of Administrative Law Judges.

(1) Hiring of administrative law judges ~~[must comply with]~~ is governed by Sections 63A-17-704 and ~~[Section]~~ R477-4-15.

KEY: administrative law judges, conduct committee

Date of Last Change: 2022[July 1, 2021]

Notice of Continuation: March 9, 2022

Authorizing, and Implemented or Interpreted Law: 63A-17-701 through 63A-17-710

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R497-100

Filing ID
54592

Agency Information

1. Department:	Human Services	
Agency:	Administration, Hearings	Administrative
Building:	MASOB	
Street address:	195 N 1950 W	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Sonia Sweeney	801-538-8241	ssweeney@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov

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

General Information

2. Rule or section catchline:

R497-100. Adjudicative Proceedings

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

With the consolidation of the Department of Health and Human Services (Department), the Department of Human Services is amending the rules that establish the administrative hearing procedures for the Department. This amendment aligns the administrative hearing procedures for the Center for Medical Cannabis Compassionate Use Board with the consolidated Department's standards and procedures.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment aligns the administrative hearing procedures for the Center for Medical Cannabis Compassionate Use Board with the consolidated Department's standards and procedures. It also amends language to adhere to the Utah Rulewriting Manual.

Fiscal Information

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

A) State budget:

It is not anticipated that this rule will result in a fiscal impact to the state budget. This rule aligns the administrative hearing procedures with the consolidated Department's standards and is not fiscal in nature.

B) Local governments:

This proposed rule will not result in a fiscal impact to local governments because this rule does not establish requirements for local agencies.

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

This proposed rule will not result in a fiscal impact to small businesses because this rule does not establish requirements for small businesses.

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

This proposed rule will not result in a fiscal impact to non-small businesses because this rule does not establish requirements for non-small businesses.

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

This proposed rule will not result in a fiscal impact to persons other than small businesses, non-small businesses, state, or local government entities because this rule does not establish requirements for persons other than small businesses, non-small businesses, state, or local government entities.

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

There are no compliance costs associated with this rule.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Health and Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Subsection		
26B-1-202(1)		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Tracy Gruber, Executive Director	Date:	05/02/2022
--	----------------------------------	--------------	------------

R497. Human Services, Administration, Administrative Hearings.

R497-100. Adjudicative Proceedings.

R497-100-1. Authority.

The Department of Health and Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to Subsection 26B-1-202(1)~~[62A-1-111]~~.

R497-100-2. Definitions.

For purposes of this rule, the definitions in Section 63G-4-103 of the Utah Administrative Procedures Act apply in addition to the following:~~[The terms used in this rule are defined in Section 63G-4-103.]~~

(1) For ~~[the purpose of]~~ this rule, "agency" means the Department of Health and Human Services or a division, ~~[or]~~ office, or operational unit of the Department of Health and Human Services

including the Division of Child and Family Services (DCFS), the Division of Services for People with Disabilities (DSPD), the Division of Juvenile Justice and Youth Services (DJJYS), the Division of Aging and Adult Services (DAAS),~~[the Division of Substance Abuse and Mental Health (DSAMH), the Division]~~~~[Office]~~ of Licensing and Background Checks (DLBC), the Utah State Developmental Center (USDC)~~[the Utah State Hospital (USH)], the Center for Medical Cannabis (CMC), and any~~ boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of each Division, Office, or Institution. For purposes of this rule, the term "agency" does not include the Office of Recovery Services (ORS),~~the Division of Integrated Health Care (DIH), or the~~ Compassionate Use Board within the CMC.

(2) "~~Adjudicative~~~~[Agency actions or]~~ proceedings" of the Department of Health and Human Services include~~[the following]~~:

(a) ~~[challenges to]~~ findings of child abuse, neglect and dependency pursuant to Section 62A-4a-1009;

(b) due process ~~[hearings afforded]~~ given to foster parents regarding the removal of a foster child from their home pursuant to Section 62A-4a-206;

(c) the denial, revocation, modification or suspension of a license issued by DLBC pursuant to Sections 62A-2-106, 62A-2-120, 26-8a-501 through 507, 26-8a-310, 26-8a-401 through 416, 26-21-11, 26-21-201 through 210, 26-39-401 through 404, and 26-39-601~~[the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101];~~

(d) ~~[challenges to]~~ findings of abuse, neglect or exploitation of a vulnerable adult pursuant to Section 62A-3-301;

(e) actions by the DJJYS~~[Division of Juvenile Justice Services]~~ and the Youth Parole Authority relating to granting or revocation of parole, discipline, or resolution of grievances, supervision, confinement or treatment of residents of any Juvenile Justice Services facility or institution;

(f) resolution of client grievances with respect to delivery of services by contracted private, nongovernmental providers within the agency's service delivery system;

(g) actions by agency owned and operated institutions and facilities relating to discipline or treatment of residents of those facilities;

(h) placement and transfer decisions affecting involuntarily committed residents of the USDC~~[Utah State Developmental Center]~~ pursuant to Section 62A-5-313;

(i) protective payee hearings;~~[and]~~

(j) a denial, termination, suspension, or reduction of a license or card issued pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act, or the imposition of a penalty or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(j) ~~[A]~~ agency records amendment hearings held pursuant to Section 63G-2-603.

(3) "Aggrieved person" includes any applicant, recipient, or person aggrieved by an agency action.

(4) "Claimant" means the party that initiates an adjudicative proceeding whether by an agency action or a request for agency action.

~~[(4)]~~ "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(6) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact or law, between the Administrative Law Judge and one party only.

([5]7) "Mail" means to send~~transmit~~ through mail services, email, or facsimile~~hand-delivery~~.

([6]8) "Office" means the Office of Administrative Hearings in the Department of Human Services.

([7]9) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

- (a) hearing officers;
- (b) administrative law judges;
- (c) division and office directors;
- (d) the superintendent of agency institutions; and
- (e) statutorily created boards or committees.

R497-100-3. Exceptions.

~~[The provisions of this rule do not govern the following.]~~ This rule does not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. Pursuant to Subsection 63G-4-102(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the agency, including terminations of contracts by the ~~[D]~~ department.

(3) ~~[Initial applications for and initial determinations of eligibility for state-funded programs.]~~ The issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code.

(4) Adjudicative proceedings brought by or against ORS. ~~[The rules regarding]~~ Rule R527-200 contains ORS adjudicative proceeding rules. [are stated in Rule R527-200.]

(5) Adjudicative proceedings brought by or against DIH. Rule R410-14 contains DIH adjudicative proceeding rules.

(6) Adjudicative proceedings brought by or against the CMC Compassionate Use Board. Rule R380-412 contains CMC Compassionate Use Board adjudicative proceeding rules.

R497-100-4. Form of Proceeding.

(1) Adjudicative proceedings commenced by the Department of Health and Human Services or commenced by other persons affected by the Department of Health and Human Services' actions shall be informal adjudicative proceedings.

(2) Any time before ~~[a]~~ the office issues a final order~~[is issued]~~ in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

- (a) conversion of the proceeding is in the public interest; and
- (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If ~~[a]~~ the presiding officer converts a proceeding ~~[is converted]~~ from informal to formal, the ~~[P]~~ procedures for ~~[F]~~ formal ~~[A]~~ adjudicative ~~[P]~~ proceedings in Sections 63G-4-204 through 63G-4-208 shall apply. In other cases, the ~~[P]~~ procedures for ~~[H]~~ informal ~~[P]~~ proceedings in Sections 63G-4-203 and R497-100-7, and other applicable department rules shall apply.

R497-100-5. Commencement of Proceedings.

(1) Adjudicative proceedings shall ~~[be-]~~ commence~~[d]~~ by either:

- (a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if persons other than the agency commence ~~proceedings~~ ~~[are commenced by persons other than the agency].~~

(2) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Subsection 63G-4-201(2) and shall also include a statement that:

(a) the adjudicative proceeding is to be conducted informally; and

(b) describes the aggrieved person's right to request a hearing and the applicable time limits within which the aggrieved person shall request a hearing ~~[must be requested]~~.

(3) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Subsections 63G-4-201(3)(a) through 63G-4-201(3)(b) and include the name of the adjudicative proceeding, if known.

(4) In the case of adjudicative proceedings commenced under Subsection (3), the presiding officer shall within ~~[ten]~~ 20 calendar ~~[business-]~~ days give notice by mail to all parties. The written notice shall:

(a) give the agency's file number or other reference number;

(b) give the name of the proceeding;

(c) ~~[designate that the proceeding is to be conducted informally.]~~ designate that the presiding officer shall conduct the hearing informally;

(d) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(e) if a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules ~~[the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response];~~ and

(f) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-6. Availability of Hearing.

(1) When an agency commences an informal adjudicative proceeding~~[is commenced by the agency]~~, if statute or agency rule does not provide otherwise, a party may request a hearing within 15 calendar ~~[ten business-]~~ days of receipt of the notice of agency action.

(2) The agency shall promptly forward hearing requests to the office, unless statute or rule designates another presiding officer. ~~[Hearing requests received by the agency shall be forwarded to the office, unless another presiding officer is designated by statute or rule.]~~

(3) In the case of a hearing commenced under Subsection (1), a party who fails to request a hearing within 15 calendar ~~[ten business-]~~ days of receipt of the notice of agency action shall have no right to an administrative ~~[adjudicative]~~ hearing or judicial review of the agency action, unless the party can demonstrate, by a preponderance of the evidence, that it was virtually impossible or unreasonably burdensome to file the request within ~~[ten business-]~~ 15 calendar days.

(4) ~~[Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact.]~~ If the aggrieved party requests a hearing and if there is a disputed issue or fact, the presiding officer may hold an informal

hearing in connection with an agency action. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and issue a decision without a hearing, based on the record. In the decision, the presiding officer shall specifically set out all material, and relevant facts that are not in dispute.~~[determine the issues in the adjudicative proceeding, if such a determination complies with the policies and standards of the applicable agency.]~~ If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(5) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding; or

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-7. Settlement Agreements.

So long as there is no statutory or rule prohibition against such, at any time before the issuance of a final decision and order, the parties may enter into a settlement agreement resolving all, or part, of the adjudicative proceeding.

R497-100-8. Stays.

(1) The presiding officer may stay an adjudicative proceeding during the time an investigation or court case is pending due to the same facts that gave rise to the agency action.

(2) If the stay is based on a proceeding in a state court of public record, the presiding officer may monitor the public records of that proceeding to determine if the stay should be continued or lifted, or if other action must be taken.

R497-100-7[2]. Procedures for Informal Proceedings.

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings ~~are~~is as follows:

(1)~~[-](a)~~ Unless specified otherwise in another applicable rule, t[F]he respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 15 calendar[10 business] days following receipt of the notice of agency action or request for agency action.

~~(b) An attorney or non-attorney may represent a party.[A party may be represented by an attorney or a non-attorney.] [Attorneys will not be appointed by the office or the agency.]~~The office or agency shall not pay for the attorney.

~~(c) The parties shall not exercise discovery, but the office may issue subpoenas or other orders to compel the production of necessary evidence.~~

~~(d) Attorneys may issue their own subpoenas for necessary evidence. Parties who are not represented by attorneys may request subpoenas from the office. The party to whom the presiding officer has issued a subpoena shall cause the subpoena to be served on the witness.~~

~~(e) Parties shall request a subpoena as shortly after a hearing date is set as is possible. The office will not issue subpoenas less than 16 calendar days before the hearing.~~

~~(f) Each party shall have access to information contained in the agency's files and to materials and information gathered in any investigation, to the extent permitted by law.~~

~~(g) The office may require that parties exchange documents before the hearing to expedite the hearing process.~~

~~(h) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.~~

~~([e])~~(i) The office shall hold a[A] hearing [shall be provided to] for any party entitled to request a hearing as a matter of law.[in accordance with Section 63G-4-203.]

~~(j)~~ In the hearing, the presiding officer shall take testimony under oath or affirmation.

~~([d])~~(k) In the hearing, the parties[party named in the notice of agency action or in the request for agency action] shall be permitted to testify, present evidence, and comment on the issues.

~~(l) Each party may offer any relevant evidence, including hearsay evidence. Claimant cannot base their case exclusively on inadmissible hearsay. Claimant must present a residuum of evidence that would be admissible under the rules of procedure with the applicable court of competent jurisdiction.~~

~~(m) The presiding officer may exclude irrelevant, immaterial, and unduly repetitious evidence.~~

~~(n) The presiding officer may question any party or witness.~~

~~(o) The presiding officer shall maintain order, and may recess the hearing to regain order if a person engages in disrespectful, disorderly, or disruptive conduct. The presiding officer may remove any person, including a party, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:~~

~~(i) restrict the person's participation in the hearing; or~~

~~(ii) issue an order of default.~~

~~(p) When a party claims to have but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.~~

~~(q) The presiding officer may issue an order of default against any party that fails to appear, participate, or obey an order entered by the presiding officer.~~

~~(r)~~([e]) The office will hold [H]hearings [will be held] only after a timely notice has been mailed to each party.

~~(f) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. Each party to the proceedings will be responsible for the appearance of witnesses.~~

~~(g) Each party shall have access to information contained in the agency's files and to materials and information gathered in any investigation, to the extent permitted by law.~~

~~(h) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.]~~

~~(i)~~([s]) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Subsection 63G-4-203(1)(i).

~~(j)~~(t) Hearings shall be open to the parties.[each party.] Hearings are not open to the public.

~~([k])~~(u) The presiding officer[s] shall base their order[shall be based] on the facts appearing in the agency's files that were available to the other party and on the facts presented in evidence at the hearings.

~~([l])~~(v) The office shall promptly mail a[A] copy of the presiding officer's order [shall be promptly mailed] to each of the parties.

(2) ~~[Hearings shall be recorded at the office's expense.]~~A transcript of the record may be prepared pursuant to Subsection 63G-4-203(2)(b). The presiding officer may record any proceedings other than a hearing at their own discretion.

(3) When the agency commences an informal adjudicative proceeding and is to be heard by the office, [U]nless statute or agency rule specify otherwise, [when an informal adjudicative proceeding is commenced by the agency and is to be heard by the office,]the agency shall have the burden of proving, by a preponderance of the evidence, that its decision was reasonable. The agency can demonstrate this by showing that the agency's decision was not arbitrary or capricious.[This can be demonstrated by showing that the agency's decision was not arbitrary and capricious.]

(4) The parties shall mail copies of any [M]otions or [and] pleadings filed with the office [by a party shall be mailed-]to each of the other parties named in the action.

(5) Motions or pleadings received by the office after regular business hours of Monday through Friday, 8[:00] a.m. to 5[:00] p.m., excluding state holidays, will be deemed received the following business day.

(6) Ex parte communication with the presiding officer is prohibited unless all other parties to the case have been given notice and opportunity to be present. The prohibition against ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters. The presiding officer shall report any improper ex parte discussions at the time of the hearing and be made apart of the record.

(7) The parties must keep the office informed of their current address, email address, and telephone number.

RA97-100-[8]10. Platform and Venue.

(1) The office shall hold hearings by telephone, video conferencing, or in-person, as determined by the office.[Hearings shall be held by telephone, video conferencing or in-person, as determined by the office.]

(2) The office shall conduct hearings by telephone or video conferencing when[ever] possible.

(3) The office may hold in-person hearings if the office finds good cause to do so.[In-person hearings may be held if the office finds good cause to do so.] Good cause includes that a party does not have the equipment necessary to participate in a video hearing.

(4) Venue for in-person hearings conducted by the office shall be in an agency office located in the county closest to where the aggrieved person resides or maintains their principal place of business, unless the office finds good cause to hold the hearing elsewhere.

RA97-100-11. Amending Administrative Orders.

(1) The presiding officer may amend an order if the presiding officer determines that the order contains a clerical error.

(2) The presiding officer shall mail a copy of the amended final decision and order to each party.

[RA97-100-9. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition. The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

~~_____ (a) the statute, rule or order to be reviewed;~~
~~_____ (b) a detailed description of the situation or circumstances at issue;~~

~~_____ (c) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;~~

~~_____ (d) an address and telephone where the petitioner can be contacted during regular work days;~~

~~_____ (e) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and~~

~~_____ (f) the signature of the petitioner or an authorized representative.~~

~~_____ (3) Exemptions from Declaratory Order Procedure.~~ A declaratory order shall not be issued by the agency under the following circumstances:

~~_____ (a) the subject matter of the petition is not within the jurisdiction and competency of the agency;~~

~~_____ (b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;~~

~~_____ (c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;~~

~~_____ (d) the declaratory order is trivial, irrelevant, or immaterial;~~

~~_____ (e) a declaratory order proceeding is otherwise prohibited by state or federal law;~~

~~_____ (f) a declaratory order is not in the best interest of the agency or the public;~~

~~_____ (g) the subject matter is not ripe for consideration; or~~

~~_____ (h) the issue is currently pending in a judicial proceeding.~~

~~_____ (4) Intervention in Accordance with Subsection 63G-4-203(1)(g) and Section 63G-4-503.~~

~~_____ (a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.~~

~~_____ (b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.~~

~~_____ (c) The agency presiding officer may grant a petition to intervene if the petition meets the following requirements:~~

~~_____ (i) the intervenor's legal interests may be substantially affected by the declaratory order proceedings; and~~

~~_____ (ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.~~

~~_____ (5) Review of Petition for Declaratory Order.~~

~~_____ (a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Subsection 63G-4-503(6)(a).~~

~~_____ (b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:~~

~~_____ (i) give the name, title, mailing address, and telephone number of the presiding officer;~~

~~_____ (ii) give the agency's file number or other reference number;~~

~~_____ (iii) give the name of the proceeding;~~

~~(iv) state whether the proceeding shall be conducted informally or formally;~~

~~(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and~~

~~(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.~~

~~(c) If the agency's presiding officer issues a declaratory order, it shall conform to Subsection 63G-4-503(6)(b) and shall also contain:~~

~~(i) a notice of any right of administrative or judicial review available to the parties; and~~

~~(ii) the time limits for filing an appeal or requesting review.~~

~~(d) A copy of the declaratory order shall be mailed in accordance with Subsection 63G-4-503(6)(c).~~

~~(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.]~~

R497-100-12[0]. Agency Review.

The [A]agency [review] shall not [be] allow agency review under Section 63G-4-301.[ed.]

R497-100-13[4]. Reconsideration.

(1) Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday, the deadline shall [will be] extend[ed] until the next working day.

(2) A presiding officer may grant a request for reconsideration if the moving party demonstrates that the final decision and order contains an error of fact or law, based on the evidence presented at hearing, the correction of which would materially alter the ultimate decision.

R497-100-1[2]4. Scope and Applicability.

[The provisions of this section supersede the provisions of any other Department] This section supersedes any other department rule[s] that may conflict with the foregoing rules.

KEY: administrative procedures, social services

Date of Last Change: 2022[September 1, 2020]

Notice of Continuation: June 19, 2020

Authorizing, and Implemented or Interpreted Law: 26B-1-202(1)[62A-1-110; 62A-1-111]

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R590-102	Filing ID
		54581

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorsville State Office Building

Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R590-102. Insurance Department Fee Payment Rule

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed to update the fees for a captive insurance company and to comply with Executive Order No. 2021-12.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The most significant change is an update to the fees paid by a captive insurance company. The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual standards and make the language of this rule more clear.

Public Hearing Information:

Virtual Meeting ID:

June 7, 2022, 2:00 PM

meet.google.com/ggj-ohvi-gff

Phone: 254-826-9801

PIN: 491 471 998#

Fiscal Information

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

A) State budget:

There are 340 companies holding a captive insurance company license in Utah. Each of these companies will pay an additional \$1,125 at renewal. This will result in the Department of Insurance (Department) collecting an additional \$382,500 in annual revenue. Additionally, there are 10 captives in dormancy that pay half the normal renewal fee, for an additional \$5,625 to the Department, annually.

B) Local governments:

There is no anticipated cost or savings to local governments. The majority of changes are clerical in nature, and the fee increase will not affect any local governments.

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

Only a very small number of captives operating in Utah have employees. Of the 340 currently licensed captives, fewer than 20 are estimated to have 1 to 49 employees. These captives will have a cost increase of \$1,125 for their annual license fees, resulting in an aggregate cost increase of less than \$22,500, annually.

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. No captives operating in Utah have more than 50 employees.

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**):

Most captives operating in Utah have no employees. Of the 340 currently licensed captives, an estimated 320 have no employees. These captives will have a cost increase of \$1,125 for their annual license fees, resulting in an aggregate cost increase of \$360,000.

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

A captive insurance company doing business in Utah will pay \$1,125 more annually for its license.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will result in an additional annual cost of \$1,125 to each affected party as a result of this rule. However, an insurer is required to have a minimum of \$250,000 of unimpaired capital to form and maintain a captive in Utah; the additional \$1,125 a year will not be fiscally burdensome. Despite the increase, Utah will remain one of the nation's most cost competitive domiciles for captives. Due to a number of new policies at the federal level, the captive industry is seeing a lot of uncertainty nationwide. The level of uncertainty is sufficient to make it impossible to estimate how the next two years will look. Recent years have seen a significant number of new captives, a significant number of closures, and both in the same year. The Department believes the most accurate estimate is to assume a status quo for the

next few years while the federal policies settle. Jonathan T. Pike, Commissioner

6. A) 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	\$22,500	\$22,500	\$22,500
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$365,625	\$365,625	\$365,625
Total Fiscal Cost	\$388,125	\$388,125	\$388,125
Fiscal Benefits			
State Government	\$388,125	\$388,125	\$388,125
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$388,125	\$388,125	\$388,125
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-2-201	Section 31A-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. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until:		06/14/2022
B) A public hearing (optional) will be held:		
On:	At:	At:
06/07/2022	02:00 PM	See details above in Box 4

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/02/2022
--	---	--------------	------------

R590. Insurance, Administration.

R590-102. Insurance Department Fee Payment Rule.

R590-102-1. Authority.

This rule is ~~[adopted pursuant to Subsection 31A-3-103(3), which requires the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees]~~ promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-3-103.

R590-102-2. Purpose and Scope.

- (1) The purpose[s] of this rule ~~[are]~~ is to:
- (a) publish the schedule of fees approved by the legislature;
 - (b) establish fee deadlines; and
 - (c) disclose this information to licensees and the public.
- (2) ~~[The]~~ This rule applies to:
- (a) any person engaged in the business of insurance in Utah;
 - (b) any person holding an insurance license in Utah;
 - (c) any applicant for a license, registration, certificate, or other similar filing; and
 - (d) any person requesting any service provided by the department for which a fee is required.

