

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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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

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## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between July 02, 2022, 12:00 a.m., and July 15, 2022, 11:59 p.m. are included in this, the August 01, 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 August 31, 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 November 29, 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.

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Rule or Section Number:	R68-7	Filing ID: 54754

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R68-7. Utah Pesticide Control Rule
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
Clarifications are needed that will improve management of the program.
<b>4. Summary of the new rule or change</b> (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Clarifying language is added to make this rule easier to understand and more consistent between changes, based on feedback from program staff and suggestions from the Environmental Protection Agency. Incorrect citations are fixed. Other changes are made to make the rule text more consistent with the guidelines of 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 changes clarify rule requirements but don't alter the requirements of the program. There should be no fiscal impact to the state.

**B) Local governments:**

Local governments are not licensed as pesticide applicators or businesses and do not manage the program so they will not be impacted by the rule changes.

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

The changes clarify rule requirements but don't alter the requirements of the program. There should be no fiscal impact to small businesses.

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

The changes clarify rule requirements but don't alter the requirements of the program. There should be no fiscal impact to non-small businesses.

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

The changes clarify rule requirements but don't alter the requirements of the program. There should be no fiscal impact to other persons.

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

Compliance costs will not change because program requirements are not changing.

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

Regulatory Impact Table			
Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved the regulatory impact analysis.			

**Citation Information**

<b>6. 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:</b>		
Section 4-14-106		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/31/2022

<b>9. This rule change MAY become effective on:</b>	09/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	07/13/2022
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**R68. Agriculture and Food, Plant Industry.****R68-7. Utah Pesticide Control Rule.****R68-7-1. Authority.**

Promulgated under authority of Section 4-14-106.

**R68-7-2. Definitions.**

(1) "Commercial pesticide applicator" means any person who uses or applies pesticides for hire or compensation, or who makes pesticidal claims, remedies, or advertises for hire or compensation, or who solicits the use of pesticides for hire or compensation.

(2) "Commercial pesticide business license" means a license issued by the department to a business responsible for supervising commercial pesticide applicators employed to apply pesticides on a commercial basis.

(3) "Department" means the Utah Department of Agriculture and Food

(4) "EPA WPS" means the U.S. Environmental Protection Agency (EPA) Worker Protection Standard, or the standards described in 40 CFR 170, as of January 2, 2017, which is [herein] incorporated by reference.

(5) "EPA WPS Trainer" means a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements and may also be a graduate of an EPA approved WPS Train the Trainer Program.

(6) "Good standing" means a person has no outstanding infractions with the department and does not owe money to the department. A person who has resolved their infractions, entered into and complying with a settlement agreement with the department or who has not exhausted their rights to appeal are potentially excluded from this categorization with department approval.

(7) "Licensee" means the holder of a pesticide applicator license or a commercial pesticide business license issued by the department or a restricted use pesticide dealer.

(8) "Non-commercial pesticide applicator" means any person working as an employee of any entity, firm, or government agency who uses or demonstrates the use of any restricted use pesticide on the entity's property, or any property occupied, managed, or under the direction or authority of any entity, firm, or government agency, and does not require a commercial pesticide applicator's license.

(9) "Pesticide" means the same as the term is defined in Section 4-14-102.

(10) "Pesticide applicator" or "applicator" means a person who:

- (a) applies or supervises the application of a pesticide; or
- (b) is required by Title 4, Chapter 14-, Utah Pesticide Control Act, to have a license.

(11) "Person" means an individual or entity

(12) "Private pesticide applicator" means any person who uses, or supervises the use of, any restricted use pesticide for [the purpose of] producing any agricultural commodity on private property owned, rented, or leased by the pesticide applicator, or on the private property of another, if applied without compensation.

## NOTICES OF PROPOSED RULES

(13) "Qualifying party" means the same as the term is defined in Section 4-14-102.

(14) "Registrant" means the company responsible for the registration of a pesticide product.

(15) "Restricted use pesticide" or "RUP" means any pesticide or pesticide use restricted by the administrator of EPA or by the department.

### **R68-7-3. Registration of Products.**

Pesticide products distributed in Utah shall be registered annually with the department.