R590-102-3. Definitions.

~~[In addition to the definitions in Title 31A, Insurance Code, the following definitions shall apply for the purposes of this rule]~~ Terms used in this rule are defined in Sections 31A-1-301 and 63G-4-106. Additional terms are defined as follows:

- (1) ~~["Admitted insurer" includes fraternal, health, health maintenance organization, life, limited health plan, motor club, non-~~

~~profit health service, property and casualty, title insurer, and a prescription drug plan.~~

~~_____ (2) "Agency" means:~~

~~_____ (a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and~~

~~_____ (b) an insurance organization required to be licensed under Sections 31A-23a-301, 31A-25-207, and 31A-26-209.~~

~~_____ (3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, sponsored captive, and special purpose financial captive. It does not include a captive eeH]"Captive insurance company" means the same as under Section 31A-37-102.~~

~~[(4)](2) "Deadline" means the final date or time:~~

~~(a) imposed by:~~

~~(i) statute;~~

~~(ii) rule; or~~

~~(iii) order; and~~

~~(b) by which:~~

~~(i) a payment must be received by the department without incurring a penalty for late payment or non-payment; or~~

~~(ii) required information must be received by the department without incurring a penalty for late receipt or non-receipt.~~

~~[(5)](3) "Fee" means an amount set by the commissioner, by statute, or by rule, and approved by the legislature for a license, registration, certificate, or other filing or service provided by the [Insurance Department] department.~~

~~_____ (4) "Electronic payment" means a credit card or automated clearinghouse payment.~~

~~_____ (6) "Full line agency" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third-party administrator.~~

~~_____ (7) "Full line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third-party administrator.~~

~~_____ (8) "Limited line agency" includes a bail bond producer and a limited line producer.~~

~~_____ (9) "Limited line individual" includes a bail bond agent, limited lines producer, and customer service representative.]~~

~~[(10)](5) "Other organization" includes a home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, and health discount program.~~

~~_____ (11) "Non electronic application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.~~

~~_____ (12) "Non electronic filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.~~

~~_____ (13) "Non electronic payment" means a payment that must be manually entered by the department because the payment was submitted by check, money order, or other physical medium when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.]~~

~~_____ (6) "Medicare prescription drug plan insurer" means an insurer that offers exclusively Medicare Part D coverage.~~

~~[(14)](7)~~ "Received~~[by the department]~~" means:

- (a) the date delivered to and stamped received by the department, if delivered in person;
- (b) the postmark date, if delivered by mail;
- (c) the delivery service's postmark date or pick~~[-]~~up date, if delivered by a delivery service; or
- (d) the received date recorded on an item delivered, if delivered by:
 - (i) facsimile;
 - (ii) email; or
 - (iii) another electronic method; or
- (e) a date specified in:
 - (i) a statute;
 - (ii) a rule; or
 - (iii) an order.

R590-102-4. General Instructions.

(1) ~~[Any]~~Due Date. A fee payable to the department not included in Sections R590-102-5 through R590-102-24 ~~[shall be]~~is due when service is requested~~[-, if applicable, otherwise-]~~or by the due date on the invoice.

(2) Payment.

(a) A ~~[non-electronic payment]~~processing fee will be added to a non-electronic payment ~~[when-]~~if the department ~~[has provided-]~~provides an electronic payment process~~[-and stated the electronic process is the preferred process for receiving a payment].~~

(b) Check.

(i) A check shall be made payable to the Utah Insurance Department.

(ii) A person will be charged all fees associated with a dishonored check~~[-that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided].~~

(iii) A dishonored check will not constitute payment of the fee for which the check was issued and any action taken based on the payment will be voided.

(iv) ~~[Any]~~A late fee or ~~[other]~~penalty resulting from ~~[the voided action-]~~a voided check will apply until proper payment is ~~[made]~~received.

~~[(iv)]~~ A check payment that is dishonored is a violation of this rule.

(c) Cash. The department is not responsible for ~~[un-receipted-]~~a cash payment that is lost or misdelivered prior to a receipt being issued.

(d) Electronic Payment.

~~[(i)]~~ Credit card.

~~[(A)]~~ A credit card may be used to pay any fee due to the department.

~~[(B)]~~ A credit card payment that is dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.

~~[(C)]~~ A late fee or other penalty resulting from the voided action will apply until proper payment is made.

~~[(D)]~~ A credit card payment that is dishonored is a violation of this rule.

~~[(ii)]~~ Automated clearinghouse (ACH).

~~[(A)]~~ Any payer or purchaser desiring to use this method must contact the department for the proper routing and transit information.

~~[(B)]~~ A payment that is made in error to another agency or that is not deposited into the department's account will not constitute

payment of the fee and any action taken based on the payment will be voided.

~~[(C)]~~ Any late fee or other penalty resulting from the voided action will apply until proper payment is made.

~~[(D)]~~ An ACH payment that is dishonored is a violation of this rule.

(i) An electronic payment may be used to pay any fee due to the department.

(ii) A person will be charged all fees associated with a dishonored electronic payment.

(iii) A dishonored electronic payment will not constitute payment of the fee for which the electronic payment was issued and any action taken based on the payment will be voided.

(iv) A late fee or penalty resulting from a voided electronic payment will apply until proper payment is received.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation ~~[in accordance with-]~~under Section 31A-3-401 if other states or countries impose higher fees.

(4) Refund~~[s]~~.

(a) ~~[Fees-]~~A fee enumerated in this rule ~~[are-]~~is non-refundable.

(b) ~~[Overpayments of fees are-]~~An overpayment of a fee is refundable.

(c) A request for a ~~[return-]~~refund of an overpayment ~~[must]~~shall be submitted in writing.

(5) ~~[A non-electronic processing fee described in Section R590-102-21 will be assessed for a particular service if the department has established an electronic process for that service]~~A payment made in error to another agency or that is not deposited into the department's account will not constitute payment and any action taken based on the payment will be voided.

(6) An~~[y]~~ annual or biennial license fee, service fee, or assessment described in this rule is for services the department will provide during the year and is paid in advance of providing the services.

(7) An electronic commerce dedicated fee described in Section R590-102-23 may be added to the fees required by Sections R590-102-5 through R590-102-20.

R590-102-5. Admitted Insurer ~~[and Prescription Drug Plan]~~ Fees.

(1) Annual license fees for a certificate of authority:

(a) ~~[certificate of authority-]~~initial license application, due with license application -- \$1,000;

(b) ~~[certificate of authority-]~~renewal, due by the due date on the invoice -- \$300;

(c) ~~[certificate of authority-]~~late renewal, due for any renewal paid after the date on the invoice -- \$350; and

(d) ~~[certificate of authority-]~~reinstatement, due with application for reinstatement -- \$1,000.

(2) Other license fees for a certificate of authority:

(a) ~~[certificate of authority-]~~amendment~~[s]~~, due with request for amendment -- \$250;

(b)(i) Form A application for merger, acquisition, or change of control, due with filing -- \$2,000; and

(ii) ~~[E]~~xpenses incurred for consultant services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing, due with filing -- \$2,000; and

(d) application for organizational permit for a mutual insurer to solicit applications for qualifying insurance policies or

subscriptions for mutual bonds or contribution notes, due with application -- \$1,000.

(3) The annual license fee includes the following ~~licensing services for which no additional fee is required~~:

- (a) filing annual statement and report of Utah business, due annually on March 1;
- (b) filing holding company registration statement, Form B;
- (c) filing application for material transactions between affiliated companies, Form D; and
- (d) applications for:
 - (i) stock solicitation permit;
 - (ii) public offering filing ~~but not an SEC filing~~;
 - (iii) ~~an~~ SEC filing;
 - (iv) private placement offering; and
 - (v) individual license to solicit ~~in accordance~~ with the stock solicitation permit.

(4) Annual service fee ~~is~~.
[Due] The annual service fee is due by the due date on the invoice.

(b) A Medicare prescription drug plan insurer is exempted from payment of a service fee.

(c) The annual service fee is based on the Utah premium as shown in the ~~company's~~ insurer's prior year annual statement on file with the ~~National Association of Insurance Commissioners~~ NAIC and the department.

- (d) Fee schedule based on premium volume:
- (i) \$0 premium volume - no service fee;
 - (ii) more than \$0 but less than \$1 million ~~in premium volume~~ -- \$700;
 - (iii) \$1 million but less than \$3 million ~~in premium volume~~ -- \$1,100;
 - (iv) \$3 million but less than \$6 million ~~in premium volume~~ -- \$1,550;
 - (v) \$6 million but less than \$11 million ~~in premium volume~~ -- \$2,100;
 - (vi) \$11 million but less than \$15 million ~~in premium volume~~ -- \$2,750;
 - (vii) \$15 million but less than \$20 million ~~in premium volume~~ -- \$3,500; and
 - (viii) \$20 million or more ~~in premium volume~~ -- \$4,350.

(e) The annual service fee includes the following services ~~for which no additional fee is required~~:

- (i) filing of amendments to articles of incorporation, charter, or bylaws;
- (ii) filing ~~of~~ a power of attorney;
- (iii) filing of registered agent;
- (iv) affixing the commissioner's seal and certifying any paper;
- (v) filing of authorization to appoint and remove agents;
- (vi) initial filing of a producer's or agency's appointment with an insurer;
- (vii) ~~termination of~~ terminating a producer's or agency's appointment with an insurer;
- (viii) report filing;
- (ix) rate filing; and
- (x) form filing.

(5) Actual costs plus overhead expenses incurred during an examination of an insurer shall be paid by the examined insurer by the due date on the invoice.

R590-102-6. Foreign Surplus Lines Insurer ~~Accredited Reinsurer, Certified Reinsurer, Trusted Reinsurer, and Employee Welfare Fund Administrative/Service~~ and Reinsurer Fees.

- (1) Annual license fees:
 - (a) initial, due with application -- \$1,000;
 - (b) renewal, due by the due date on the invoice -- \$500;
 - (c) late renewal, due for any renewal payment paid after the due date on the invoice -- \$550; and
 - (d) reinstatement, due with application -- \$1,000.
- (2) The annual license fee includes the following services ~~for which no additional fee is required~~:
 - (a) filing ~~of~~ a power of attorney; and
 - (b) filing of registered agent.

R590-102-7. Other Organization Fees.

- (1) ~~(a)~~ Annual license fees:
 - ~~(a)~~ (i) initial, due with application -- \$250;
 - ~~(b)~~ (ii) renewal, due by the due date on the invoice -- \$200;
 - ~~(c)~~ (iii) late renewal, due for any renewal paid after the due date on the invoice -- \$250; and
 - ~~(d)~~ (iv) reinstatement, due with application for reinstatement -- \$250.
- ~~(e)~~ (b) The annual other organization initial or renewal fee includes the risk retention group annual statement filing, due annually on March 1.
- (2) Annual service fee, due by the due date on the invoice -- \$200.
 - (a) The annual service fee includes the following services ~~for which no additional fee is required~~:
 - (i) filing ~~of~~ a power of attorney;
 - (ii) filing of registered agent; ~~and~~
 - (iii) rate ~~file~~ ing;
 - (iv) form ~~file~~ ing;
 - (v) report ~~or~~ ing; and
 - (vi) service contract filing.

R590-102-8. Captive ~~Insurer~~ Insurance Company Fees.

- (1) Initial license application, due with license application -- \$200.
- (2) Actual costs incurred by the department during the initial license application review shall be paid by the captive ~~insurer~~ insurance company by the due date on the invoice.
- (3) Annual license fees:
 - (a) initial, due by the due date on the invoice -- ~~[\$6,125]~~ 7,250;
 - (b) renewal, due by the due date on the invoice -- ~~[\$6,125]~~ 7,250;
 - (c) late renewal, due for any renewal paid after the due date on the invoice -- ~~[\$6,130]~~ 7,300; and
 - (d) reinstatement, due with application for reinstatement -- ~~[\$6,130]~~ 7,300.
- (4) Actual costs plus overhead expenses incurred during an examination of a captive ~~insurer~~ insurance company shall be paid by the examined captive ~~insurer~~ insurance company by the due date on the invoice.

R590-102-9. Captive Cell Fees.

- (1) Initial license application, due with license application -- \$200.

(2) Actual costs incurred by the department during the initial license application review shall be paid by the captive ~~insurer~~ insurance company by the due date on the invoice.

(3) Annual license fees:

(a) initial, without proration, due by the due date on the invoice -- \$1,000;

(b) renewal, due by the due date on the invoice -- \$1,000; and

(c) late renewal, due for any renewal paid after the due date on the invoice -- \$1,050.

R590-102-10. Life Settlement Provider Fees.

(1) Annual license fees:

(a) initial, due with application -- \$1,000;

(b) renewal, due by the due date on the invoice -- \$300;

(c) late renewal, due for any renewal paid after the due date on the invoice -- \$350; and

(d) reinstatement, due with reinstatement application -- \$1,000.

(2) Annual service fee, due by the due date on the invoice -- \$600.

(a) The annual service fee includes ~~the following service for which no additional fee is required~~:

(i) rate[-] filing;

(ii) form[-] filing;

(iii) report[-] filing; and

(iv) service contract filing.

(3) Actual costs plus overhead expenses incurred during an examination of a ~~vitality~~ life settlement provider shall be paid by the examined ~~vitality~~ life settlement provider by the due date on the invoice.

R590-102-11. Professional Employer Organization (PEO) Fees.

(1) Annual license fees:

(a) PEO not certified by an assurance organization:

(i) initial, due with application -- \$2,000;

(ii) renewal, due by the due date on the invoice -- \$2,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice -- \$2,050; and

(iv) reinstatement, due with reinstatement application -- \$2,050.

(b) PEO certified by an assurance organization:

(i) initial, due with application -- \$2,000;

(ii) renewal, due by the due date on the invoice -- \$1,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice -- \$1,050; and

(iv) reinstatement, due with reinstatement application -- \$1,050.

(c) PEO small operator:

(i) initial, due with application -- \$2,000;

(ii) renewal, due by the due date on the invoice -- \$1,000;

(iii) late renewal, due for any renewal paid after the due date on the invoice -- \$1,050; and

(iv) reinstatement, due with reinstatement application -- \$1,050.

R590-102-12. Individual Resident and Non-Resident License Fees, Other Than Individual Navigators.

(1) Biennial ~~full-line~~ license fees:

(a) initial, due with application -- \$70;

(b) renewal ~~if renewed prior to license expiration date~~, due with renewal application -- \$70; and

(c) reinstatement ~~if inactive license is reinstated within one year following the license expiration date~~, due with application for reinstatement -- \$120.

(2) Biennial limited[-] line license fees:

(a) initial, due with application -- \$45;

(b) renewal ~~if renewed prior to license expiration date~~, due with renewal application -- \$45; and

(c) reinstatement ~~if inactive license is reinstated within one year following the license expiration date~~, due with application for reinstatement -- \$95.

(3) Other fees:

(a) addition of producer classification or line of authority to individual producer license, due with request for additional classification or line of authority -- \$25; and

(b) title insurance product or service approval for dual licensed title licensee form filing, due with filing -- \$25.

(4) The biennial license fee includes the following services ~~for which no additional fee is required~~:

(a) ~~issuance of~~ issuing a letter of certification;

(b) ~~issuance of~~ issuing a letter of clearance;

(c) ~~issuance of~~ issuing a duplicate license; and

(d) individual continuing education services.

R590-102-13. Individual Navigator Fees.

(1) Annual license fees:

(a) initial, due with application -- \$35;

(b) renewal ~~if renewed prior to license expiration date~~, due with renewal application -- \$35; and

(c) reinstatement ~~if inactive license is reinstated within one year following the license expiration date~~, due with application for reinstatement -- \$60.

(2) The annual license fee includes the following services ~~for which no additional fee is required~~:

(a) ~~issuance of~~ issuing a letter of certification;

(b) ~~issuance of~~ issuing a letter of clearance;

(c) ~~issuance of~~ issuing a duplicate license; and

(d) individual continuing education services.

R590-102-14. Agency License Fees, Other Than Navigator or Bail Bond ~~Agencies~~ Agency.

(1) Biennial resident and non-resident ~~full-line~~ agency and limited[-] line agency license fees:

(a) initial, due with application -- \$75;

(b) renewal ~~if renewed prior to license expiration date~~, due with renewal application -- \$75; and

(c) reinstatement ~~if inactive license is reinstated within one year following the license expiration date~~, due with application for reinstatement -- \$125.

(2) Biennial resident title agency license fees:

(a) initial, due with application -- \$100;

(b) renewal ~~if renewed prior to license expiration date~~, due with renewal application -- \$100; and

(c) reinstatement ~~if inactive license is reinstated within one year following the license expiration date~~, due with application for reinstatement -- \$150.

(3) Addition of producer classification or line of authority to agency license, due with request for additional classification or line of authority -- \$25.

(4) The biennial license fee includes the following services ~~for which no additional fee is required~~:

(a) ~~issuance of~~ issuing a letter of certification;

(b) ~~issuance of~~ issuing a letter of clearance;

- (c) ~~[issuance of]~~issuing a duplicate license;
- (d) initial filing of a producer's designation to an agency license;
- (e) ~~[termination of]~~terminating a producer's designation to an agency license;
- (f) filing ~~[of]~~an amendment to an agency license; and
- (g) filing ~~[of]~~a power of attorney.

R590-102-15. Navigator Agency Fees.

- (1) Annual license fees:
 - (a) initial, due with application -- \$40;
 - (b) renewal~~[-if renewed prior to license expiration date]~~, due with renewal application -- \$40; and
 - (c) reinstatement~~[-if inactive license is reinstated within one year following the license expiration date]~~, due with application for reinstatement -- \$65.
- (2) The annual license fee includes the following services~~[for which no additional fee is required]~~:
 - (a) ~~[issuance of]~~issuing a letter of certification;
 - (b) ~~[issuance of]~~issuing a letter of clearance;
 - (c) ~~[issuance of]~~issuing a duplicate license;
 - (d) initial filing of a producer's designation to an agency license;
 - (e) ~~[termination of]~~terminating a producer's designation to an agency license;
 - (f) filing ~~[of]~~an amendment to an agency license; and
 - (g) filing ~~[of]~~a power of attorney.

R590-102-16. Bail Bond Agency Fees.

- (1) Annual license fees:
 - (a) initial, due with application -- \$250;
 - (b) renewal~~[-if renewed prior to license expiration date]~~, due with renewal application -- \$250; and
 - (c) reinstatement~~[-if inactive license is reinstated within one year following the license expiration date]~~, due with application for reinstatement -- \$300.
- (2) The annual license fee includes the following services~~[for which no additional fee is required]~~:
 - (a) ~~[issuance of]~~issuing a letter of certification;
 - (b) ~~[issuance of]~~issuing a letter of clearance;
 - (c) ~~[issuance of]~~issuing a duplicate license;
 - (d) initial filing of a producer's designation to an agency license;
 - (e) ~~[termination of]~~terminating a producer's designation to an agency license;
 - (f) filing ~~[of]~~an amendment to an agency license; and
 - (g) filing ~~[of]~~a power of attorney.

R590-102-17. Continuing Care Provider Fees.

- (1) Annual registration fee:
 - (a) initial, due with application -- \$6,900;
 - (b) renewal, due by the due date on the invoice -- \$6,900;
- and
- (c) reinstatement, due with application for reinstatement -- \$6,950.
- (2) Annual disclosure statement fee:
 - (a) initial, due with application -- \$600; and
 - (b) renewal, due with annual renewal disclosure statement -- \$600.

R590-102-18. Pharmacy Benefit Manager Licensing Fees.

- (1) Annual license fee:

- (a) initial, due with application -- \$1,000;
- (b) renewal, due by the due date on the invoice -- \$1,000;
- (c) late renewal, due for any renewal paid after the due date on the invoice -- \$1,050; and
- (d) reinstatement, due with application for reinstatement -- \$1,000.

R590-102-19. Guaranteed Asset Protection Provider Fees.

- (1) Annual provider registration fee:
 - (a) initial, due with application -- \$1,000;
 - (b) renewal, due by the due date on the invoice -- \$1,000;
- and
- (c) late renewal, due for any renewal paid after the due date on the invoice -- \$1,050.
- (2) Annual retail seller assessment:
 - (a) annual assessment, due by the due date on the invoice -- \$50; and
 - (b) late fee, due for a~~ny~~ retail seller assessment fee paid after the due date on the invoice -- \$50.

R590-102-20. Continuing Education Fees.

- (1) Annual license fee:
 - (a) initial, due with application -- \$250;
 - (b) renewal~~[-if renewed prior to license expiration date]~~, due with renewal application -- \$250; and
 - (c) reinstatement~~[-if inactive license is reinstated within one year following the license expiration date]~~, due with application for reinstatement -- \$300.
- (2) Continuing education course post-approval fee, due with request for approval -- \$5 per credit hour, minimum fee \$25.

R590-102-21. Non-Electronic Processing or Payment Fees.

- (1) Non-electronic filing processing fee~~[-Assessed on a non-electronic filing]~~, due with each non-electronic filing or by the due date on the invoice -- \$5.
- (2) Non-electronic paper application processing fee~~[-Assessed on a non-electronic application]~~, due with each non-electronic paper application or by the due date on the invoice -- \$25.
- (3) Non-electronic payment processing fee~~[-Assessed on a non-electronic payment]~~, due with each non-electronic payment or by the due date on the invoice -- \$25.

R590-102-22. Dedicated Fees.

The ~~[following are]~~ fees listed in this section are dedicated to specific uses~~[:]~~.

- (1) Fraud assessment:
 - (a) annual assessment ~~[as calculated]~~ under Section 31A-31-108~~[-and stated in the invoice]~~, due by the due date on the invoice -- per invoice; and
 - (b) late fee, due for a~~ny~~ fraud assessment fee paid after the due date on the invoice -- \$50.
- (2) ~~[Title]~~Annual title insurance regulation assessment: annual assessment ~~[as calculated]~~ under Section 31A-23a-415 and Rule R592-10~~[-and stated in the invoice]~~, due by the due date on the invoice -- per invoice.
- (3) Annual Title Recovery, Education, and Research Fund assessment under Section 31A-41-202:
 - (a) individual title ~~[licensee applicant for initial license or renewal license]~~insurance producer:
 - (i) initial, due with ~~[the initial application or the renewal]~~ application -- \$15; and
 - (ii) renewal, due with renewal application -- \$15;

(b) agency title [~~licensee applicant~~] insurance producer, due with the initial application -- \$1,000; and

(c) annual agency title [~~licensee~~] insurance producer assessment based on annual written title insurance premium, due by the due date on the invoice:

- (i) Band A, \$0 to \$1 million -- \$125;
- (ii) Band B, more than \$1 million to \$10 million -- \$250;
- (iii) Band C, more than \$10 million to \$20 million -- \$375;

and

- (iv) Band D, more than \$20 million -- \$500.

(4) Health insurance actuarial review assessment [~~annual assessment as calculated~~] under Section 31A-30-115 [~~and stated in the invoice~~], due by the due date on the invoice -- per invoice.

(5) Code book fee[s]:

(a) code book, due at time of purchase or by the due date on the invoice [~~due date~~] -- \$57; and

(b) mailing fee, due at time of purchase or by the due date on the invoice [~~due date if book is to be mailed to purchaser~~] -- \$3.

(6) Fingerprint fees, due with application for individual license:

- (a) Bureau of Criminal Investigation (BCI) -- \$15; and
- (b) Federal Bureau of Investigation (FBI) -- \$13.25.

R590-102-23. Electronic Commerce Dedicated Fees.

(1) Electronic commerce, e-commerce, and internet technology services fee:

(a) admitted insurer and surplus lines insurer, due with the initial, renewal, or reinstatement application -- \$75;

(b) captive [~~insurer~~] insurance company, due with the initial, renewal, or reinstatement application -- \$250;

(c) other organization including professional employer organization, continuing care provider, pharmacy benefit manager, and life settlement provider, due with the initial, renewal, or reinstatement application -- \$50;

(d) continuing education provider, due with the initial, renewal, or reinstatement application -- \$20;

(e) agency, due with the initial, renewal, or reinstatement application -- \$10; and

(f) individual, due with the initial, renewal, or reinstatement application -- \$5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose, due when the department's database is accessed to input or acquire data -- \$3 per transaction; and

(b) rate and form filing database access to an electronic public rate and form filing, due at time of service or by the due date on the invoice:

(i) a separate fee is assessed per line of insurance accessed [~~(), for example, accident and health, life and annuity, or property(-) and casualty(-)];~~

(ii) each line of insurance accessed is charged the following fees:

(A) a base fee, which entitles the user to up to 30 minutes of access, the assistance of staff during that time, and one DVD -- \$45; and

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time -- \$45; and

(iii) each additional DVD -- \$2.

R590-102-24. Other Fees.

(1) Photocopy fee -- \$0.50 per page.

(2) Complete annual statement copy fee -- \$40 per statement.

(3) [~~Fee for a~~] Accepting service of legal process -- \$10.

(4) [~~Fees for p~~] Production of information list[s] regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted -- \$1 per page; and

(b) electronic list compiled by accessing information stored in the [~~D~~] department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor to up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor, due with request for information -- \$50; and

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor, due by the due date on the invoice -- \$50; and

(iii) additional CD, due by the due date on the invoice -- \$1.

(5) Returned check fee -- \$20.

(6) Workers compensation loss cost multiplier schedule -- \$5.

(7) Address correction fee, assessed when department [~~has to research and enter~~] researches and enters a new address for a licensee, due by the due date on the invoice -- \$35.

(8) Independent review organization initial application fee, due with application -- \$250.

(9) Withdrawal from writing a line of insurance or reducing total annual premium volume by 75% or more, due with plan of orderly withdrawal submission -- \$50,000.

(10) [~~Administrative disciplinary action removal from public access on Insurance Department~~] Removing an administrative disciplinary action from a state-controlled website available to the public, due with application -- \$185.

R590-102-25. Severability.

If any provision of this rule, R590-102, 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 fees

Date of Last Change: 2022 [~~May 24, 2021~~]

Notice of Continuation: December 8, 2021

Authorizing, and Implemented or Interpreted Law: 31A-3-103

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R590-152	Filing ID 54582
--------------------------------------	-----------------	------------------------

Agency Information

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300

Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-152. Health Discount Programs and Value Added Benefit Rule
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual. Other changes make the language of this rule more clear and update the new Section R590-152-12 to use the Department's current language. Sections R590-152-14 and R590-152-15 are removed because this rule is already in force and penalties are already provided for in statute. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):																																
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.																																
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 changes are largely clerical in nature, and will not affect non-small businesses.																																
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):																																
There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.																																
F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):																																
There are no compliance costs for any affected persons. The changes are largely clerical in nature.																																
G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):																																
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner																																
6. A) 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																																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Fiscal Benefits</td> <td></td> <td></td> <td></td> </tr> </tbody> </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	Total Fiscal Cost	\$0	\$0	\$0	Fiscal Benefits			
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																													
Total Fiscal Cost	\$0	\$0	\$0																													
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 31A-2-201	Section 31A-8a-210	

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/02/2022
--	---	--------------	------------

R590. Insurance, Administration.**R590-152. Health Discount Programs and Value[-]Added Benefit Rule.****R590-152-1. Authority.**

This rule is promulgated by the commissioner ~~[under 31A-8a-210, which authorizes the commissioner to enforce Chapter 8a and protect the public interest]~~ pursuant to Sections 31A-2-201 and 31A-8a-210.

R590-152-2. Purpose and Scope.

(1) The purpose of this rule is to ~~[describe initial and renewal license procedures, fees, and other authorized charges, required and prohibited practices, advertising and marketing activity, disclosure requirements, provider agreements, dispute resolution, and record keeping]~~ establish standards for:

(a) a health discount program; and

(b) a value-added benefit.

(2) This rule applies to[-];

~~(a) a person offering, operating, or marketing a health discount program[s, health discount program operators, and health discount program marketers-]; and~~

~~[(3) This rule applies to-](b) a value[-]-added benefit provided by a person licensed under;~~

(i) Title 31A, Chapter[s] 7, Nonprofit Health Service Insurance Corporations; or

(ii) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans.

R590-152-3. Definitions.

~~[For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-8a-102 and the following]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-8a-102. Additional terms are defined as follows:

~~[(1) "Administration of the health discount program" means the processes to solicit members, enroll members, maintain the membership, resolve disputes with members, disenroll members, and collect or refund fees and other authorized charges.~~

~~(2) "Authority to do business in this state" means having other applicable licenses as required by statute and operating within the scope of such licenses.~~

~~(3) "Health discount program marketer" means a person or entity, including a private label entity, that markets or distributes a health discount program but may also operate the marketed or distributed health discount program.~~

~~(4)[(1) "Private label entity" means an entity that purchases a health discount program from a health discount program operator and issues or markets the [obtained]-health discount program under the [private label]-entity's name or logo[-].~~

~~(5) "Prominently" means not less than 14 point type or no smaller than the largest type on the page if larger than 12 point type].~~

R590-152-4. [General Information:

~~(1) The commissioner may examine, audit, or investigate the business and affairs of any health discount program operator or a licensed health discount program marketer or any person the commissioner believes may be operating or marketing a health discount program.~~

~~(2) A health discount program, a health discount program operator, or a health discount program marketer that offers an insurance benefit as part of a health discount program or in addition to a health discount program must comply with statutes and rules pertaining to the solicitation, negotiation, and sale of insurance in Utah that are otherwise applicable to the altering of such benefit.~~

R590-152-5. ~~[Licensing (Application, Initial, Renewal).~~

~~[(1) The following must be licensed prior to offering a health discount program:~~

- ~~_____ (a) a health discount program operator; or~~
- ~~_____ (b) a health discount program marketer. A licensee licensed under Chapters 7 or 8 does not require a license as a health discount program operator or health discount program marketer when offering valued added benefits as part of their insurance product package.~~

~~_____ (2) The "Application for Health Discount Program Operator or Health Discount Program Marketer" must: [(1) An application for a health discount program operator or a health discount program marketer shall be complete[d] and submitted with the appropriate fee.~~

~~[(3) The commissioner may deny an application from a health discount program operator or a health discount program marketer if the applicant would not be in compliance with Chapter 31A-8a because the applicant, in this or any other jurisdiction, for a matter dealing with a health discount program is:] (2) An application may be denied if the applicant, in any jurisdiction:~~

- ~~_____ (a) is under investigation; or~~
- ~~_____ (b) has been found in violation of a statute or regulation.~~
- ~~[(4) A licensed health discount program operator must notify the commissioner each time a health discount program marketer or private label entity is added or deleted during the annual licensure period.~~

~~_____ (5) Annual licensure period.~~

~~_____ (a) A license issued under this section is for one annual period which expires each December 31st.~~

~~_____ (b) A licensee desiring to continue to do business in this state must renew its license prior to December 31st each year by submitting an Application for Health Discount Program Operator or Health Discount Program Marketer and paying the required fee.]~~

R590-152-6[5]. Fees and Other Authorized Charges.

(1) A health discount program operator may provide a discount[s] or free service[s] through a contracted provider[s] to ~~[subscribers]~~ a member purchaser in exchange for a periodic payment to the program or as a benefit in connection with a membership ~~[in a particular group].~~

(2) A health discount program operator may charge:

- (a) a non-refundable one-time ~~[enrollment]~~ membership charge; and
- (b) a refundable periodic fee.

(3) ~~[A health discount program operator that charges fees for a time period.] If a membership is cancelled by a health discount program operator that charges a fee in excess of one month, the health discount program operator shall [must, in the event of cancellation of the membership by the health discount program operator,] make a pro[-] rata refund of the [periodic-] excess fees paid by the [member] purchaser.~~

R590-152-7[6]. Required Practices.

(1) A health discount program operator ~~[must-]shall~~ have an active toll-free telephone number for ~~[members-]an enrollee~~ to call.

(2) ~~[Face to face, paper, telephone, and electronic-]Any~~ communication[s] with clients or potential clients ~~must-] with a~~ purchaser, a member, or a potential purchaser shall state that the health discount program is a discount plan and not insurance.

(3) When a health discount program operator or a health discount program marketer[;] markets or sells a health discount

program ~~[together-]with~~ any other product that can be purchased separately, including insured benefits, an itemized list ~~[of the fees or premiums-]including each fee and premium~~ for each individual product must be provided in writing to the ~~[client at-]potential purchaser~~ at the time of solicitation.

(4) Information available online to a ~~[health discount program member via a health discount program operator's or marketer's web page-]member~~ must be updated ~~[no later than-]within~~ 30 days from ~~[a-]the date of the change.~~

R590-152-8[7]. Value[-]Added Benefit.

(1) ~~[Any value added benefit must actually exist and a copy of the contract verifying such existence must-]Evidence of a value-added benefit shall be available to the commissioner upon request[- to the commissioner].~~

(2) ~~[Prior to any-]Before offering [of-]a value[-]-added benefit, [a person licensed under Title 31A, Chapter 7 or 8-]a licensee shall:~~

(a) file with the commissioner a value[-]-added benefit[s] list that includes the following:

- (i) the insurer's name and address;
- (ii) ~~[the insurer's policy-]each form[-number(s)]~~ to which the value[-]-added benefit applies; and
- (iii) a description of ~~[the-]each~~ benefit[s] offered[-]; and

(b) comply with Sections R590-152-10 and R590-152-11, if providing a ~~[member-]discount card to a member.~~

R590-152-9[8]. Prohibited ~~[p]Practices.~~

(1) A health discount program operator may not make any payment[s] to a provider[s] for:

- (a) participation in the health discount program;
- (b) a capitation ~~[payments]arrangement;~~
- (c) a signing fee[s];
- (d) a bonus[es]; or
- (e) ~~[other-]any other~~ form[s] of compensation.

(2) A health discount program operator may not offer any insurance benefit[s] unless licensed as an insurance producer and contracted and appointed by the insurer providing the insurance benefit[s].

R590-152-10[9]. Advertising and Marketing.

(1) The format and content of any advertisement shall be ~~[sufficiently-]complete and clear [as-]to~~ avoid deceiving or misleading the reader, viewer, or listener.

(2) An advertisement of any ~~[insured-]insurance~~ product or benefit must comply with ~~[applicable provisions of Subsections 31A-23a-102 (12) and (13) and-];~~

~~_____ (a) Section 31A-23a-402; and~~

~~_____ (b) Rule R590-130, Rules Governing Advertisements of Insurance.~~

(3) ~~[A health discount program operator must approve in writing all advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program marketer marketing a health discount program operator's health discount program.~~

~~_____ (4) All advertisements, marketing materials, brochures, web sites and discount cards used by a health discount program operator and the health discount program operator's health discount program marketer must be available to the commissioner upon request.~~

~~_____ (5) The-]A health discount program operator must have an executed written agreement with a health discount program marketer~~

~~[prior to] before~~ the health discount plan marketer ~~[marketing, promoting, selling, or distributing] markets, promotes, sells, or distributes~~ a health discount program.

R590-152-~~14~~10. Disclosures.

(1) ~~[A health discount program operator must provide the disclosures required by Section 31A-8a-205.~~

~~(2) The]A membership card shall prominently state:[-]~~
"This is not health insurance."

~~(3) Disclosure-](2) In addition to the disclosures required by Section 31A-8a-205, disclosure materials provided to a purchaser or potential purchaser [must] shall include:~~

- (a) membership materials;
- (b) new ~~[enrollee] enrollment~~ information;

~~(c) [a printed list of providers, or access to the health discount program operator's web page, that have agreed by written contract with the health discount program to accept the program] a list of the providers that have agreed in writing to accept the health discount program, whether in print or accessible on the health discount program operator's website;~~

(d) a statement that "A health discount program ~~[member] purchaser~~ is responsible for the entire payment of their medical or health care bill after the discount is applied."; and

(e) the complete terms and conditions of any refund policy.

(4) A health discount program operator or health discount program marketer ~~[must] shall~~:

(a) provide a purchaser a 30-day money~~[-]~~back guarantee, which allows the purchaser to terminate the contract and receive a full refund of any periodic fee paid; and

(b) ~~start~~ the 30-day money-back guarantee period ~~[must commence]~~ when the purchaser receives the membership materials.

R590-152-~~12~~11. Contracts.

(1) A provider agreement between a health discount program operator and a provider network shall require:

(a) the provider network to have a written agreement with each provider in the network authorizing the provider network to contract with a health discount program operator on behalf of the provider; and

(b) the health discount program operator to ~~[inform]~~ provide each provider within the contracted provider network with information about the health discount program.

(2) A provider agreement between a health discount program operator and another health discount program operator that has contracted with a provider network shall require the contract with the provider network to comply with Subsection (1).

R590-152-~~13~~13. Dispute Resolution Procedures.

~~A health discount program operator must:~~

~~(1) file its dispute resolution procedures with the commissioner pursuant to Section 31A-8a-203; and~~

~~(2) comply with its filed dispute resolution procedures.~~

R590-152-14. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-152-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

~~R590-152-16-~~12. Severability.

~~[If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby] If any provision of this rule, Rule R590-152, 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, medical discount program

Date of Last Change: 2022[January 20, 2011]

Notice of Continuation: November 1, 2017

Authorizing, and Implemented or Interpreted Law: 31A-1-103; 31A-2-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-243

Filing ID
54583

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule or section catchline:

R590-243. Commercial Motor Vehicle Insurance Coverage

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual. Other changes make the language of this rule more clear, update the new Section R590-243-5 to use the Department's current language, and remove the current Sections R590-243-5 and R590-243-6 because this rule is already in force and penalties are already provided for in statute. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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 changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 31A-2-201	Section 31A-22-315	
-------------------	--------------------	--

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/21/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/02/2022
--	---	--------------	------------

R590. Insurance, Administration.**R590-243. Commercial Motor Vehicle Insurance Coverage.****R590-243-1. Authority.**

This rule is promulgated by the ~~[insurance-]commissioner~~ pursuant to ~~[Subsections 31A-22-315(1)(b)]~~ Sections 31A-2-201 and 31A-22-315.

R590-243-2. Purpose and Scope.

(1) The purpose of this rule is to define commercial motor vehicle insurance coverage ~~[as it]~~.

(2) This rule applies to a person required to report on commercial motor vehicle insurance ~~[reporting]~~.

R590-243-3. Definitions.

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Commercial ~~[M]motor~~ ~~[V]vehicle~~ ~~[I]insurance~~ ~~[C]coverage~~" means any coverage provided under a commercial automobile, garage, or truckers policy form, regardless of the number of vehicles or ~~[entity-]entities covered~~, and rated from either a commercial manual or rating rule ~~[as filed with the Utah Insurance Department]~~.

R590-243-4. ~~[Rule]~~Commercial Motor Vehicle Classification.

~~[All persons must]~~ Any person required to report under this rule shall use the ~~[above-]definition~~ of commercial motor vehicle insurance coverage in Section R590-243-3 to identify ~~[those-]a motor vehicle[s]~~ within this classification~~[s]~~ when reporting as required by Subsection 31A-22-315(2)(b).

R590-243-5. ~~[Penalties]~~.

~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-243-6. ~~Enforcement Date.~~

~~The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.~~

R590-243-7. ~~Severability.~~

~~[If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it]~~ If any provision of this rule, Rule R590-243, 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: commercial motor vehicle insurance

Date of Last Change: 2022 ~~[January 11, 2008]~~

Notice of Continuation: January 4, 2018

Authorizing, and Implemented or Interpreted Law: 31A-22-315

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R590-245	Filing ID	54584
--------------------------------------	-----------------	------------------	--------------

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W, 2nd Floor	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov

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

General Information

2. Rule or section catchline:
R590-245. Self-Service Storage Insurance

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with the Utah Rulewriting Manual. Other changes make the language of this rule more clear, remove Section R590-245-5 because penalties are already provided for in statute, remove Section R590-245-6 because this rule is already in force, and update the new Section R590-245-5 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

Fiscal Information

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

A) State budget:

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

B) Local governments:

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

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 changes are largely clerical in nature, and will not affect non-small businesses.

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

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

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

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

Citation Information

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

Section 31A-2-201	Section 31A-23a-104	Section 31A-23a-106
Section 31A-23a-110	Section 31A-23a-111	

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/21/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/02/2022
--	---	--------------	------------

R590. Insurance, Administration.**R590-245. Self-Service Storage Insurance.****R590-245-1. Authority.**

This rule is promulgated by the commissioner pursuant to [Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code and specifically Subsections:

(1) 31A-23a-106(3)(a), that authorizes the Commissioner to recognize by rule other limited line producer lines of authority as to kinds of insurance not listed under Subsections 31A-23a-106(2)(a) through (f);

(2) 31A-23a-104(2), and 31A-23a-110(1), that authorizes the Commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued or renewed; and

(3) 31A-23a-111(10), that authorizes the Commissioner to prescribe by rule, license renewal and reinstatement procedures Sections 31A-2-201, 31A-23a-104, 31A-23a-106, 31A-23a-110, and 31A-23a-111.

R590-245-2. Purpose and Scope.

(1) The purpose of this rule is to:

(a) recognize self-service storage as a limited line producer line of authority; and

(b) establish standards of licensing for [those in the] self-service storage related insurance business[~~in Utah~~].

(2) This rule applies to ~~[all persons]~~ a person selling, soliciting, or negotiating self-service storage related insurance business~~[in Utah]~~.

R590-245-3. Definitions.

~~[For the purposes of this rule, the commissioner adopts the definitions in Sections 31A-1-301 and 31A-23a-102, and the following]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-23a-102. Additional terms are defined as follows:

(1) "Self-service storage insurance" means any contract of insurance issued to a renter as a part of an agreement of self-service storage with respect to:

(a) hazard insurance coverage provided to a renter for loss or damage to tangible personal property in storage or in transit during the rental period; or

(b) tenant liability insurance coverage.

(2) "Self-service storage facility" means a person or agency engaged in the business of providing leased or rented storage space to the public.

(3) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

(4) "Renter" means any person who obtains the use of storage space from a self-service storage facility under the terms of a rental agreement.

(5)(1) "Rental agreement" means ~~[any]~~ a written agreement setting forth the terms and conditions governing the use of storage space provided by a self-service storage facility.

(2) "Renter" means a person who uses storage space from a self-service storage facility pursuant to a rental agreement.

(3) "Self-service storage facility" means a person or agency engaged in the business of providing leased or rented storage space to the public.

(4) "Self-service storage insurance" means a contract of insurance issued to a renter as part of an agreement of self-service storage with respect to:

(a) hazard insurance coverage provided to a renter for loss or damage to tangible personal property in storage or in transit during the rental period; or

(b) tenant liability insurance coverage.

~~[(6)]~~(5) "Self-service storage insurance license" means a limited line producer license with a self-service storage insurance limited line producer line of authority that authorizes a person~~[s]~~ licensed ~~[pursuant to]~~ under this rule~~[s]~~ to offer self-service storage insurance in connection with, and incidental to, a rental agreement~~[s]~~ on behalf of an insurer~~[authorized to write the types of insurance specified in this state]~~.

(6) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

R590-245-4. Licensing and Renewal.

(1) ~~[All persons and entities]~~ A person involved in the sale, solicitation, or negotiation of self-service storage insurance must be licensed ~~[in accordance with Chapter 31A-23a, applicable department rules regarding individual and agency licensing]~~ pursuant to Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, and this rule.

(2) A self-service storage insurance license is issued for a two-year ~~[license]~~ period and ~~[requires no]~~ does not require examination or continuing education.

(3) A self-service storage insurance license must be renewed at the end of the two-year licensing period ~~[in accordance with Chapter 31A-23a and any applicable department rules regarding license renewal]~~ pursuant to Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, and this rule.

(4) A self-service storage insurance license may be held by ~~[an individual or by an agency, such as]~~ a self-service storage facility or a franchisee of a self-service storage facility.

(5) An individual licensed under this rule ~~[must either]~~ shall:

(a) be appointed by an insurance company underwriting the insurance policy the individual sells~~[-]~~; or

(b) be designated to act by an agency licensed under this rule.

(6) An agency licensed under this rule ~~[must]~~ shall:

(a) be appointed by an insurance company underwriting the insurance policies the agency sells; and

(b) designate a licensed individual to be responsible for the regulatory compliance of the agency~~[- in Utah]~~.

(7)(a) An agency licensed under this rule may employ non-licensed personnel ~~[employed]~~ as a self-service storage counter sales representative~~[s]~~ to sell, solicit, or negotiate self-service storage insurance.~~[- Such]~~

(b) Any non-licensed employee~~[s must]~~ shall:

~~[(a)]~~(i) be trained and supervised in the sale of a self-service storage insurance product~~[s]~~; and

~~[(b)]~~(ii) be responsible to a licensed individual designated by the agency.

(8) ~~[No]~~ A self-service storage facility, or a franchisee of a self-service storage facility, may ~~not~~ offer or sell self-service storage insurance unless it ~~[has complied]~~ complies with the requirements of this rule and ~~[has been issued a license]~~ is licensed by the commissioner.

R590-245-5. Penalties.

~~A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.~~

R590-245-6. Enforcement Date.

~~The commissioner will begin enforcing this rule 45 days from the rule's effective date.~~

R590-245-7. Severability.

~~[If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remaining provisions to other persons or circumstances shall not be affected.]~~ If any provision of this rule, Rule R590-245, 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: self-service storage, insurance

Date of Last Change: ~~2022~~ November 12, 2008

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-104; 31A-23a-106; 31A-23a-110; 31A-23a-111; 31A-1-301; 31A-23a-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code Ref (R no.): R708-37

Filing ID
54538

Agency Information

1. Department:	Public Safety
Agency:	Driver License
Street address:	4501 S 2700 W
City, state and zip:	Salt Lake City, UT 84129
Mailing address:	PO Box 144501
City, state and zip:	Salt Lake City, UT 84114-4501
Contact person(s):	
Name:	Phone: Email:
Kim Gibb	801-556-8198 kgibb@utah.gov
Tara Zamora	801-964-4483 tarazamora@utah.gov
Britani Flores	801-884-8313 bflores@utah.gov

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

General Information

2. Rule or section catchline:

R708-37. Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this rule is to clarify the application procedures to obtain a certification for a licensed instructor of a commercial driver training school or testing only school to administer driving skills tests.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This filing revises definitions to include information on moral turpitude, as well as removing definitions that are not used in this rule. Information that was not applicable to this rule has been removed to clarify the certification requirements. Information regarding adjudicative proceedings has been added for cohesion among similar rules.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have any fiscal impact on state government because the requirements contained within this rule have not changed. This filing removes repetitive information already outlined in other rules and clarifies the requirements to certify licensed instructors of commercial driver training schools and testing only schools to administer driving skills tests.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments because the requirements contained within this rule have not changed. This filing removes repetitive information already outlined in other rules and clarifies the requirements to certify licensed instructors of commercial driver training schools and testing only schools to administer driving skills tests.

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

This rule change is not expected to have any fiscal impact on small businesses because the requirements contained within this rule have not changed. This filing removes repetitive information already outlined in other rules and clarifies the requirements to certify licensed instructors of commercial driver training schools and testing only schools to administer driving skills tests.

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

This rule change is not expected to have any fiscal impact on non-small businesses because the requirements contained within this rule have not changed. This filing removes repetitive information already outlined in other rules and clarifies the requirements to certify licensed instructors of commercial driver training schools and testing only schools to administer driving skills tests.

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

This rule change is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the requirements contained within the rule have not changed. This filing removes repetitive information already outlined in other rules and clarifies the requirements to certify licensed instructors of commercial driver training schools and testing only schools to administer driving skills tests.

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

There are no compliance costs associated with this rule. The requirements for certification contained within this rule have not changed.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change is not expected to have any fiscal impact on businesses because the requirements contained within this rule have not changed. The rule is being amended to streamline requirements, and make it easier to read and understand. Jess L. Anderson, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 53-3-510

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 06/21/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Christopher Caras, Director	Date:	04/20/2022
--	-----------------------------	--------------	------------

R708. Public Safety, Driver License.

R708-37. Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests.

[R708-37-1. Purpose.

~~The purpose of this rule is to establish standards and procedures to certify instructors of commercial driver training schools and testing only schools to administer driving skills tests.~~

R708-37-2. Authority.

~~This rule is authorized by Section 53-3-510.~~

R708-37-3. Definitions.

~~(1) "Agreement" means a written agreement between the state and a third-party tester agreeing to the conditions contained in this rule.~~

~~(2) "Cancellation" means action taken by the division that voids an instructor's testing certification.~~

~~(3) "Certification" means the process by which commercial driver training instructors are certified by the division to administer driving skills tests.~~

~~(4) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons to drive motor vehicles, and to prepare applicants for examinations prerequisite to their obtaining driver licenses or learner permits.~~

~~(5) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside and outside mirrors which are positioned for use by the instructor for the purpose of observing rearward.~~

~~(6) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.~~

~~(7) "Division" means the Driver License Division of the Utah Department of Public Safety.~~

~~(8) "Instructor" means a person who is authorized to teach driver education in an approved commercial driver training school.~~

~~(9) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school or a testing only school.~~

~~(10) "Probation" means action taken by the department which includes a period of close supervision as determined by the division.~~

~~(11) "Suspension" means action taken by the division that temporarily voids an instructor's testing certification. The certification may be reinstated whenever the instructor follows a division approved plan and complies with reinstatement procedures.~~

~~(12) "Test" means a driving skills test approved by the division.~~

~~(13) "Tester" means an instructor who is certified to administer driving skills tests.~~

R708-37-4. Application Procedures.

~~(1) An instructor shall become a certified tester by making application and by meeting the requirements of this rule. In order to become a certified tester, an individual must be certified as a commercial driver education instructor in accordance with R708-2-6,8 and 9. Application shall be made on a form furnished by the division and shall include the following information:~~

~~(a) the name of the instructor who is applying for tester certification;~~

~~(b) the name and address of the commercial driver training or testing only school where the instructor is employed; and~~

~~(c) the signature of the school owner indicating approval of the instructor for tester certification and consent to the use of school vehicles, facilities, etc. for the purpose of testing.~~

~~(2) The instructor must enter into a written agreement with the division. The agreement must contain provisions that:~~

~~(a) the tester cannot maintain employment with more than one commercial driver training school or testing only school at a time;~~

~~(b) allow the division to conduct random examinations, inspections, and audits without prior notice during normal business hours; and~~

~~(c) allow the division to conduct on-site inspections annually or when deemed necessary by the division.~~

~~(3) The division will offer training to instructors regarding minimum standards which must be met in the administration and scoring of tests.~~

~~(4) The division may authorize, train, and approve persons outside the division to provide the training. Instructors are responsible for any costs associated with training provided by approved organizations, agencies, or individuals.~~

~~(5) The division shall maintain a list of approved testers and shall assign testers identification numbers.~~

R708-37-5. Medical Screening.

~~(1) Prior to administering a driving skills test, the tester shall screen students for visual acuity, visual field and physical or emotional conditions which may compromise public safety. Screening may not be performed over the telephone. An employee of the tester who is not certified as an instructor or tester may not perform medical or visual screening unless approved in writing by the division.~~

~~(a) Students must have 20/40 or better visual acuity in one eye and a visual field of 90 degrees. Students with less than the required visual acuity and/or visual field shall be referred to a licensed medical practitioner for further consideration.~~

~~(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to a licensed medical practitioner for further consideration. Health questionnaires shall be provided by the division and maintained for three years by the commercial driver training school or testing only school as a part of the school's records.~~

~~(c) The driver will not be required to submit to a medical screening if one of the following is provided to the tester:~~

~~(i) a verification of medical fitness approval form as completed by a commercial driver education instructor; or~~

~~(ii) a driver receipt issued by the division that indicates that the medical screening has taken place in the division.~~

R708-37-6. Tests.

~~(1) When testing students for driver licenses, instructors certified as testers shall administer tests developed in accordance with these rules which meet or exceed minimum division testing standards.~~

~~(2) Tests shall be conducted:~~

~~(a) on test routes approved by the division;~~

~~(b) by certified testers who are also certified instructors;~~

~~(c) in vehicles provided by commercial driver training schools or testing only schools which have been inspected and approved for use in driver training by the division or in a personal vehicle provided by the applicant. Each school shall notify the division of any vehicle added to or deleted from their fleet. No vehicle owned by a commercial driver training school or testing only school may be used for testing until it passes an inspection by the division;~~

~~(d) using division approved content, forms, and scoring procedures;~~

~~(e) only for students who have completed a course of driver education or who have had a previous driver license;~~

~~(f) with only the student and the tester occupying the vehicle. The tester shall be seated next to the student. No other passengers or observers shall occupy the vehicle during the test, except upon approval and written consent by the division; and~~

~~(g) only for students who have in their possession a temporary driving permit, a learner permit, an instruction permit issued by the division; or a valid driver license issued by a jurisdiction other than the State of Utah.~~

~~(h) only for students who have in their possession adequate verification of their identity.~~

~~(3) a tester may not make any changes to a testing route without prior written approval by the division.~~

~~(4) a tester shall not employ an employee of the division as a tester.~~

R708-37-7. Test Requirements.

~~(1) A tester may not administer a skills test to a student who:~~

~~(a) completed the driver training course at the same commercial driver training school or testing only school in which the tester is employed as an instructor; or~~

~~(b) completed the driver training course at a commercial driver training school that is owned completely or partially by an individual or individuals who possess any ownership in the school in which the tester is employed as an instructor.~~

~~(2) A student who fails the skills test given by a tester may:~~

~~(a) apply to the same tester for additional testing;~~

~~(b) apply to a different tester for additional testing; or~~

~~(c) complete the skills test at a division office.~~

~~(3) The written test shall be administered by the division.~~

R708-37-8. Notification of Accident.

~~If any vehicle is involved in an accident during the driving skills test the tester shall notify the division of the accident in a written report on a form supplied by the division within five working days of the date of the accident. If damages are \$1,000 or more, the accident must also be reported to the local law enforcement agency. A copy of the officer's report shall also be submitted to the division when available.~~

R708-37-9. Evidence of Test Completion.

~~(1) The tester shall furnish a certificate of test completion to the student in a sealed envelope with the tester's signature signed over the seal. The certificate shall be a form approved by the division and shall contain the results of tests taken, the signature and certification number of the tester who administered the tests, and the dates the tests were completed. The test results are valid for a period of one year from the test completion date.~~

~~(2) The tester shall provide the student with a receipt each time money is paid by the student to the tester. The tester shall maintain a copy of all receipts.~~

~~(3) A student, under this rule, must submit a certificate of completion of a driver education course and a certificate of successful test completion, issued by a tester, to the division and make an application in order to obtain a Class D Driver License.~~

~~(4) The commercial driver training school or testing only school shall maintain records of all tests administered for a period of three years. Records shall be maintained in separate files for each tester for auditing purposes. The records shall be subject to inspection by the division during business hours.~~

R708-37-10. Monthly Reports.

~~(1) Each third party tester shall submit to the division a monthly report containing the number of tests administered each month.~~

~~(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later than the 10th day of each month following the month in which the testing occurred.~~

~~(3) Failure to submit monthly reports within the prescribed time is grounds for suspension or cancellation of the third party tester's certification.~~

~~(4) Monthly reports may be submitted electronically with division approval.~~

R708-37-11. Refusal to Certify, Grounds for Cancellation, Suspension, or Probation of a Tester's Certification.

~~(1) The division may refuse to certify tester applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.~~

~~(2) The tester certification shall remain effective as long as the tester retains the status of instructor for a commercial driver training school or testing only school or until the tester certification is canceled or suspended by the division. A commercial driver training school or testing only school may initiate suspension or cancellation of the testing certification held by one of their instructors by providing the division with acceptable written justification.~~

~~(3) The tester certification shall be canceled or suspended upon cancellation, revocation, denial of issuance of renewal of the tester's instructor certification. Grounds for cancellation or suspension of the tester certification shall include all items listed in R708-2-25.~~

~~(4) Certification may be canceled or suspended for non-compliance with these rules.~~

~~(5) Certification may be canceled or suspended for failure to participate in any in-service training required by the division.~~

~~(6) Certification may be canceled or suspended when a third-party tester's personal driver license has been denied, suspended, revoked, canceled, or disqualified. The tester shall be required to notify the division in writing within five working days of any action taken against the tester's driving privilege.~~

~~(7) When the division determines it is necessary to cancel, suspend, or place on probation a tester's certification, it shall determine an appropriate course of action from the following options:~~

~~(a) probation, with terms that must be met and adhered to by the tester;~~

~~(b) suspension, pending a remedial plan leading to reinstatement; or~~

~~(c) cancellation.~~

~~(8) Action by the division to cancel, suspend, place on probation or refuse to issue a tester certification is designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.~~

~~(9) The following procedures will govern informal adjudicative proceedings:~~

~~(a) action by the division to cancel, revoke, place on probation or refuse to issue a certification will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63G-4-201;~~

~~(b) no response is required to the notice of agency action;~~

~~(c) an opportunity for a hearing will be granted on a cancellation, revocation, probation or refusal to issue a certification if, within five days, the division receives a request for a hearing;~~

~~(d) the tester will receive written notice of the hearing at least ten days prior to the date of the hearing;~~

~~(e) no discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law;~~

~~(f) the hearing shall be conducted by an individual, or panel designated by the division; and~~

~~(g) within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right to judicial~~

review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

~~(10) Reinstatement following cancellation of certification shall consist of completing an approved training plan and making application for a new certification. Instructors and testers must have a driving record free of suspensions or revocations of their driving privilege resulting from moving violations, chargeable accidents, and drug or alcohol related offenses, in all states, for a two-year period immediately prior to application and during employment.~~

~~(11) Certification shall be canceled when testers are no longer employed as instructors in commercial driver training schools or testing only schools. Testers who discontinue employment as instructors with a commercial driver training schools or testing only school and subsequently return to instruct and test under the sponsorship of a different commercial driver training schools or testing only school must make a new application with the division for a new instructor certification and tester certification. If the period of cancellation of testing certification exceeds six months the applicant shall complete a course of approved training.~~

R708-37-12. Advertising.

~~(1) No advertisement shall indicate in any way that a commercial driver training schools or testing only school or a tester can issue or guarantee the issuance of a driver license, or imply that the testing program, except for reporting test scores, can in any way influence the division in the issuance of a Class D driver license; or imply that preferential or advantageous treatment can be obtained from the division through participation in their testing program.~~

~~(2) No tester, employee, or agent of a commercial driver training schools or testing only school shall be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.]~~

R708-37-1. Purpose.

The purpose of this rule is to establish standards and procedures to certify instructors of commercial driver training schools and testing only schools to administer driving skills tests.

R708-37-2. Authority.

This rule is authorized by Section 53-3-510.

R708-37-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-3-102 and 53-3-502.

(2) In addition:

(a) "act of moral turpitude" means conduct that:

(i) is done knowingly contrary to justice, honesty or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property.

(b) "agreement" means a written agreement between the division and a third-party tester agreeing to the conditions contained in this rule;

(c) "cancellation" means action taken by the division that voids an instructor's testing certification;

(d) "certification" means the process by which commercial driver training instructors are certified by the division to administer driving skills tests;

(e) "probation" means action taken by the division that includes a period of close supervision whose time frame shall be determined by the division;

(f) "suspension" means action taken by the division temporarily withdrawing an instructor's certification to conduct testing. The certification may be reinstated when the instructor follows a division-approved plan and complies with reinstatement procedures;

(g) "test" means a driving skills test approved by the division; and

(h) "tester" means an instructor who is certified to administer driving skills tests.

R708-37-4. Certification Procedures.

(1) Each tester shall become certified to administer tests by:

(a) being licensed as a commercial driver education instructor as required by Rule R708-2;

(b) meeting the requirements of this rule and Rule R708-2;

(c) completing an application; and

(d) completing a training course offered by the division.

(2) An application for tester certification shall be submitted on a form provided by the division and shall include:

(a) the name of the tester applying for certification;

(b) the name and address of the commercial driver training or testing only school where the tester is employed; and

(c) the signature of the school owner indicating approval of the tester for certification and consent to the use of school vehicles and facilities for testing.

R708-37-5. Tester Restrictions.

(1) A tester may not administer a test to a student who:

(a) took the driver training course at the same school the tester is employed as an instructor; or

(b) took the driver training course at a school that is owned completely or partially by an individual or individuals who have any ownership in the school the tester is employed as an instructor.

(2) A student who fails the test given by a tester may:

(a) apply to the same tester for additional testing;

(b) apply to a different tester for additional testing; or

(c) take the test at a division office.

(3) A tester may not make any changes to a testing route without earlier written approval by the division.

(4) A tester shall not employ an employee of the division as a tester.

(5) A tester shall not use or do anything that may distract their attention away from the test. For example, use of phones or other electronic devices.

(6) A tester may not test an individual who has been required by the division to take a driver review exam.

(7) A tester may not test an individual who has been required by the division to take additional hours of driving instruction.

(8) The tester shall administer at least ten tests per calendar year. If the tester fails to meet this requirement:

(a) the division will cancel the tester license in accordance with Section R708-37-7;

(b) the tester must return any unused test forms; and

(c) reinstatement following cancellation of certification shall consist of completing an approved training plan and completing an application for a new certification outlined in Section R708-37-4.

(9) A tester may not test an individual who has previously taken a test on the same day.

(10) Before administering a test, the tester shall:

(a) screen the student's learner permit or receipt for medical or visual restrictions; and

(b) verify that the student is in compliance with any restrictions.

R708-37-6. Termination of Employment.

(1) Certification shall be cancelled when testers are no longer employed as instructors.

(2) Any tester who intends to instruct and test for a different school following termination must make a new application with the division for a new instructor license and tester certification under the new school.

(3) If the testing certification has been cancelled for a period of six months, the applicant shall take a course of approved training before becoming relicensed.

R708-37-7. Refusal to Certify, Grounds for Cancellation, Suspension, or Probation of a Tester's Certification.

(1) The tester certification shall remain effective as long as the tester remains employed by the school as a tester, or until the tester certification is cancelled or suspended by the division.

(2) The division may:

(a) refuse to certify a tester;

(b) suspend an existing certification; or

(c) place a tester on probation.

(3) A tester certification may be suspended, placed on probation or refused issuance for:

(a) failure to comply with Title 53, Chapter 3, Part 5 Commercial Driver Training Schools Act;

(b) failure to comply with this rule and Rule R708-2;

(c) failure to meet the standards for training;

(d) providing false information in an application or form required by the division;

(e) conviction of a felony, or conviction of or reasonable grounds to believe a tester has committed an act of moral turpitude; or

(f) failure to appear for a hearing.

(4) A proceeding to suspend, place on probation, or refuse to issue or renew a certification is designated as an informal adjudicative proceeding under Section 63G-4-202.

(5) A tester who has had a certification suspended shall not be eligible to reapply for a certification until six months have elapsed since the date of the suspension.

(6) Following suspension, the applicant shall submit an application for re-certification.

(7) Upon receipt of a completed application, the division shall conduct a review process as established by the division director to determine eligibility for re-certification.

(8) Notice of the division's final decision shall be provided in writing to the applicant within 20 days of receipt of the completed application, required documentation, and fees.

(9) When a request for reinstatement is denied, the applicant shall have an opportunity to request a hearing in writing within 20 days of receipt of the division's final decision.

(10) Any applicant who has had a certification suspended by the division two times shall not be eligible to reapply for re-certification.

R708-37-8. Procedures Governing Informal Adjudicative Proceedings.

(1) The following procedures will govern informal adjudicative proceedings:

(a) the division shall begin an action to suspend, place on probation, or refuse to issue certification to administer tests by the issuance of notice of agency action:

(i) the notice of agency action shall comply with Section 63G-4-201; and

(ii) the notice of agency action shall not require a response from the recipient.

(b) an opportunity for a hearing shall be granted on a suspension, probation or refusal to issue certification when the division receives in writing a proper request for a hearing;

(c) the division shall send written notice of a hearing to the licensee or applicant at least 14 days before the date of the hearing;

(d) no discovery, either compulsory or voluntary, shall be permitted before the hearing except that each party shall have access to information in the division's files, and to investigator information and materials not restricted by law;

(e) the division shall designate an individual or panel to conduct the hearing;

(f) within 20 days after the date of the close of the hearing, or after the failure of a party to appear for the hearing, the individual or panel conducting the hearing shall issue a written decision that shall constitute final agency action; and

(g) the written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right of judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(2) If a certification is suspended, placed on probation or an applicant is refused certification, contracts, records, properties, training activities, obligations, or licenses shall not be transferred to another party.

(3) If a certification is suspended or an applicant is refused certification under Section 63G-4-502, the tester shall not administer the test unless otherwise determined at a hearing.

(4) A certification may be placed on probation upon approval of the division director or designee.

(5) A certification that has been placed on probation shall be subject to a period of close supervision with conditions determined by the division.

KEY: driver training, driving skills tests, tests

Date of Last Change: 2022|August 18, 2003|

Notice of Continuation: March 3, 2020

Authorizing, and Implemented or Interpreted Law: 53-3-510

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R708-46	Filing ID 54539
--------------------------------------	----------------	------------------------

Agency Information

1. Department:	Public Safety
Agency:	Driver License

Street address:	4501 S 2700 W	
City, state and zip:	Salt Lake City, UT 84129	
Mailing address:	PO Box 144501	
City, state and zip:	Salt Lake City, UT 84114-4501	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Tara Zamora	801-964-4483	tarazamora@utah.gov
Britani Flores	801-884-8313	bflores@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule or section catchline:**

R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The purpose of this change is to implement legislative changes for H.B. 163 from the 2022 General Session.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

H.B. 163 (2022) adds a covered humanitarian parolee to the list of individuals who are authorized to take the written knowledge test in their native language. This rule establishes requirements and procedures for authorized individuals to test in their native language, the term covered humanitarian parolee has been added to the list of authorized individuals in this rule. Language regarding how the interpreters become qualified has been updated to reflect that they must have a contract with the Utah Division of State Purchasing and General Services as opposed to certification with the Department of Workforce Services. In addition, the definition section has been alphabetized, and additional definitions have been added for applicant, covered humanitarian parolee, and qualified interpreter.

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

A) State budget:

This rule change is not expected to have any fiscal impact on state government revenues or expenditures because this rule only adds covered humanitarian parolee to the list of individuals authorized to take the written knowledge test in the person's native language upon the initial or first renewal of a limited-term license certificate.

B) Local governments:

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because this rule only adds covered humanitarian parolee to the list of individuals authorized to take the written knowledge test in the person's native language upon the initial or first renewal of a limited-term license certificate.

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

This rule change could have a direct fiscal benefit for five small businesses. The number of customers who choose to utilize an interpreter's service to assist in the initial application or first renewal could increase the amount of fees collected. The direct fiscal benefit to small businesses is inestimable. There is no way to determine how many more customers would choose to utilize their interpreter services.

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

This rule change is not expected to have any fiscal impact on non-small businesses revenues or expenditures because this rule only adds covered humanitarian parolee to the list of individuals authorized to take the written knowledge test in the person's native language upon the initial or first renewal of a limited-term license certificate. There are not currently any non-small businesses that provide interpreter services for this purpose.

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

This rule change could have a direct fiscal cost to persons other than small businesses, non-small businesses, state or local government entities. The number of persons affected, and the direct fiscal cost is inestimable. There is no way to determine how many covered humanitarian parolees would choose to utilize an interpreter's services. This rule change could also have a direct non fiscal benefit to persons. The changes to this rule identify the requirements and procedures for a covered humanitarian parolees to take the written knowledge test in their native language, which provides the opportunity to acclimate and become more familiar with driving practices prior to being required to take a written knowledge test in English.

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

There are no compliance costs for affected persons associated with this rule because this rule only allows the option for taking the written knowledge test in a person's native language upon the initial or first renewal of a limited-term license.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This rule change could result in a fiscal benefit to five small businesses, all of which have contracts with the Utah Division of State Purchasing and General Services to provide interpreter services. Interpreter services would only be needed if the applicant is taking a written knowledge test in a language for which the test has not yet been translated. The direct fiscal benefit to businesses is inestimable because there is no way to determine how many covered humanitarian parolees would choose to utilize their interpretation services. Jess L. Anderson, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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

Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 53-3-206		

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Christopher Caras, Director	Date:	04/20/2022
--	-----------------------------	--------------	------------

R708. Public Safety, Driver License.

R708-46. Refugee, ~~or Approved~~ Asylee, or Covered Humanitarian Parolee Knowledge Test in Applicant's Native Language.

R708-46-1. Purpose.

The Driver License Division shall allow an applicant who is a refugee, pending asylee, ~~or~~ approved asylee, or covered humanitarian parolee, and is applying for a limited-term driver license to take the knowledge test on traffic laws in the person's native language.

R708-46-2. Authority.

This rule is authorized by Section 53-3-206.

R708-46-3. Definitions.

- (1) Terms used in this rule are found in Section 53-3-102.
- (2) In addition:

(a) "applicant" means an applicant with a refugee, approved asylee, pending asylee, or covered humanitarian parolee status;

(b) "approved asylee" means a person who has an approved application for asylum in the United States;

(c) "covered humanitarian parolee" means a person who is a citizen and national of Afghanistan who has been paroled into the United States between July 31, 2021, and September 30, 2022, and certain immediate family members who have been paroled into the United States after September 30, 2022;

(d) "pending asylee" means a person's status is an authorized stay, or permission to stay and work in the United States;

(e) "qualified interpreter" means an interpreter that has a contract approved through the Utah Division of State Purchasing and General Services to provide interpreter services; and

~~[(4)](f)~~ "[R]efugee" means a person who has entered into the United States in refugee status.

~~[(2)]~~ "Approved Asylee" means a person who has an approved application for asylum in the United States.

~~[(3)]~~ "Pending Asylee" means a person's status is an authorized stay, or permission to stay and work in the United States.

~~[(4)]~~ "Limited Term License Certificate" means the evidence of the privilege granted and issued under Title 53, Chapter 3, Uniform Driver License Act, to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).

R708-46-4. Requirements.

(1) The first time an applicant ~~[with a refugee, approved asylee, or pending asylee status]~~ applies for a limited-term license certificate, they ~~[shall be given the opportunity to]~~ may:

- (a) take the knowledge test in their native language~~[-];~~ or
- (b) take the knowledge test with the assistance of a qualified interpreter.

(2) The first time an applicant ~~[with a refugee, approved asylee, or pending asylee status]~~ applies for a renewal of a limited-term license certificate~~[-]~~ and is required to take the knowledge test for renewal in accordance with Section 53-3-214, they ~~[shall be given the opportunity to]~~ may:

- (a) take the knowledge test in their native language~~[-];~~ or
- (b) take the knowledge test with the assistance of a qualified interpreter.

(3) ~~[If the applicant had previously taken the knowledge test in their native language, t]~~ The second time an applicant applies for a renewal of a limited-term license certificate, ~~[renewal for a refugee, approved asylee, or pending asylee will require the applicant]~~ they shall be required to pass a knowledge test of traffic laws in English.

~~[(4)]~~ The Division of Workforce Services shall maintain a list of qualified interpreters that can be found on the Driver License Division's website.

R708-46-5. Procedures.

(1) The applicant must schedule an appointment to apply for an original limited-term license or first renewal of a limited-term license using the on-line scheduler.

(2) ~~If the applicant chooses to take the knowledge test with the assistance of a qualified interpreter, [T]~~ the applicant must arrange and pay for a ~~[a]~~ qualified interpreter ~~[approved by the Division of Workforce Services]~~ to accompany them for the test.

(3) A link to the list of qualified interpreters shall be posted on the Driver License Division's website.

KEY: limited-term driver license; knowledge test; refugee; ~~approved~~ asylee; covered humanitarian parolee
Date of Last Change: ~~2022~~ December 23, 2021
Notice of Continuation: May 10, 2021
Authorizing, and Implemented or Interpreted Law: 53-3-206

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R877-23V-16	Filing ID 54574

Agency Information

1. Department:	Tax Commission	
Agency:	Motor Vehicle Enforcement	
Building:	Utah State Tax Commission	
Street address:	210 N 1950 W	
City, state and zip:	Salt Lake City, UT 84134	
Contact person(s):		
Name:	Phone:	Email:
Chantay Asper	801-297-3901	casper@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The reason for the change is to clarify the method and procedure for obtaining a replacement or renewal dealer, dismantler, manufacturer, remanufacturer, or transporter plate.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
This amendment authorizes the Division of Motor Vehicle Enforcement (Division) to replace a lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter license plate upon request instead of only after the plate has expired. The amendment also provides that the replacement is subject to availability and is issued at the discretion of the Division.

Fiscal Information

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

A) State budget:

This amendment is not expected to impact the state budget because it is consistent with current plate replacement practice.

B) Local governments:

This amendment is not expected to impact local governments because it is consistent with current plate replacement practice.

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

This amendment is not expected to impact small businesses because it is consistent with current plate replacement practice.

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

This amendment is not expected to impact non-small businesses because it is consistent with current plate replacement practice.

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

This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it is consistent with current plate replacement practice.

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

This amendment is not expected to impose compliance costs on affected persons because it is consistent with current plate replacement practice.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This amendment is not expected to have a fiscal impact on businesses because it is consistent with current plate replacement practice. Rebecca L. Rockwell, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
B) Department head approval of regulatory impact analysis:			
A Commissioner of the Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 41-3-507		

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/22/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

Agency head or designee, and title:	Rebecca L. Rockwell, Commissioner	Date:	04/29/2022
--	-----------------------------------	--------------	------------

R877. Tax Commission, Motor Vehicle Enforcement.

R877-23V. Motor Vehicle Enforcement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

~~[A-](1)~~ A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced upon request of the licensee and at the discretion of the division.~~[only after it has expired.]~~

~~[B-](2)~~ The replaced special plate shall be included in the calculation of special plates a dealer may be issued under Section 41-3-503.

(3) Replacement of a special plate is subject to availability.

KEY: taxation, motor vehicles

Date of Last Change: ~~March 28, 2022~~ 2022

Notice of Continuation: November 9, 2021

Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R884-24P-66	Filing ID	54575
--------------------------------------	--------------------	------------------	--------------

Agency Information

1. Department:	Tax Commission		
Agency:	Property Tax		
Building:	Utah State Tax Commission		
Street address:	210 N 1950 W		
City, state and zip:	Salt Lake City, UT 84134		
Contact person(s):			
Name:	Phone:	Email:	
Chantay Asper	801-297-3901	casper@utah.gov	

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

General Information**2. Rule or section catchline:**

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The reason for the change is to correct errors in classifications related to certain property tax exemptions from constituting a factual error.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This amendment limits what constitutes a factual error for purposes of when a county must accept a late filed application to appeal the valuation or equalization of real property. This amendment also removes errors in classifications related to certain property tax exemptions from constituting a factual error.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This amendment is not expected to impact the state budget because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

B) Local governments:

This amendment is not expected to impact local governments because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

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

This amendment is not expected to impact small businesses because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

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

This amendment is not expected to impact non-small businesses because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

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

This amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

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

This amendment is not expected to impose compliance costs on affected persons because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This amendment is not expected to have a fiscal impact on businesses because it only removes errors in classifications related to certain property tax exemptions from constituting a factual error consistent with the Utah Code. Rebecca L. Rockwell, Commissioner

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

A Commissioner of the Tax Commission, Rebecca L. Rockwell, has reviewed and approved this fiscal analysis.

Citation Information

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

Section 59-2-1001	Section 59-2-1004	
-------------------	-------------------	--

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/22/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Rebecca L. Rockwell, Commissioner	Date:	04/29/2022
--	-----------------------------------	--------------	------------

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error described in Subsection (1)(b):

(i) that is objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) that is demonstrated by clear and convincing evidence; and

(iii) the existence of which is recognized by the taxpayer and the county assessor.

(b) Subject to Subsection (1)(c), "factual error" includes an error that is:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption, deferral, reduction, or abatement under[~~§~~];

~~(A)] Section 59-2-103;~~

~~[(B) Title 59, Chapter 2, Part 11;~~

~~(C) Title 59, Chapter 2, Part 18; or~~

~~(D) Title 59, Chapter 2, Part 19;]~~

(iv) valuation of a property that is not in existence on the lien date; and

(v[~~i~~]) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) "Factual error" does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the county assessor;

(d) the taxpayer's estimate of the fair market value of the property;

(e) evidence or documentation that supports the taxpayer's claim for relief; and

(f) the taxpayer's signature.

(3) If the evidence or documentation required under Subsection (2) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.

(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.

(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(7) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

(i) the name and address of the property owner;

(ii) the identification number, location, and description of the property;

(iii) the value placed on the property by the county assessor;

(iv) the basis for appeal stated in the taxpayer's appeal;
 (v) facts and issues raised in the hearing before the county board that are not clearly evident from the county assessor's records; and

(vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (8)(a) shall include:

- (i) the name and address of the property owner;
- (ii) the identification number of the property;
- (iii) the date the notice was sent;
- (iv) a notice of appeal rights to the commission; and
- (v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).

(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(11) Decisions by the county board of equalization are final orders on the merits.

(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Subsection 59-2-1004(3)(a) if any of the following conditions apply:

(a) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Subsection 59-2-1004(3)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(a), and no co-owner of the property was capable of filing an appeal.

(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(14) ~~[The provisions of]~~ Subsection (12) ~~[apply]~~ applies only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(15) ~~[The provisions of this]~~ This rule ~~[apply]~~ applies only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see ~~[Section]~~ Sections 59-2-1006 and R861-1A-9.

KEY: taxation, personal property, property tax, appraisals

Date of Last Change: ~~[January 1,]~~ 2022

Notice of Continuation: November 9, 2021

Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R907-66	Filing ID 54542
--------------------------------------	----------------	----------------------------------

Agency Information

1. Department:	Transportation	
Agency:	Administration	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule or section catchline:

R907-66. Procurement of Consultant Services - Procedures and Contract Administration

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

The Department of Transportation (Department) submits these proposed changes to update this rule and conform it to the requirements of the Utah Rulewriting Manual.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The Department proposes these changes to conform this rule to the requirements of the Rulewriting Manual, to eliminate unnecessary text, to correct outdated citations to state law and federal regulations, and to update procurement procedures to reflect how the Division of Consultant Services (Division) currently operates.

Fiscal Information

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

A) State budget:

These proposed changes could lead to savings in the state's budget over time if they lead to more efficiency and efficacy in the Division procurement processes. However, any state budget savings are speculative and unquantifiable now.

B) Local governments:

Rule R907-66 regulates the Division procurement processes only and does not apply to any local governments or subdivisions of the state. Therefore, these proposed changes will not affect the budgets of local governments.

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

Rule R907-66 regulates the Division procurement processes only. Consultants that are small businesses may be affected by these proposed changes but the Department's intent is for these effects to be savings to their budgets. However, any budget savings for small businesses are speculative and unquantifiable now.

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

Rule R907-66 regulates the Division procurement processes only. Consultants that are non-small businesses may be affected by these proposed changes; the Department's intent is for these effects to be savings to their budgets. However, any budget savings for non-small businesses are speculative and unquantifiable now.

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**):

Rule R907-66 regulates the Division procurement processes only. Therefore, persons other than small businesses, non-small businesses, state, or local government entities should not be affected by these proposed changes.

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

The proposed changes do not include any direct compliance costs for any entity affected by Rule R907-66.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

This proposed rule change will not have a fiscal impact on businesses. Carlos M. Bracerias, PE, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Transportation, Carlos M. Braceras, PE, has reviewed and approved this fiscal analysis.

Citation Information**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 63G-6a-107.7(5)	Subsection 72-1-201(1)(h)
-------------------------------	------------------------------

Incorporations by Reference Information**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	First Incorporation
Official Title of Materials Incorporated (from title page)	2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
Publisher	Office of the Federal Register
Date Issued	December 19, 2014
Issue, or version	November 12, 2020

B) This rule adds, updates, or removes the following title of materials incorporated by references:

	Second Incorporation
Official Title of Materials Incorporated (from title page)	48 CFR Part 31, Contract Cost Principles and Procedures
Publisher	Office of the Federal Register
Date Issued	September 19, 1983
Issue, or version	January 29, 2013

C) This rule adds, updates, or removes the following title of materials incorporated by references:

	Third Incorporation
Official Title of Materials Incorporated (from title page)	23 CFR 1.11, Engineering Services
Publisher	Office of the Federal Register
Date Issued	May 11, 1960
Issue, or version	February 24, 2022

D) This rule adds, updates, or removes the following title of materials incorporated by references:

	Fourth Incorporation
Official Title of Materials Incorporated (from title page)	23 CFR 1.33, Conflicts of Interest
Publisher	Office of the Federal Register
Date Issued	May 11, 1960
Issue, or version	February 24, 2022

E) This rule adds, updates, or removes the following title of materials incorporated by references:

	Fifth Incorporation
Official Title of Materials Incorporated (from title page)	23 CFR Part 172, Procurement, Management, and Administration of Engineering and Design Related Service Contracts
Publisher	Office of the Federal Register
Date Issued	May 22, 2015
Issue, or version	June 22, 2015

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	06/21/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	04/18/2022
--	--	--------------	------------

R907. Transportation, Administration.**R907-66. Procurement of Consultant Services - Procedures and Contract Administration.****R907-66-1. Authority and Purpose.**

(1) Authority. The Department of Transportation (the "Department") makes this rule pursuant to authority granted by Utah

~~Code]~~under [Sections]~~Subsections~~ 63G-6a-~~[106(3)(a)]~~107.7(5) and 72-1-201(1)(h).

(2) Purpose. ~~[The Department solicits for and contracts with consultants to perform design professional.]~~This rule establishes requirements and procedures for procuring engineering[7] and engineering-related services[7].

~~(a) This Rule, R907-66, establishes procedures for procuring services of design, engineering and engineering related professionals, identified herein as consultants, and administering the attendant contracts.[utilizing Federal aid highway program funding or Utah state funding.~~

~~(b) For detailed guidance beyond federal and state codes, federal regulations, and this rule, the Department's Consultant Services Division maintains the Consultant Services Manual of Instruction, which includes procedures and guidelines for preparing and publishing solicitations such as requests for qualifications that have project specific requirements.]~~

R907-66-2. Definitions.

~~[For purposes of this rule, R907-66, t]~~The following definitions apply:

(1) "Brooks Act" means a commonly used term for the Federal Property and Administrative Services Act of 1949, ~~[c]~~Public Law 92--582, 86 Stat. 1278 (1972) and 40 U.S.C. Chapter 11, Sections 1101[-] through 1104.

(2) "Competitive negotiation" means any form of negotiation that utilizes qualifications-based procedures complying with the Brooks Act.

(3) "Consultant" means an individual expert or firm the Department contracts with to perform professional services as may be necessary to the planning, progress, and completion of any design, engineering, and engineering-related services.

(4) "Desk review" means a process that includes a limited-scope examination of a Consultant's original source financial documentation and communication to provide reasonable assurance [that costs]the Consultant has not materially misstated costs, [presented are not materially misstated]and the Consultant's financial documentation [comply]complies with FAR Part 31 and 2 CFR Part 200.

(5) "The ~~[d]~~Division" means the Consultant Services Division of the Department of Transportation.

(6) "Engineering," "the practice of engineering," and "professional engineering" mean the same as the terms are defined in ~~[Utah Code Section]~~Subsection 58-22-102(9)(a).

(7) "Engineering-Related Services" means other professional services, including project-related public involvement, right of way acquisition services, transportation research, asset management, prototype development, technology transfer, technical writing, or other services as deemed necessary by the executive director or designee.

~~[7)]~~(8) "FAR" means Federal Acquisition Regulations, Title 48, Code of Federal Regulations.

~~[8)]~~(9) "Federal-aid highway funds" means funds authorized by Congress to assist the Department in providing for the construction, reconstruction, and improvement of highways and bridges on eligible ~~[Federal Aid]~~federal-aid highway routes and [for] other special[-]purpose programs and projects.

(10) "Financial Screening" means the process performed by the Department's Consultant Services Division under 23 CFR 172.11 to review financial and entity data submitted annually by Consultants and subconsultants. This process will determine financial viability and establish or maintain the ability to contract

with the Department for engineering and engineering-related services.

~~[-----]~~(9) "Other Professional Services" means grant writing, asset management, transportation research, prototype development, technology transfer, project related public involvement, right of way acquisition services, or other services as deemed necessary by the executive director or designee.]

(11) The "Manual" means the Consultant Services Manual, which is maintained by the Department's Consultant Services Division. This Manual provides details beyond federal and state codes, federal regulations, and this rule.

~~[(10)]~~(12) "Qualifications-based selection" or "QBS" means that procurement process defined in the Brooks Act, 40 U.S.C. Sections 1101 through 1104, [40 U.S.C. Sections 1101—1104 (Brooks Act), as a process for public agencies to use for architectural, engineering, and related professional services for public construction projects and Utah Code 63G-6a Part 15 for procurement of design professional services.]

~~[(11)]~~(13) "Risk Assessment" is the equivalent of Risk-based Analysis as defined in Subsection 23 C.F.R. 172.11(c)(2).[means a process that includes identifying and analyzing potential internal control deficiencies and evaluation of initial evidence for indications of noncompliance with FAR and 2 CFR Part 200 and making judgments on the tolerability of the risk of accepting the Consultant's indirect cost rate(s) as presented without further action.]

R907-66-3. Qualifications-based Selection of Consultants for Design, Engineering and Engineering-related Services.

~~[(14)]~~The Department will perform qualifications-based selection procedures, including competitive negotiations to procure, manage, and administer contracts with [e]Consultants and other professional services.

~~[R907-66-4. Incorporation by Reference of Applicable Federal Law.~~

~~To receive grants of federal aid highway funds the Department must conform to applicable federal law. Therefore, the Department incorporates by reference the following federal regulations:~~

~~-----~~(1) 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for both federal and state funded projects. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

~~-----~~(2) 23 CFR 1.11, Engineering Services. 23 CFR 1.11 Engineering Services

~~-----~~(3) 23 CFR 1.33, Conflicts of Interest. 23 CFR 1.33 Conflicts of Interest

~~-----~~(4) 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Service Contracts. Procurement, Management, and Administration of Engineering and Design Related Services

R907-66-5. Small Purchase Cap.

~~-----~~(1) Utah Code Section 63G-6a-506(2) grants the Department authority to make rules governing small purchases of any procurement item.

~~-----~~(2) When procuring services of consultants, the Division will follow the simplified acquisition threshold established by 48 CFR 2.101 as the small purchase maximum or small purchase cap for individual procurement of consultant services.

~~(3) The Division will establish pools of prequalified consultants or other professional service providers for various work disciplines for consultant selection to perform services with an estimated value less than the Small Purchase Cap following the Utah Procurement Code Section 63G-6a-507 Approved Vendor List Procurement Process.~~

~~(4) The Department will publish detailed procedures the Consultant Services Division will follow to establish pre-qualified consultant pools in the Consultant Services Manual of Instruction, Pool Solicitation or other Solicitations such as Requests for Qualifications.~~

R907-66-6. Selection of Consultants for Services with Estimated Values in Excess of the Small Purchase Cap.

~~The Department will select consultants for contracts with a value in excess of the small purchase cap set forth in R907-66-5 in accordance with 23 CFR Part 172, Utah Procurement Code 63G-6a Part 15 Design Professional Services, the Consultant Services Manual of Instruction, and the specific Solicitation such as the Request for Qualifications.~~

R907-66-4. Incorporation by Reference of Applicable Federal Law.

~~To receive grants of federal-aid highway funds, the Department must comply with applicable federal law. Therefore, the Department incorporates by reference the following federal regulations for both federal and state funded projects:~~

~~(1) 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.~~

~~(2) FAR Part 31, Contract Cost Principles and Procedures.~~

~~(3) 23 CFR 1.11, Engineering Services.~~

~~(4) 23 CFR 1.33, Conflicts of Interest.~~

~~(5) 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Service Contracts.~~

R907-66-5. Prequalified Pools.

~~The Division will establish pools of prequalified Consultants for various work disciplines to perform services for the Department following the Section 63G-6a-507 Approved vendor list procurement process.~~

R907-66-6. Small Purchase Contracts.

~~(1) Section 63G-6a-506 grants the Department authority to make rules governing small purchases of any procurement item.~~

~~(2) When procuring services of Consultants, the Division will follow the simplified acquisition threshold established by 48 CFR 2.101 as the small purchase maximum or small purchase cap for individual procurement of Consultant Services.~~

~~(3) The Division will publish detailed procedures to establish prequalified pools in the Manual or solicitations.~~

R907-66-7. Non-Small Purchase Contracts.

~~For contracts with an estimated value above the small purchase cap, the Department will select Consultants in accordance with 23 CFR Part 172, Title 63G, Chapter 6a, Part 15, Design Professional Services, the Manual, and the requirements set forth in the solicitation or request for qualifications.~~

R907-66-[7]8. Consultant Financial Screening and Auditing.

~~(1) To provide reasonable assurance that the Consultant's presented Indirect Cost [Rate(s)] Rates, hourly billing rates, and direct costs comply with [the] FAR Part 31 and 2 CFR Part 200, [Subpart~~

~~E, Cost Principles,] the Department will conduct risk assessments, desk reviews, and audits as necessary for C[e]onsultants seeking to perform design professional, engineering, or engineering-related services for the Department.~~

~~(2) Consultants must submit their firm's Financial Screening Application, [f]including [all] required supporting documents[9], within 90 days of their most recent fiscal year-end or [60]180 days if the Consultant submits a Certified Public Accountant audit. The Department may grant an extension at its sole discretion.[prior to the anniversary date of their previous financial screening application approval, whichever occurs first.]~~

~~(3) If the Division rejects a Consultant's financial screening as non-compliant, the Consultant may request reconsideration by submitting a written request to the Department's Office of Internal Audit before the end of seven calendar days after receiving notice that the Consultant's financial screening has been rejected. The Consultant must provide notice to the Division before filing the request for reconsideration. The written request must include a detailed explanation of the facts justifying the request for reconsideration.~~

~~(4) The Department's Office of Internal Audit may conduct an audit to determine compliance with the requirements of this rule.[costs are allowable and in compliance with the requirements of 2 CFR Part 200.]~~

R907-66-[8]9. Competitive Contract Negotiations.

~~(1) The Department will conduct competitive negotiations for contracts.[with the consultant firm it considers most qualified to provide services necessary to complete a project using guidelines developed by the Division. The Department will prepare independent estimates of the value of such services for use in negotiations.]~~

~~(2) [Negotiations follow state and federal procurement procedures and are based on compensation that the Department considers fair and reasonable. Negotiations will end if the Department decides that it cannot agree on terms with the firm it considers most qualified. The Division will then begin negotiations with the firm it determines to be next most qualified firm. This process continues until either mutually agreeable terms are agreed to or the Division chooses to begin the selection process again to identify other firms qualified to provide such services.]~~

~~(3) [The guidelines for [both e] Consultant selection and negotiations [are public information and may be found within] are in [the Consultant Services Manual of Instruction,] the project-specific solicitation or request for qualifications, and other guidelines established by the Division and published on the Department's website[Internet web site].~~

R907-66-[9]10. Award of Contracts.

~~The Department will award a contract to the most highly qualified, responsive, and responsible Consultant with which it can negotiate a fair and reasonable cost under the Utah Procurement Code, 23 C.F.R. Part 172, and under the Manual and other guidelines and policies established by the Department.[The Division will award a contract to the best qualified, responsive and responsible consultant with which it can negotiate a fair and reasonable cost as required by the Utah Procurement Code and 23 CFR Part 172, and in accordance with the Department's Consultant Services Manual of Instruction and other guidelines established by the Consultant Services Division.]~~

R907-66-[14]11. Execution of Contracts.

Funding must be approved, and all appropriate signatures applied before the contract is considered executed.~~[The Department will not consider a contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.]~~

R907-66-[14]12. Notice to Proceed.

~~[(1) Consultants may not begin performing work under a contract before the Division has issued to the consultant a notice to proceed for the contract.~~

~~[(2) The Department will not pay for any work:—a consultant performs before the Department has issued to the consultant a notice to proceed for the contract.]~~

(1) the Department has not authorized in writing;

(2) the Consultant performs before the Department has an effective, fully executed contract with the Consultant; or

(3) the Consultant performs before the Department authorizes the Consultant to begin work by issuing a notice to proceed or similar writing.

KEY: procurement, small purchases, design and engineering services

Date of Last Change: 2022~~March 26, 2019~~

Notice of Continuation: August 14, 2021

Authorizing, and Implemented or Interpreted Law: 63G-6-105; 72-1-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R986-100	Filing ID 54576
--------------------------------------	-----------------	------------------------

Agency Information

1. Department:	Workforce Services	
Agency:	Employment Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R986-100. Employment Support Programs

3. Purpose of the new rule or reason for the change
(Why is the agency submitting this filing?):

S.B. 45, passed during the 2022 General Session, requires the Department of Workforce Services (DWS) to conduct non-clinical eligibility hearings and issue final decisions in adjudicative proceedings for medical assistance eligibility. This rule change describes the new adjudicative proceeding process.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Interested parties have the right to a review of an adverse DWS action concerning medical assistance eligibility. Such review consists of an informal fair hearing before an administrative law judge (ALJ). The ALJ issues a written decision. Prior to the passage of S.B. 45 (2022), agency review of an ALJ decision regarding medical assistance eligibility was to be filed with the Department of Health. With the passage of S.B. 45, the DWS is responsible for agency review of such decisions. This rule change describes how an interested party may appeal an ALJ decision regarding medical assistance to the Executive Director of the DWS or their designee. This rule change also makes minor clarifications regarding further appeals from an ALJ decision concerning other public assistance administered by the DWS and how fair hearings are conducted generally.

Please note that the Notice of Effective Date of this rule change may be filed after the date shown in Box 10. The Notice of Effective Date may be filed at any time between 06/21/2022 and 09/12/2022.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures beyond any impact addressed in the fiscal note of S.B. 45 (2022).

B) Local governments:

This rule change is not expected to have any fiscal impact on local government revenues or expenditures beyond any impact addressed in the fiscal note of S.B. 45 (2022).

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

This rule change is not expected to have any fiscal impact on small business revenues or expenditures beyond any impact addressed in the fiscal note of S.B. 45 (2022).

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

This rule change is not expected to have any fiscal impact on non-small business revenues or expenditures beyond any impact addressed in the fiscal note of S.B. 45 (2022).

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

This rule change is not expected to have any fiscal impact on other persons revenues or expenditures beyond any impact addressed in the fiscal note of S.B. 45 (2022).

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

This rule change of this rule requires no new action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this rule change will not result in a fiscal impact beyond what was addressed in the fiscal note of S.B. 45 (2022). Casey Cameron, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) 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.

Citation Information

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

Section 35A-3-101 et seq.	Section 35A-3-301 et seq.	Section 35A-3-401 et seq.
---------------------------	---------------------------	---------------------------

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

A) Comments will be accepted until: 06/14/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	04/29/2022
--	-----------------------------------	--------------	------------

R986. Workforce Services, Employment Development.

R986-100. Employment Support Programs.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) An interested person has the right to a review of an adverse Department action by requesting a fair hearing before an ALJ. Reviews of medical assistance eligibility determinations are subject to Section R986-100-137.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged SNAP overpayment, the interested person must request a

hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the interested person must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the interested person disagrees.

(3) Only a clear expression by the interested person, whether orally or in writing, ~~[to the effect]~~ that the interested person wants an opportunity to present ~~their~~~~[his or her]~~ case is required.

(4) The request for a hearing can be made by contacting the Department.

(5) If the interested person disagrees with the level of SNAP benefits paid or payable, the interested person can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost SNAP benefits is made within one year of the loss of benefits an interested person may request a hearing within 90 days of the date of the denial of restoration.

(7) An interested person may contact the Department ~~[and attempt]~~ to resolve the dispute. If the dispute cannot be resolved, the interested person may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

(8) In cases not involving an overpayment or disqualification, if the interested person does not submit a timely appeal, the Department decision is final.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow ~~[the Utah]~~ Title 63G, Chapter 4, Administrative Procedures Act.

(3) Hearings for ~~the~~~~[all]~~ programs listed in Section R986-100-102 and for overpayments and IPV's in ~~[Section 35A-3-601 et seq.]~~ Title 35A, Chapter 3, Part 6, Administrative Determination of Overpayment Act are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has ~~[all of]~~ the same rights, duties, powers, and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are scheduled as telephone hearings. Every party wishing to participate in the telephone hearing must call the Division of Adjudication ~~[at the time of the hearing]~~ as instructed in the notice of hearing. If the party fails to call in as required by the notice of hearing, the appeal will be dismissed. ~~[If a party wishes to have the ALJ call them at the start of the hearing, the party must call the Department and make arrangements to that effect prior to the hearing.]~~

(6)(a) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so ~~the~~~~[that all]~~ other parties may be given notice of the change in hearing type and the opportunity to appear in person also.

(b) Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements.

(c) If the ALJ grants ~~a~~~~[the]~~ request for an in-person hearing, the other~~[all]~~ parties will be informed that the hearing will be conducted in person. ~~[Even if the hearing is scheduled as an in-person hearing, a]~~ party may elect to participate by telephone.

~~(d)~~ In-person hearings are held in the office of the Division of Adjudication unless the ALJ determines that another location is more appropriate. A party or witness may participate from the closest local Employment Center.

(7) ~~The~~~~[the]~~ Department is not responsible for any travel costs incurred by any party or witness in attending an in-person hearing.

(8) ~~The~~~~[the]~~ Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-135. Further Appeal From the Decision of the ALJ or [Presiding]Hearing Officer.

(1) Except as provided in Section R986-100-138, ~~each~~~~[Either]~~ party has the option of appealing the decision of the ALJ or ~~[presiding]~~hearing officer to either

~~(a)~~ the Executive Director or person designated by the Executive Director; or

~~(b)~~ ~~[to]~~the District Court.

(2) ~~[The]~~An appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or ~~hearing~~~~[presiding]~~ officer. An untimely request for agency review will be dismissed unless the requesting party can show good cause for the untimely request pursuant to Subsection R986-100-131(2).

(3) Pursuant to Section 63G-4-402, within 30 days of the date an agency review decision is issued, an adversely affected party may file a petition for judicial review with the district court.

R986-100-137. Hearings on Determinations of Medical Assistance Eligibility.

(1)(a) The Department has been designated by the Utah Department of Health and Human Services to determine eligibility for medical assistance, as authorized by the following:

~~(i)~~ 42 U.S.C. 1396a;

~~(ii)~~ 42 C.F.R. 431.10;

~~(iii)~~ Section 26-18-5 of the Utah Code; and

~~(iv)~~ Section R414-301-2.

(b) The Department of Health and Human Services administers Medicaid and other medical assistance benefits programs.

~~(2)(a)~~ An adversely affected party may request a fair hearing to review a decision of medical assistance eligibility.

(b) Except as stated in this rule, a fair hearing request follows the procedures of Sections R986-100-123 through R986-100-135.

(3) A hearing may be requested by:

~~(a)~~ a client;

~~(b)~~ a client's spouse;

~~(c)~~ a parent or guardian of a minor client; or

~~(d)~~ an authorized guardian or representative of a client.

(4)(a) A representative from DWS shall participate in hearings.

(b) Representatives from other state agencies may participate as needed.

(5)(a) If the ALJ or hearing officer's decision is not appealed for agency review as provided in Section R986-100-138, the decision becomes final 30 days after the decision is issued.

(b) The parties may stipulate to an earlier effective date, if no appeal will be requested.

(c) If the ALJ or hearing officer reverses the eligibility decision, the Department of Health and Human Services will comply

with the ALJ or hearing officer's decision after the decision becomes final.

(6)(a)(i) A recipient of medical assistance benefits may continue to receive benefits pending a hearing decision if the recipient requests the hearing before the effective date of the eligibility determination or within 15 days on the notice of eligibility determination.

(b) A recipient may decline the continued benefits while a hearing is pending by notifying the Department of Health and Human Services in writing.

(c) A recipient must repay any benefits received while a hearing is pending if a decision denying eligibility is upheld.

R986-100-138. Agency Review of Medical Assistance Eligibility.

(1) An adversely affected party, including the Department of Health and Human Services, may appeal an ALJ or hearing officer decision by requesting agency review.

(2) A request for agency review must be made within 30 days after the decision is issued. An untimely request for agency review will be dismissed unless the requesting party can show good cause for the untimely request pursuant to Subsection R986-10-131(2).

(3) The Executive Director of the Department or the Executive Director's designee shall conduct the agency review.

(4) Agency review is an informal proceeding and shall be conducted in accordance with Section 63G-4-301.

(a) The ALJ or hearing officer's decision is suspended until the Executive Director or their designee issues a final decision and order on agency review.

(b) A hearing will not be conducted for agency review.

(c) A party may submit written comments or arguments within 10 days following notice of the agency review.

(d) The agency review may confirm, reverse, or modify the ALJ or hearing officer's decision.

(5)(a) Benefits may continue while an agency review is pending.

(b) A recipient may decline the continued benefits while agency review is pending by notifying the Department of Health and Human Services in writing.

(c) A recipient must repay any benefits received while agency review is pending if a decision denying eligibility is upheld.

(6) A decision on agency review is final upon issuance.

(7) The Department of Health and Human Services shall take case action within ten calendar days of the date the agency review decision becomes final.

R986-100-139. Appeal of Agency Review of Medical Assistance Eligibility.

(1)(a) Pursuant to Section 63G-4-402, within 30 days of the date the agency review decision is issued, an adversely affected party may file a petition for judicial review with the district court.

(b) Failure to appeal a decision to the Department for agency review pursuant to Section R986-100-138 constitutes a waiver of the right to judicial appeal.

(2) Recipients are not entitled to continued benefits pending judicial review by the district court.

KEY: employment support procedures, hearing procedures, public assistance, SNAP

Date of Last Change: 2022[April 20, 2020]

Notice of Continuation: September 2, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R986-300-306	Filing ID 54577
--------------------------------------	---------------------	----------------------------------

Agency Information

1. Department:	Workforce Services	
Agency:	Employment Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, Utah 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, Utah 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information

2. Rule or section catchline:

R986-300-306. Time Limits

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

On 02/18/2022, the federal Office of Refugee Resettlement (ORR) issued new guidance providing that Afghan humanitarian parolees may be eligible to receive assistance, and including definitions and time frames for Afghan parolees. On 03/28/2022, the federal ORR published new guidance allowing states to offer up to 12 months of refugee resettlement financial assistance instead of 8 months. This amendment reflects the changes adopted by the Federal ORR governing the program.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The changes adopt new time limit for eligibility to receive assistance from the Refugee Resettlement Program from 8 to 12 months; retain an eight-month eligibility limit for refugees with eligibility dates prior to 10/01/2021; clarify language that the date of eligibility for assistance is the date of entry into the United States, except in certain

circumstances; and add language addressing assistance eligibility of Afghan refugees due to changes in Federal law and policy.

This rule amendment has minor stylistic changes in accordance with the Utah Rulewriting Manual. The Notice of Effective Date of this rule amendment may be filed after the date shown in Box 10. The Notice of Effective Date may be filed at any time between 06/21/2022 and 09/12/2022.

(EDITOR'S NOTE: A corresponding 120-day emergency rule that is effective as of 04/25/2022 is under ID 54554 in this issue, May 15, 2022, of the Bulletin.)

Fiscal Information

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

A) State budget:

This rule amendment is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee the new section. This new section will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state through the federal ORR.

B) Local governments:

This rule amendment 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.

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

This rule amendment is expected to have an indirect fiscal benefit for small businesses because covered individuals will be able to receive additional months of benefits, thereby increasing the individuals' ability to purchase goods and services from small businesses. The indirect benefit is not calculable, but it presumed to be a portion of the benefits to other persons as shown in the Regulatory Impact Table.

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

This rule amendment is expected to have an indirect fiscal benefit for non-small businesses because covered individuals will be able to receive additional months of benefits, thereby increasing the individuals' ability to purchase goods and services from non-small businesses. The indirect benefit is not calculable, but it presumed to be a portion of the benefits to other persons as shown in the Regulatory Impact Table.

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 anticipated that this amendment will allow approximately 1,020 covered individuals to be potentially eligible to receive financial assistance for additional months, based on data obtained on 04/14/2022. The average financial assistance payment is \$109 each month per individual, and \$296 each month per household. The benefits shown in the Regulatory Impact Table presumes 3 months of individual eligibility for 1,020 individuals in fiscal year 2022, based upon the emergency rule going into effect in 04/25/2022. The Table further presumes 4 months of individual eligibility for 1,020 individuals in fiscal years 2023 and 2024, based upon 4 additional months of eligibility. The actual impact may be greater or lesser depending upon the number of eligible refugees who resettle in Utah.

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

This rule amendment is not expected to cause any compliance costs for affected persons because this new section does not create any new administrative fees.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

The funding for refugee resettlement financial assistance is provided by the federal ORR. The ORR allows states to administer a refugee cash assistance program consistent with a state's Temporary Assistance for Needy Families (TANF) program. The Department of Workforce Services currently administers the Refugee Resettlement Program with the goal of helping refugees assimilate and achieve self-sufficiency. By extending the number of months covered individuals may receive financial assistance, Utah will be able to better achieve this goal and continue to support communities and improve the lives of individuals. This rule change is needed to access the funding for the Refugee Resettlement Program and to make the state program consistent with federal requirements. Casey Cameron, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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	\$333,540	\$444,720	\$444,720
Total Fiscal Benefits	\$333,540	\$444,720	\$444,720
Net Fiscal Benefits	\$333,540	\$444,720	\$444,720
B) 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.			

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:		
Section 35A-3-103	45 CFR 400.65 through 400.68	

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. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	06/14/2022

10. This rule change MAY become effective on:	06/21/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of	

Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	04/22/2022
--	-----------------------------------	--------------	------------

R986. Workforce Services, Employment Development.**R986-300. Refugee Resettlement Program.****R986-300-306. Time Limits.**

(1) A refugee's eligibility date for RRP is the date of entry into the United States.

(a) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(b) The date of entry for a victim of trafficking is established by the certification date determined by the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR).

(c) "Afghan Humanitarian Parolee" means citizens or nationals of Afghanistan paroled into the United States between July 31, 2021 and September 30, 2022, including spouses and children of paroled individuals, and parents or guardians of paroled individuals who are unaccompanied children. The eligibility date for Afghan Humanitarian Parolees is the date of entry into the community, as determined by the ORR.

(2)(a) A refugee with an eligibility date on or after October 1, 2021, is eligible for RRP financial assistance only during the first 12 months after the eligibility date.

(b) A refugee with an eligibility date before October 1, 2021, is eligible for RRP financial assistance only during the first eight months after the eligibility date.

(c) Notwithstanding Subsections R986-300-306(2)(a) and (2)(b), an Afghan Humanitarian Parolee is eligible for RRP financial assistance only until March 31, 2023, or until the end of the individual's parole term.

(3) Regardless of eligibility date, RRP financial assistance cannot be paid for any months before the date of application for assistance. (4) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.]

KEY: refugee resettlement program, SNAP

Date of Last Change: 2022[August 26, 2009]

Notice of Continuation: August 31, 2020

Authorizing, and Implemented or Interpreted Law: 35A-3-103; 45 CFR 400.65 through 400.68

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.):	R986-700	Filing ID 54585
--------------------------------------	-----------------	----------------------------------

Agency Information

1. Department:	Workforce Services	
Agency:	Employment Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information

2. Rule or section catchline:
R986-700. Child Care Assistance
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The purpose of this change is to update and clarify language concerning child care subsidies, to expand eligibility for subsidies to family child care providers.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
In Section R986-700-701.1, adds clarifying language to the definition of "review or recertification".
In Section R986-700-702, adds language excluding the owner of a child care business from receiving child care assistance for their own children, and makes other nonsubstantive organizational changes.
In Section R986-700-721, adds language clarifying eligible providers.
In Section R986-700-723, removes language defining that a sponsor of an alien client is an ineligible provider.
In Section R986-700-728, changes overpayment reimbursement to allow Department of Workforce Services discretion.
In Section R986-700-740, clarifies the definition of a license in good standing and denied participation status.
In Section R986-700-741, clarifies that any provider with an eligible child care license may apply for a quality rating, including Family Friend and Neighbor providers.

Please note that the Notice of Effective Date of this rule change may be filed after the date shown in Box 10. The Notice of Effective Date may be filed at any time between 06/21/2022 and 09/12/2022.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
This rule amendment is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee the rule changes. The changes will not increase workload and can be carried out with existing budget. Child Care subsidies and grants are provided by federal funds.
B) Local governments:
This rule amendment 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.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule amendment is expected to have a fiscal benefit for small businesses. This benefit is reflected in the "Other Persons" category.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule amendment is not expected to have any fiscal impact on non-small businesses as the rule changes only affect small-business Family Providers.
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):
Child care providers who receive "High Quality" or "High Quality Plus" ratings are eligible to receive an Enhanced Subsidy Grant for each child. Based on the average number of child care providers currently participating and receiving subsidies, it is anticipated that with this amendment an additional 64 Family, Friend and Neighbor Providers will be eligible (56 High Quality and 8 High Quality Plus). The average number of children cared for by each provider is 5.14. Providers with High Quality ratings receive \$100 per child each month, and those with High Quality Plus ratings receive \$125 per child each month. This calculates out to be \$345,408 for High Quality programs, and \$61,680 for High Quality Plus programs, for a total subsidy increase of \$407,088 per fiscal year. This

estimate is based on the number of Child Care providers currently participating in the grant program.

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

This rule amendment is not expected to cause any compliance costs for affected persons because the changes do not create any new administrative fees.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

The funding for child care grants and assistance is provided through federal funding. The rule changes are expected to have a fiscal benefit for Family Providers. Casey Cameron, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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	\$407,088	\$407,088
Total Fiscal Benefits	\$0	\$407,088	\$407,088
Net Fiscal Benefits	\$0	\$407,088	\$407,088

B) 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.

Citation Information

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

Section 35A-3-310 | Section 35A-3-203 | Section 53F-5-210

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

A) Comments will be accepted until: 06/21/2022

10. This rule change MAY become effective on: 07/01/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	04/29/2022
--	-----------------------------------	--------------	------------

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 and 35A-3-201.

(2) In addition:

(a) "ALJ" means Administrative Law Judge.

(b) "Applicant" means a[ny] person requesting CC.

(c) "Approved Provider" means a provider who meets the requirements in Section R986-700-726.

(d) "CC" means Child Care assistance or subsidy.

(e) "CCDF" means Child Care and Development Fund.

(f) "Certification period" as it relates to a recipient of CC is the period [of time] for which CC is presumptively approved.

(g) "Client" means an applicant for, or recipient of, CC.

(h) "Child" includes children and vice versa.

(i) "Child Care Provider" or "Provider" means a[ny] person, individual or corporation, institution or organization that provides child care services.

(j) "Department" means Department of Workforce Services.

- (k) "DWS" means Department of Workforce Services.
- (l) "Employment" means a job or providing a service that pays wages, a salary, in-kind benefits, or self-employment income, provided federal or state law does not prohibit the occupation.
- (m) "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.
- (n) "FEP" means Family Employment Program.
- (o) "FEPTP" means Family Employment Program Two Parent.
- (p) "FFN" means Family, Friend and Neighbor provider.
- (q) "Financial assistance" means a payment, other than for SNAP, CC, or medical care, to an eligible individual or household that is intended to provide for the individual's or household's basic needs.
- (r) "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.
- (s) "IPV" means intentional program violation.
- (t) "Licensed-center provider" means a non-hourly, licensed child care center that is regulated through CCL.
- (u) "Local office" means the Employment Center that serves the geographical area in which the client resides.
- (v) "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 educational program ~~before~~^{prior to} turning 19, and who has not been emancipated either by a lawful marriage or court order.
- (w) "OCC" means Department of Workforce Services, Office of Child Care.
- (x) "ORS" means Office of Recovery Service, Utah State Department of Human Services.
- (y) "Parent" includes natural, adoptive, and stepparents. "Parent" includes "parents" and vice versa.
- (z) "Recipient" means an~~y~~^a individual receiving CC.
- (aa) "Review or recertification" means the process to determine continued eligibility. ~~[- Clients who are found eligible for CC are given a date for review or recertification at which point continuing eligibility is determined.]~~
- (bb) "SSA" means Social Security Administration.
- (cc) "SSI" means Supplemental Security Insurance.
- (dd) "TCA" means Transitional Cash Assistance.
- (ee) "VA" means US Department of Veteran Affairs.

R986-700-702. General Provisions.

- (1) Child Care assistance is provided to support employment for a qualified household with at least one minor dependent child who is a United States citizen or who meets qualified alien status. Child Care assistance 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 a client who is employed or is participating in activities that lead to employment, and is:
 - (a) a parent, including a foster care parent who receives foster care reimbursement from the Utah Department of Human Services, Division of Family and Child Care Services, or its successor;
 - (b) a specified relative; or
 - (c) a client who has 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 ~~[e]~~Care assistance is provided only for a child who lives in the home of the client and only during hours when no parent or other guardian is available to provide care for the child. 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, each of the following children, living in the household unit, are eligible:

- (a) a child under the age of 13 years; and
- (b) a child 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)(a) A client who qualifies for CC will be paid if and as funding is available.

- (b) When the child care needs of an eligible applicant exceeds available funding, the applicant will be placed on a waiting list.

- (i) Eligible applicants on the waiting list will be served as funding becomes available.

- (ii) Special needs children, homeless children, and FEP or FEPTP eligible children will be prioritized at the top of the waiting list and will be served first.

- (iii) "Special needs child" is defined in Section R986-700-717.

- (6) Child Care assistance is 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)(a) Child Care assistance ~~[can]~~^{may} only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care.

- (b) Illegal child care is care provided by a~~ny~~^{ny} 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)(a) 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.

- (b) 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.

- (c) 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 child care.

- (d)(i) A person who is self-employed as a child care provider cannot receive CC for child care provided for that person's children during the time the person is working as a child care provider, regardless of where the person's child receives child care.

- (ii) A person who is self-employed as a child care provider may receive CC when needed for approved activities while the person is not engaged in child care.

(10) Neither the Department nor the state is liable for an injury that may occur when a child is placed in child care even if the parent receives CC from the Department.

(11) Once eligibility for CC has been established, eligibility must be reviewed once every 12 months.

(a) Each requested verification must be provided at the time of the review.

(b) The review is not complete until the client has completed, signed, and returned each necessary review form to the local office.

(c) 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.

R986-700-721. Eligible Provider.

(1) A provider may only be eligible if the provider is:

(a) a provider regulated through CCL including a licensed:

(i) home provider;

(ii) child care center, ~~[unless the center is an hourly center;]~~ including an out-of-school time program and excluding an hourly center; or

(iii) home with a residential certificate; ~~or~~[-]

(b) a license exempt ~~[provider who]~~ center or school-age program which is not required by law to be licensed and is either;

(i) a license exempt center ~~[provider]~~ or school-age program as defined in Section R430-8-3, ~~that has~~[-] A license exempt center provider must have a current letter of exempt status from CCL identifying the provider as DWS Approved; or

(ii) a DWS FFN provider as approved by CCL.

~~[(A) The requirements for FFN approval are provided in R986-700-724 and in DWS policy.]~~

R986-700-723. Ineligible Provider Setting.

(1) A provider is not eligible to receive a CC payment for a particular client if the provider is:

(a) living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs as determined by the Department and who cannot be otherwise accommodated;

(b) a sibling of the child living in the home, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent of the child, even if living in another residence;

(d) providing care for the child in another state;[-]

~~(e) a sponsor of a qualified alien client applying for CC;]~~
or

~~[(F)]~~(e) living in the same home as a non-custodial parent and providing child care for a child of that parent.

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 to be eligible for CC payment.

(a) A provider has the burden of proof to demonstrate the provider provided care to each~~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 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]~~ may be required to 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.

R986-700-740. Child Care Quality System (CCQS) Definitions and Acronyms.

In addition to the definitions and acronyms found in Title 35A, Chapter 3, Employment Support Act, Sections R986-100-103, R986-100-104, and R986-700-701.1, the following definitions apply to CCQS:

(1) "CC subsidy" means a Child Care assistance subsidy payment.

(2) "CCL" means Utah Department of Health, Child Care Licensing Program.

(3) "Certified quality rating" means the CCQS rating determined by applying the CCQS framework and assigned by OCC.

(4) "Certified Quality Rating Review Committee" or "Review Committee" means a committee consisting of one representative from OCC, one representative from a licensed private 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.

(5) "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.

(6) "CCQS status" means the status assigned by OCC to a program without a default rating or certified quality rating.

(7) ~~["DWS-eligible"]~~ "Eligible program" or "eligible provider" means a provider who:

(a) is classified as a CCQS-eligible license type from CCL, in accordance with OCC policy;

~~(b) meets CCDF eligibility requirements;~~

~~(b)c~~ (e) is compliant with CCL licensing requirements;

~~(e)d~~ (d) has followed the CCL process to indicate the program will accept funding from OCC, including funding for children covered by CC subsidy; and

~~(d)e~~ (e) can potentially receive CC subsidy and OCC grants, including ESG, if approved.

(8) "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.

(9) "License in good standing" means a program is currently licensed by CCL, but not with a conditional license.

(10) "Not participating" is a CCQS ~~[S]~~ status referring to a program that:

(a) has ~~[withdrawn from]~~ opted out of participation in the CCQS;

(b) ~~[does not hold]~~ is not classified as a [center] CCQS-eligible license [in good standing] type from CCL, in accordance with OCC policy;

(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-]~~ CCQS-eligible.

(11) "Denied participation" is a CCQS status referring to an eligible program that is operating on a conditional license from CCL.

~~[(+)]~~ (12) "Program" refers to an individual location of a child care business.

R986-700-741. CCQS Rating and Status.

(1) Each ~~[licensed center]~~ program of an eligible license type from CCL shall receive a CCQS rating or status, unless the program withdraws from participation following the process established by OCC policy.

(a) A licensed center program who chooses not to apply for a certified quality rating will receive a default Foundation of Quality rating.

(b) ~~[A DWS-Eligible]~~ An eligible child care program shall [is required to] participate in CCQS [to remain an eligible provider. Participation means] by maintaining at least a default Foundation of Quality rating. An eligible [provider] program is not required to submit an application for a certified quality rating.

(c) ~~[All]~~ CCQS ratings or statuses shall be made public on the Care About Childcare website.

(d) ~~[A DWS-]~~ An eligible child care program which withdraws from participation in CCQS will become ineligible to receive CC subsidy and CCQS grants or funding.

(2) A program may apply for a certified quality rating in accordance with OCC policy through the Care About Childcare website.

(a) A rating shall be awarded or a status shall be assigned no later than 180 days after the application was submitted.

(b) Certified quality ratings will be published publicly on the first day of the month of the certified quality rating period.

(3) A certified quality rating shall remain in place during the 12-month certified quality rating period unless a program:

(a) loses its license in good standing and goes on conditional license; or

(b) is disqualified from accepting funds from CCDF.

(4) The 12-month certified quality rating period may be modified when a program is receiving CCQS technical assistance and support from OCC, in accordance with OCC policy.

(5) Recertification. ~~[Upon expiration of the certified quality rating period, a]~~ A program must recertify [in order] to maintain a certified quality rating.

(a) A program must follow the recertification procedures established by OCC policy.

(b) A program failing to recertify in a timely manner may receive one of the following ratings or statuses until a certified quality rating is awarded:

(i) a default Foundation of Quality rating for ~~[a]~~ an eligible program [that is DWS-Eligible];

(ii) not participating status for a program that is not ~~[DWS-Eligible]~~ eligible; or

(iii) denied participation status for a program operating on a conditional license at the time of recertification.

KEY: child care, grant programs

Date of Last Change: ~~[March 31]~~, 2022

Notice of Continuation: August 28, 2020

Authorizing, and Implemented or Interpreted Law: 35A-3-203; 35A-3-310; 53F-5-210

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

Utah Admin. Code Ref (R no.): R990-12

Filing ID
54555

Agency Information

1. Department:	Workforce Services	
Agency:	Housing and Community Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information**2. Rule or section catchline:**

R990-12. State Small Business Credit Initiative Program Fund

3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

This rule is no longer necessary as a result of H.B. 17 passed during the 2022 General Session which moved and renumbered provisions related to the State Small Business Credit Initiative Program Fund from the Department of Workforce Services to the Governor's Office of Economic Opportunity. The Governor's Office of Economic Opportunity will file a new rule under the correct title should it determine a rule is required.

4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

This rule is repealed in its entirety.

Please note that the Notice of Effective Date of this rule change may be filed after the date shown in Box 10. The Notice of Effective Date may be filed at any time between 06/21/2022 and 09/12/2022.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This repeal is not expected to have any fiscal impact on state government revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 17 (2022).

B) Local governments:

This repeal is not expected to have any fiscal impact on local governments' revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 17 (2022).

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

This repeal is not expected to have any fiscal impact on small business revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 17 (2022).

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

This repeal is not expected to have any fiscal impact on non-small business revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 17 (2022).

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

This repeal is not expected to have any fiscal impact on other persons revenues or expenditures beyond any impact addressed in the fiscal note of H.B. 17 (2022).

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

The repeal of this rule requires no action or compliance by any persons.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this rule repeal will not result in a fiscal impact beyond what was addressed in the fiscal note of H.B. 17 (2022). Casey Cameron, Executive Director

6. A) 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
Total Fiscal Cost	\$0	\$0	\$0
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
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) 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.

Citation Information

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

Section 35A-8-1201 et seq.		
----------------------------	--	--

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

A) Comments will be accepted until:	06/14/2022
--	------------

10. This rule change MAY become effective on:	07/01/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	04/25/2022
--	-----------------------------------	--------------	------------

R990. Workforce Services, Housing and Community Development.

[R990-12. State Small Business Credit Initiative Program Fund. R990-12-1. Authority.

(1) Pursuant to Section 35A-8-1201 et seq., the Housing and Community Development Division is the administrator of the State Small Business Credit Initiative Program Fund. The Division may provide these services, in whole or in part, under contract as determined by competitive bid.

(2) The legal authority for these rules is found in Section 35A-8-1202.

R990-12-2. Purpose.

The State Small Business Credit Initiative Program Fund provides loans and loan guarantees to encourage lending from financial institutions to eligible small businesses within the state as defined by the funding sources contributing to the Fund.

R990-12-3. Definitions.

(1) "Annual Receipts" to the fund include grants made by the federal government and state legislative appropriations if any, but does not include program income.

(2) "Program Income" is defined as fees and interest income generated by participation in the program.

R990-12-4. Credit Advisory Committee.

The Division will establish a Credit Advisory Committee. Utah financial institutions may submit an application of a small business borrower for private funding to the Committee. The Committee will evaluate the application and make recommendations to the Division on the size, scope, and loan or loan loss reserve participation amount suitable for the applicant. Additionally, the Committee will advise on application processes, underwriting criteria and procedure of the Fund to ensure that program objectives are met.

R990-12-5. Eligibility.

(1) Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be considered by the Division.

(2) Eligible applicants include Small Businesses (defined as having no more than 750 employees), which:

(a) applied for a credit product and were denied by a financial institution; and

(b) the financial institution sponsors the application to the Fund as described in the Application Procedures; or

(c) directly respond to a specific Request for Applications (RFA) published by the Division.

R990-12-6. Application Requirements.

(1) Applications shall be submitted on forms published, and in accordance with the procedures outlined by the Division with the advice of the Committee. Completed applications which have been accepted for processing will be placed on the next available Committee agenda for review and recommendation.

(2) The primary process for submitting an application to the fund is as follows:

(a) An Eligible Small Business must apply for a credit product at a financial institution which has a signed a State Small Business Credit Initiative Program Fund Participation Agreement with the Division.

(b) The small business applicant must have been deemed ineligible for current banking products offered by the financial institution.

(c) The participating financial institution will submit an application form, in addition to the relevant documentation and underwriting criteria, to the Division and specify the type, amount and reason for a loan participation or loan guarantee on the transaction.

(d) The Committee at its discretion may interview parties involved in the transaction to further clarify any information as part of the application review prior to issuing a recommendation to the Director.

~~(3) An applicant may respond to a specific Request for Applications issued by the Division on forms prescribed by the Division.~~

R990-12-7. Application Review Procedures.

~~(1) The Committee will review applications and make recommendations on whether to fund a loan or loan guarantee at regularly scheduled review meetings as published on the Division's website.~~

~~(2) The process for review of new applications for loans and loan guarantees shall be as follows:~~

~~(a) Submission of an application, on or before the applicable deadline to the Division program staff for technical review and analysis.~~

~~(b) Incomplete applications will be held by the staff pending submission of required information.~~

~~(c) Complete applications accepted for processing will be placed on the next available review agenda.~~

~~(d) At the review the Committee may either recommend:~~

~~(i) denial of the application;~~

~~(ii) the issuance of the requested loan or loan guarantee~~

~~(iii) a modified issuance of a loan or loan guarantee~~

~~(iv) further analysis of the viability of the project through further collection of documentation prior to issuing a decision on the funding request.~~

~~(e) Final recommendations of the Committee on issuance or denial of applications will be forwarded to the Director.~~

~~(f) The Director may issue loans or loan guarantees after reviewing the recommendation of the Committee.~~

R990-12-8. Loan Loss Reserve Fund.

~~There is created a loan loss reserve fund to be used to secure the loan guarantees issued by the Division. The Division may issue guarantees in an amount up to a ten to one ratio of balances within the loan loss reserve fund. Neither the State nor the Division are liable for guarantees issued beyond the balance of the reserve fund. Each participating financial institution shall be informed of this stipulation via a participation agreement with the Division prior to participating in the loan guarantee program.~~

R990-12-9. Procedures for Electronic Meetings.

~~(1) These provisions govern any meeting at which one or more members of the Committee or one or more applicants appear telephonically or electronically pursuant to Section 52-4-207.~~

~~(2) If one or more members of the Committee or one or more applicants or sponsors can not attend a regularly scheduled Committee meeting in person, that member, applicant or sponsor may participate in the meeting electronically or telephonically.~~

KEY: small business loans, loan guarantees

Date of Last Change: September 12, 2012

Notice of Continuation: September 12, 2017

Authorizing, and Implemented or Interpreted Law: 35A-8-1201 et seq.]

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.):	R986-300-306	Filing ID: 54554
-------------------------------	--------------	------------------

Agency Information

1. Department:	Workforce Services	
Agency:	Employment Development	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:

R986-300-306. Time Limits

3. Effective Date:

04/25/2022

4. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):

Changes eligibility time limit for participation in the Refugee Cash Assistance Program from 8 to 12 months, and makes other changes reflecting current guidance adopted by the federal Office of Refugee Resettlement (ORR) governing the program.

5. Summary of the new rule or change (What does this filing do?):

Adopts new time limit for eligibility to receive assistance from the Refugee Resettlement Program from 8 to 12 months. Retains 8-month eligibility limit for refugees with eligibility dates prior to 10/01/2021. Clarifies language that the date of eligibility for assistance is the date of entry into the United States, except in certain circumstances. Adds language addressing assistance eligibility of Afghan refugees due to changes in federal law and policy. (EDITOR'S NOTE: A corresponding proposed amendment is under ID 54577 in this issue, May 15, 2022, of the Bulletin.)

6. A) The agency finds that regular rulemaking would:

- | | |
|---|---|
| x | cause an imminent peril to the public health, safety, or welfare; |
| x | 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 reasons and justifications for this finding:

On 02/18/2022, the federal ORR issued new guidance providing that Afghan humanitarian parolees may be eligible to receive assistance, and including definitions and time frames for Afghan parolees. The state is unable to provide assistance to Afghan humanitarian parolees without this rule change because current state rules deny assistance to humanitarian parolees. This rule change is necessary so the state may access federal funding to help Afghan refugees, and is tailored to comply with federal guidelines.

On 03/28/2022, the federal ORR published new guidance allowing states to offer up to twelve months of refugee resettlement financial assistance instead of eight months. The state will be unable to draw down the additional funds without this rule change. Without this change, individuals otherwise eligible for assistance would be denied because funds are not available.

This emergency rule amendment is being put in place until a final rule can be enacted under the regular rulemaking process.

Fiscal Information**7. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

This rule amendment is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee this new language. This new language will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state through the federal ORR.

B) Local governments:

This rule amendment 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.

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

This rule amendment is expected to have an indirect fiscal benefit for small businesses because covered individuals will be able to receive additional months of benefits, thereby increasing the individuals' ability to purchase goods and services from small businesses.

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

It is anticipated that this rule amendment will allow approximately 1,020 covered individuals to be eligible to receive financial assistance for additional months, based on data obtained on 04/14/2022. The average financial assistance payment is \$109 each month per individual, and \$296 each month per household.

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

This rule amendment is not expected to cause any compliance costs for affected persons because this new language does not create any new administrative fees.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

The funding for refugee resettlement financial assistance is provided by the federal ORR. The ORR allows states to administer a refugee cash assistance program consistent with a state's Temporary Assistance for Needy Families (TANF) program. The Department of Workforce Services (DWS) currently administers the Refugee Resettlement Program with the goal of helping refugees assimilate and achieve self-sufficiency. By extending the number of months covered individuals may receive financial assistance, Utah will be able to better achieve this goal and continue to support communities and improve the lives of individuals. This rule change is needed to access the funding for the Refugee Resettlement Program. Casey Cameron, Executive Director

Citation Information**8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 35A-3-103	45 CFR 400.65 through 400.68	
-------------------	------------------------------	--

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	04/22/2022
--	-----------------------------------	--------------	------------

R986. Workforce Services, Employment Development.**R986-300. Refugee Resettlement Program.****R986-300-306. Time Limits.**

(1) A refugee's eligibility date for RRP is the date of entry into the United States.

(a) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(b) The date of entry for a victim of trafficking is established by the certification date determined by the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR).

(c) "Afghan Humanitarian Parolee" means citizens or nationals of Afghanistan paroled into the United States between July 31, 2021 and September 30, 2022, including spouses and children of paroled individuals, and parents or guardians of paroled individuals who are unaccompanied children. The eligibility date for Afghan Humanitarian Parolees is the date of entry into the community, as determined by the ORR.

(2)(a) A refugee with an eligibility date on or after October 1, 2021, is eligible for RRP financial assistance only during the first twelve months after the eligibility date.

(b) A refugee with an eligibility date before October 1, 2021, is eligible for RRP financial assistance only during the first eight months after the eligibility date.

(c) Notwithstanding Subsections R986-300-306(2)(a) and (2)(b), an Afghan Humanitarian Parolee is eligible for RRP financial assistance only until March 31, 2023, or until the end of the individual's parole term.

(3) Regardless of eligibility date, RRP financial assistance cannot be paid for any months prior to the date of application for assistance. (1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.]

KEY: refugee resettlement program, SNAP

Date of Last Change: April 25, 2022

Notice of Continuation: August 31, 2020

Authorizing, and Implemented or Interpreted Law: 35A-3-103; 45 CFR 400.65 through 400.68

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 adminrules.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.):	R131-3	Filing ID: 53560
Effective Date:	04/20/2022	

Agency Information

1. Department:	Capitol Preservation Board	
Agency:	Administration	
Room no.:	Suite 120	
Building:	State Capitol	
Street address:	350 N. State Street, 120 State Capitol	
City, state and zip:	Salt Lake City, UT 84114	
Mailing address:	PO Box 142110	
City, state and zip:	Salt Lake City, UT 84114-2110	
Contact person(s):		
Name:	Phone:	Email:
Dana Jones	801-538-3074	danajones@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R131-3. Use of Magnetometers on Capitol Hill
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Subsection 63C-9-301(3)(a) states that the board shall make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking 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:

No written comments were received.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides for the use of magnetometers at the Capitol Hill Complex for security purposes.

This rule recognizes four potential security levels at the Capitol Hill Complex and set forth the duties and obligations of Capitol Hill Security and the Capitol Preservation Board during each security level.

This rule was substantively amended by the Capitol Preservation Board, effective 08/04/2021 to ensure security of the Capitol Hill Complex in response to recent threats to the Capitol Hill Complex.

Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Dana Jones, Executive Director	Date:	04/20/2022
-------------------------------------	--------------------------------	-------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R164-26	Filing ID: 50343
Effective Date:	04/18/2022	

Agency Information

1. Department:	Commerce	
Agency:	Securities	
Building:	Heber M. Wells	
Street address:	160 E 300 S	
City, state and zip:	Salt Lake City, UT 84114-2316	
Mailing address:	PO Box 146760	
City, state and zip:	Salt Lake City, UT 84114-6760	
Contact person(s):		
Name:	Phone:	Email:
Charles Lyons	801-530-6600	clyons@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R164-26. Consent to Service of Process
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 Sections 61-1-24 and 61-1-26. Subsection 61-1-24(a)(1)(a) authorizes the Division of Securities (Division) to make, amend, or rescind a rule when necessary to carry out the chapter. Subsection 61-1-26(7) requires applications for registration to include an irrevocable consent to service of process and authorizes the Division to prescribe by rule the form of that consent.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received regarding this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule sets forth the requirements for the consent to service of process form required to be filed with the Division. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jason Sterzer, Division Director	Date:	04/18/2022
-------------------------------------	----------------------------------	-------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R251-401	Filing ID: 50355
Effective Date:	04/28/2022	

Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14717 S. Minuteman Drive	
City, state and zip:	Draper, UT 84020	
Contact person(s):		
Name:	Phone:	Email:
Matt Anderson	801-545-5589	mattanderson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R251-401. Supervision Fees
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 under Sections 63G-3-201, 64-13-10, and 64-13-21. The purpose of this rule is to define the Utah Department of Corrections' (UDC) policy regarding offenders' monthly supervision fees including criteria for the suspension or waiver of fees and the circumstances under which an offender may request a hearing.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received, supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The statutes are still required. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Brian Nielson, Executive Director	Date:	04/28/2022
--	---	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R317-3	Filing ID:	50777
Effective Date:	04/26/2022		

Agency Information

1. Department:	Environmental Quality		
Agency:	Water Quality		
Room no.:	Third Floor		
Building:	Multi Agency State Office Building (MASOB)		
Street address:	195 N 1950 W		
City, state and zip:	Salt Lake City, UT 84116		
Mailing address:	PO Box 144870		
City, state and zip:	Salt Lake City, UT 84114		
Contact person(s):			
Name:	Phone:	Email:	
Judy Etherington	801-536-4344	jetherington@utah.gov	
Ken Hoffman	801-536-4313	kenhoffman@utah.gov	
Harry Campbell	385-501-9583	hcampbell@utah.gov	
Please address questions regarding information on this notice to the agency.			

General Information

2. Rule catchline:
R317-3. Design Requirements for Wastewater Collection, Treatment and Disposal Systems
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 19, Chapter 5, Water Quality Act, authorizes the Water Quality Board to generate rules such as Rule R317-3. Section 19-5-106 authorizes the director to develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state; to review plans, specifications, or other data relative to pollution control systems or any part of the systems

provided for in this chapter; to issue construction or operating permits for the installation or modification of treatment works or any parts of the treatment works; and to meet the requirements of federal law related to water pollution.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received from interested persons since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule creates a general treatment standard for domestic wastewater treatment systems and design guidelines for collection systems to help meet the requirements of the Water Quality Act to protect the public health and the environment. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	John K. Mackey, Interim Director	Date:	04/26/2022
--	-------------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R590-238	Filing ID:	53285
Effective Date:	05/02/2022		

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule catchline:**

R590-238. Captive Insurance Companies

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, the Insurance Code. Section 31A-37-106 authorizes the insurance commissioner to write rules to determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company; require a statement, document, or information to be provided to the commissioner to obtain a certificate of authority; determine evidence a captive insurance company shall provide under Subsection 31A-37-201(4)(b); prescribe one or more capital requirements for a captive, in addition to those required in Section 31A-37-204; waive or modify a public notice and hearing requirement for certain types of captive insurance company; approve reliable methods of valuation and rating; prohibit or limit an investment that threatens the solvency or liquidity of a pure captive insurance company or an industrial captive insurance company; determine the financial reports a sponsored captive insurance company shall file annually; prescribe required forms and reports; establish one or more standards regarding risk management functions; and establish requirements for obtaining, maintaining, and renewing a certificate of dormancy.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department of Insurance has received no written comments regarding this rule during the past five years.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule sets forth the financial, reporting, record-keeping, and other requirements necessary for the regulation of captive insurance companies as required under Title 31A, Chapter 37, Captive Insurance Companies Act. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	05/02/2022
--	---	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R698-9	Filing ID:	51866
--------------------------------------	--------	-------------------	-------

Effective Date:	04/19/2022
------------------------	------------

Agency Information

1. Department:	Public Safety	
Agency:	Administration	
Building:	Calvin Rampton Complex	
Street address:	4501 S. 2700 W. 1st Floor	
City, state and zip:	Salt Lake City, UT 84119-5994	
Mailing address:	PO Box 141775	
City, state and zip:	Salt Lake City, UT 84114-1775	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov

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

General Information**2. Rule catchline:**

R698-9. Utah Law Enforcement Memorial Support Restricted Account

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 Section 53-1-120, which requires the commissioner of the Department of Public Safety to make rules providing procedures for an organization to apply to receive funds from the Utah Law Enforcement Memorial Support Restricted Account.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have not been any comments received during or since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 53-1-120, and is necessary to establish procedures for an organization to apply to receive funds from the Utah Law Enforcement Memorial Support Restricted Account. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jess L. Anderson, Commissioner	Date:	04/19/2022
--	-----------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-1	Filing ID: 51904
Effective Date:	04/19/2022	

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Ted Black	801-256-2380	tblack@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R710-1. Concerns Servicing Portable Fire Extinguishers
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 Section 53-7-204. Subsection 53-7-204(1)(b)(i) requires the Utah Fire Prevention Board (Board) to make rules establishing standards for the prevention of fire and for the protection of life and property against fire and panic. In addition, Subsection 53-7-204(1)(k) states that the Board shall "regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property." The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers, to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, and to outline requirements for adjudicative proceedings.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have not been any comments received during or since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 53-7-204, and is necessary to establish requirements under Subsection 53-7-204(1)(k) to regulate the sale and servicing of portable fire extinguishers and automatic fire suppression systems in the interest of safeguarding lives and property. This rule establishes licensing requirements for business concerns servicing portable fire extinguishers, requirements for certificates of registration of persons servicing portable fire extinguishers, service tag requirements, and requirements for adjudicative proceedings. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-2	Filing ID: 51900
Effective Date:	04/19/2022	

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Ted Black	801-256-2380	tblack@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R710-2. Rules Pursuant to the Utah Fireworks Act
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 Section 53-7-204. Subsection 53-7-204(1)(b)(ii) requires the Utah Fire Prevention Board to make rules establishing safety and other requirements for placement and discharge of display fireworks on the basis of the state fire code and relevant publications of the National Fire Protection Association.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have not been any comments received during or since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 53-7-204, and is necessary to establish minimum safety standards for retail indoor or outdoor storage, handling, and sale of class C common state approved explosives; and requirements for licensing of importers, wholesalers, display operators, special effects operators, flame effects operators, and flame effect performing artists. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-3	Filing ID: 51897
Effective Date:	04/19/2022	

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Ted Black	801-256-2380	tblack@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R710-3. Assisted Living Facilities

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 Section 53-7-204. Subsection 53-7-204(1)(b)(i)(B) requires the Utah Fire Prevention Board to make rules to establish standards for the prevention of fire and for the protection of life and property against fire and panic in an assisted living facility.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have not been any comments received during or since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Section 53-7-204. The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities. This rule establishes the criteria used by the state and local fire departments in the inspection of these facilities. These inspections ensure the safety of the occupants from the threat of fire. Many of the individuals in these facilities have a diminished capacity for self preservation. This rule sets a standard to protect them. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-4	Filing ID: 51899
Effective Date:	04/19/2022	

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov

Ted Black	801-256-2380	tblack@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board
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 Section 53-7-204. Subsection 53-7-204(1)(b)(i) requires the Utah Fire Prevention Board to establish standards for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings; building or structure used or intended for use as an asylum, a mental hospital, a hospital, a sanitarium, a home for the elderly, an assisted living facility, a children's home or day care center, or any building or structure used for a similar purpose; or place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have not been any comments received during or since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required under Section 53-7-204, and is necessary to establish standards for fire safety equipment in buildings under the State Fire Prevention Board as listed in Subsection 53-7-204(2)(b)(i). Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-7	Filing ID:	51905
Effective Date:	04/19/2022		

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Ted Black	801-256-2380	tblack@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R710-7. Concerns Servicing Automatic Fire Suppression Systems
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 Sections 53-7-204 and 53-7-216. Section 53-7-204 requires the Utah Fire Prevention Board to make rules to establish standards for the prevention of fire and for the protection of life and property against fire and panic. Section 53-7-216 requires the Utah Fire Prevention Board to prescribe by rule an application form and standards for licensure or certification qualification, renewal, and revocation, for those who service portable fire extinguishers or fire suppression systems that discharge, or automatically detect and discharge, an approved fire extinguishing agent onto or in the area of a fire.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have not been any comments received during or since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required under Sections 53-7-204 and 53-7-216. This rule is necessary to establish licensing requirements for the companies and persons that install and service fire suppression systems, requirements for the servicing and maintenance of fire suppression systems, and requirements for service tags and labels for fire suppression systems. This rule applies to systems regulated by the state adopted editions of National Fire Protection Association (NFPA), Standard 12, Standard on

Carbon Dioxide Extinguishing Systems; NFPA, Standard 12A, Halon 1301 Fire Extinguishing Systems, 2009 edition; NFPA, Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; NFPA, Standard 17, Standard for Dry Chemical Extinguishing Systems; NFPA, Standard 17A, Standard for Wet Chemical Extinguishing Systems; NFPA, Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations; NFPA, Standard 2001, Clean Agent Fire Extinguishing Systems. These standards are not adopted elsewhere in statute or rule. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R710-9	Filing ID: 51906
Effective Date:	04/19/2022	

Agency Information

1. Department:	Public Safety	
Agency:	Fire Marshal	
Street address:	410 W 9800 S, Suite 372	
City, state and zip:	Sandy, UT 84070	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Ted Black	801-256-2380	tblack@utah.gov

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

General Information**2. Rule catchline:**

R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act

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 Section 53-7-204, which requires the Utah Fire Prevention Board (Board) make rules to establish standards for the prevention of fire and or the protection of life and property against fire and panic in buildings specified under Subsection 53-7-204(1)(b). This

rule establishes conduct of the Board and establishes the means where by the Board may amend the fire code. This rule also establishes the Fire Advisory and Code Analysis Committee, the Budget Subcommittee, and the Amendment Subcommittee. Section 53-7-503 authorizes the Utah Fire Prevention Board to adopt rules to identify lighters or classes of types of lighters that are novelty lighters, and to provide for informal adjudicative hearings for appeals of decisions regarding novelty lighters. Subsection 53-7-203(10) requires the Fire Marshal Division (Division) to implement rules made by the Board under Section 53-7-503. Section 53-7-109 requires the Division to make rules providing procedures for an organization to apply to the Division to receive a distribution from the Firefighter Support Restricted Account. Title 53, Chapter 7, Part 1, State Fire Marshal Division Administration, allows for special deputy fire marshals to be appointed by the state fire marshal. This rule outlines the process by which deputy fire marshals are appointed. This rule will be updated to include the above referenced statutory authorizations following the five-year review.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

There have not been any comments received during or since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is required under Sections 53-7-204, 53-7-503, and 53-7-109. This rule is necessary to provide minimum standards for safeguarding life and property from the hazards of fire and explosion, for Board meeting conduct, for deputizing Special Deputy State Fire Marshals, for procedures to amend incorporated references, for establishing Board subcommittees, for enforcement of the rules of the State Fire Marshal, for requirements for the firefighter support restricted account, for regulation of novelty lighters, for procedures for the issuance of blasting permits, and for amendments and additions. This rule also clarifies that the Board shall act as the hearing authority in the event that a decision made by the State Fire Marshal's Office is appealed. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Ted Black, State Fire Marshal	Date:	04/19/2022
--	-------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R746-313	Filing ID: 51956
Effective Date:	04/25/2022	

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
Contact person(s):		
Name:	Phone:	Email:
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R746-313. Electrical Service Reliability
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Utah law charges the Public Service Commission (PSC) with ensuring electric public utilities provide safe, adequate, and reliable electric service, including crafting and implementing regulations to those ends. Section 54-4-7 (providing the PSC "shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility" and public utilities "shall furnish such commodity or render such service ... [as] provided in such rules"); see also Section 54-3-1 (charging the PSC with ensuring utilities provide service that "will be in all respects adequate"); and Section 54-4-2. This rule establishes requirements for electric utilities to monitor and report on electric service reliability, according to widely accepted industry standards, to fulfill these provisions of the Utah Code.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No comments have been received since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
The rule is necessary per Sections 54-3-1, 54-4-2, and 54-4-7 and to ensure Utah customers enjoy reliable, adequate electric utility service. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Thad LeVar, PSC Chair	Date:	04/25/2022
--	-----------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R746-400	Filing ID:	51977
Effective Date:	04/25/2022		

Agency Information

1. Department:	Public Service Commission	
Agency:	Administration	
Building:	Heber M Wells Building	
Street address:	160 E 300 S, 4th Floor	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 4558	
City, state and zip:	Salt Lake City, UT 84114-4558	
Contact person(s):		
Name:	Phone:	Email:
Yvonne Hogle	801-530-6709	yhogle@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R746-400. Public Utility Reports
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Rule 746-400 is enacted under Sections 54-2-1, 54-3-21, 54-5-2, 54-8b-2, and 63G-2-101. Under Section 54-3-21, the Public Service Commission (Commission) is tasked with regulating utilities and must be able to access information related to the public utilities' business as is recorded in the submitted reports. Specifically, the reports will assist the Commission in its decisions as it regulates and supervises the public utilities. In addition, having the information from the reports is crucial for the proper regulation of these public utilities because the public utilities' business affects their ability to provide just and reasonable services to Utah customers. Section 54-2-1 requires this rule because it defines "Reporting Entity" and a telecommunications corporation is a reporting entity (and is referenced as such in this rule), subject to the requirement as a reporting entity to submit the referenced reports to the Commission. Section 54-8b-2 requires this rule because the statute contains several definitions that

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

reference and contain information that is necessary for telecommunications corporations to report to the Commission. Section 54-5-2 references "Gross operating expenses" and how they are to be determined by the executive director of the Department of Commerce. The executive director must determine these expenses using the reports that are required by the Commission under Rule R746-400. Section 63G-2-101 requires the disclosure of public information which is filed with the Commission. Since the Commission requires reporting entities to file the reports, this rule is needed to provide a means by which any information that reporting entities deem as confidential is protected from disclosure, specifically referencing the Government Records and Management 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:

No comments have been received since the last five-year review of this rule.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The reasons as to the requirement for this rule are provided in Box 3 above and they still exist today. Therefore, the rule is still needed. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Thad LeVar, PSC Chair	Date:	04/25/2022
--	-----------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R907-80	Filing ID:	53088
--------------------------------------	----------------	-------------------	--------------

Agency Information

1. Department:	Transportation
Agency:	Administration
Room no.:	Administrative Suite, 1st Floor
Building:	Calvin Rampton
Street address:	4501 S 2700 W
City, state and zip:	Taylorsville, UT 84129
Mailing address:	PO Box 148455
City, state and zip:	Salt Lake City, UT 84114-8455

Contact person(s):

Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule catchline:

R907-80. Disposition of Surplus Land

3. A concise explanation of the particular statutory provisions under which the Rule is enacted and how these provisions authorize or require this Rule:

Sections 72-5-111, 72-5-117, 72-5-404, 78B-6-520.3, and 78B-6-521 authorize the Department to make this rule. This rule provides legal authority and procedures the Department of Transportation (Department) follows to sell its surplus real property. The Department uses proceeds from the sale of surplus property to fund new highway projects.

4. A summary of written comments received during and since the last five-year review of this Rule from interested persons supporting or opposing this Rule:

The Department has not received any written comments during and since the last five-year review of this rule from interested persons supporting or opposing this rule.

5. A reasoned justification for continuation of this Rule, including reasons why the agency disagrees with comments in opposition to this Rule, if any:

This rule provides legal authority and procedures the Department follows to sell its surplus real property. The Department uses proceeds from the sale of surplus property to fund new highway projects. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Bracerias, PE, Executive Director	Date:	04/21/2022
--	---	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R930-9	Filing ID: 52149
Effective Date:	04/25/2022	

Agency Information

1. Department:	Transportation	
Agency:	Preconstruction	
Room no.:	Administrative Suite, 1st Floor	
Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 148455	
City, state and zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Leif Elder	801-580-8296	lelder@utah.gov
Becky Lewis	801-965-4026	blewis@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	loriedwards@agutah.gov

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

General Information

2. Rule catchline:
R930-9. Detection and Elimination of Unauthorized Discharges into Drainage Systems, Enforcement of Water Laws, Sanctions for Violation, and Permitting
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Sections 72-7-102 and 72-7-104 authorize the Department of Transportation (Department) to detect, investigate, eliminate, and enforce against any non-stormwater discharge, including illegal dumping, to its drainage systems, and within its right-of-way. Section 72-1-201 grants the Department authority to make rules for the administration of the Department, state transportation systems, and programs such as the Utah Pollutant Discharge Elimination System to keep its Municipal Separate Storm Sewer System Permit.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

The Department has not received any written comments during and since it made this rule five years ago from interested persons supporting or opposing this rule

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

The Department must regulate non-stormwater discharge, including illegal dumping, to its drainage systems, and within its right-of-way to keep its Municipal Separate Storm Sewer System Permit. This administrative rule is the mechanism the Department has to regulate this unlawful activity. Therefore, this rule must be continued.

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	4/25/2022
--	--	--------------	-----------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R994-404	Filing ID: 54375
Effective Date:	05/02/2022	

Agency Information

1. Department:	Workforce Services	
Agency:	Unemployment Insurance	
Building:	Olene Walker Building	
Street address:	140 E 300 S	
City, state and zip:	Salt Lake City, UT 84111	
Mailing address:	PO Box 45244	
City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov

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

General Information

2. Rule catchline:
R994-404. Payments Following Workers' Compensation

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 35A-4-502 authorizes the Department of Workforce Services (Department) to make rules necessary for the administration of the Unemployment Security Act. Section 35A-4-404 authorizes the Department to adjust the base period of a claimant for unemployment benefits if the claimant received workers' compensation or occupational disease compensation.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

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 provides claimants for unemployment benefits and Department personnel with information to determine how a claimant's receipt of workers' compensation or occupational disease compensation affects the claim for unemployment benefits and sets forth procedures for processing the claim. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	05/02/2022
--	-----------------------------------	--------------	------------

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R994-406	Filing ID: 54439
Effective Date:	05/02/2022	

Agency Information

1. Department:	Workforce Services
Agency:	Unemployment Insurance
Building:	Olene Walker Building
Street address:	140 E 300 S
City, state and zip:	Salt Lake City, UT 84111
Mailing address:	PO Box 45244

City, state and zip:	Salt Lake City, UT 84145-0244	
Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information**2. Rule catchline:**

R994-406. Fraud, Fault, and Nonfault Overpayments

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

Section 35A-4-502 authorizes the Department of Workforce Services (Department) to make rules necessary for the administration of the Unemployment Security Act. Section 35A-4-406 identifies the types of overpayments to be assessed against claimants for unemployment benefits who receive benefits to which they are not entitled and how each type of overpayment will be collected.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments have been received during the last five years or since the last five-year review.

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 provides claimants for unemployment benefits and Department personnel with information to determine the applicable overpayment and how overpayments and other penalties are established, collected, and enforced. The rule also sets forth procedures for establishing, collecting, and enforcing overpayments and other penalties. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Casey Cameron, Executive Director	Date:	05/02/2022
--	-----------------------------------	--------------	------------

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Education

Administration

No. 54420 (Amendment) R277-406: Early Learning Program and Benchmark Assessments
Published: 04/01/2022
Effective: 05/11/2022

No. 54421 (Amendment) R277-489: Kindergarten Entry and Exit Assessment - Enhanced Kindergarten Program
Published: 04/01/2022
Effective: 05/11/2022

No. 54422 (Amendment) R277-622: School-based Mental Health Qualifying Grant Program
Published: 04/01/2022
Effective: 05/11/2022

No. 54423 (Amendment) R277-726: Statewide Online Education Program
Published: 04/01/2022
Effective: 05/11/2022

No. 54424 (Amendment) R277-733: Adult Education Programs
Published: 04/01/2022
Effective: 05/11/2022

No. 54425 (Amendment) R277-916: College and Career Awareness
Published: 04/01/2022
Effective: 05/11/2022

Environmental Quality

Waste Management and Radiation Control, Radiation
No. 54370 (Amendment) R313-28-140: Qualifications of Mammography Imaging Medical Physicist
Published: 03/01/2022
Effective: 04/18/2022

Health

Administration

No. 54390 (Amendment) R380-406: Medical Cannabis Pharmacy
Published: 03/15/2022
Effective: 05/04/2022

Health Care Financing, Coverage and Reimbursement Policy
No. 54388 (Amendment) R414-312: Adult Expansion Medicaid
Published: 03/15/2022
Effective: 04/29/2022

Family Health and Preparedness, Primary Care and Rural Health

No. 54219 (Amendment) R434-30: Primary Care Grant Program
Published: 01/15/2022
Effective: 04/22/2022

No. 54219 (Change in Proposed Rule) R434-30: Primary Care Grant Program
Published: 03/15/2022
Effective: 04/22/2022

Cultural and Community Engagement

History

No. 54376 (Amendment) R455-12: Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds
Published: 03/01/2022
Effective: 04/21/2022

Labor Commission

Occupational Safety and Health

No. 54392 (Amendment) R614-1-4: Incorporation of Federal Standards
Published: 04/01/2022
Effective: 05/09/2022

NOTICES OF RULE EFFECTIVE DATES

Natural Resources

Wildlife Resources

No. 54339 (Amendment) R657-10: Taking Cougar
Published: 02/01/2022
Effective: 05/02/2022

No. 54339 (Change in Proposed Rule) R657-10: Taking
Cougar
Published: 04/01/2022
Effective: 05/02/2022

No. 54396 (Amendment) R657-13-9: Underwater
Spearfishing
Published: 04/01/2022
Effective: 05/09/2022

No. 54397 (Amendment) R657-26-5: Hearings
Published: 04/01/2022
Effective: 05/09/2022

No. 54340 (Amendment) R657-33: Taking Bear
Published: 02/01/2022
Effective: 05/02/2022

No. 54340 (Change in Proposed Rule) R657-33: Taking
Bear
Published: 04/01/2022
Effective: 05/02/2022

Workforce Services

Administration

No. 54389 (Repeal) R982-301: Councils
Published: 03/15/2022
Effective: 04/21/2022

End of the Notices of Rule Effective Dates Section