(1) Application for registration shall be made to the department on the department website, or on forms prepared and provided by the department, and shall include the following information:

(a) ~~[T]~~the name, address, telephone number, and email address of the registrant, and the name, address, telephone number, and email address of the company whose name will appear on the label, if other than the registrant;

(b) the name of the pesticide product, including the EPA Registration Number;

(c) a list of the active ingredients;

(d) if the product is an RUP, a general use pesticide, or a product claiming a Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), 7 U.S.C. Section 136 *et seq.* Section 25(b) exemption; and

(e) a complete copy of the pesticide product label as it will appear on the pesticide product.

(2) The burden shall be on the registrant to notify the department of any changes to their contact information within 30 days.

(3) The department may require submission of the complete formula of any pesticide if it is deemed necessary for the administration of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, or to enforce EPA requirements and guidelines.

(4) The product shall be registered if:

(a) it appears to the department that the composition of the product warrants the proposed claims for the product; and

(b) the product, its labeling, and any other information that may be required to be submitted, complies with the requirements of Title 4, Chapter 14, Utah Pesticide Control Act, FIFRA, and EPA rules, requirements and guidelines

(5) The registrant is responsible for the accuracy and completeness of the information submitted concerning any application for the registration of a pesticide product.

(6) Once a pesticide product is registered no further state registration other than annual renewal is required, provided:

(a) the product remains in the manufacturer's or registrant's original container; and

(b) the claims made for it, the directions for its use, and other labeling information does not differ in substance from the representations made in connection with the registration.

(7) If the name of a pesticide product is changed or there are changes in the product ingredients, a new registration is required. Other labeling changes do not require a new registration, but the registrant shall submit copies of any changes to the department as soon as they are effective.

(8) If a registered pesticide product is to be discontinued for any reason, except when suspended or canceled by the EPA, the licensee shall provide notice of discontinuation to the department.

(a) The department requires that a product be registered for a two-year discontinuation period starting from the date of the notice of discontinuation.

(b) If a product is found in commercial trade after the discontinuation period, the department shall require that the registrant register the product as outlined in Section 4-14-103.

(c) If a product is suspended or canceled by the EPA, the product shall be removed as quickly as reasonably possible from sale in Utah.

(9) The department may exempt, in its sole discretion, any pesticide that is determined either:

(a) to be adequately regulated by a federal agency; or

(b) to be of a character that is not subject to FIFRA.

(10) A registrant who desires to register a pesticide to meet special local needs pursuant to FIFRA Section 24(c) shall comply with Section 4-14-103.

(11) No registration is required for a pesticide distributed in Utah pursuant to an experimental use permit issued by the EPA or under Section 4-14-105.

(12) A registration fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid annually for each product.

(13) Each registration is renewed for a period of one year upon payment of the annual renewal fee determined by the department, pursuant to Subsection 4-2-103(2). The renewal fee shall be paid on or before June 30 of each year. If the renewal of a pesticide registration is not received ~~[prior to]~~ before July 1 of each year, an additional fee determined by the department, pursuant to Subsection 4-2-103(2), shall be assessed and added to the original registration fee, and shall be paid by the applicant before the registration renewal for that pesticide will be issued.

### **R68-7-4. Product Labeling.**

(1) Each container of pesticide distributed in Utah shall bear a label showing the information set forth in Section 4-14-104.

(2) Each pesticide label shall contain the statements, words, graphic material, and any other information required by the EPA in 40 CFR 156.

### **R68-7-5. Classification of Pesticides.**

(1) The department shall classify each pesticide product registered in Utah for either restricted use or general use according to standards consistent with FIFRA Section 3.

(2) The department may also classify other substances as pesticides or restrict the use of any substance as a pesticide if the department determines, in its sole discretion, that such a substance may pose a risk to the health or safety of the public or the environment.

(3) Restricted use pesticides shall not be used by any person that does not have a valid pesticide applicator license with the appropriate category for its use, except they may be used by:

(a) a pesticide handler, supervised by a certified pesticide applicator under the EPA WPS and who meets the qualifications in Subsection R68-7-6(6); or

(b) a pesticide handler acting upon an ~~[e]~~Emergency ~~[u]~~Use ~~[p]~~Permit issued under this rule.

### **R68-7-6. Certification of Pesticide Applicators.**

(1) A pesticide applicator shall be certified by the department as a commercial pesticide applicator, non-commercial pesticide applicator, or a private pesticide applicator.

(2) A pesticide applicator shall comply with FIFRA and Title 4, Chapter 14, Utah Pesticide Control Act.

(3) A pesticide applicator shall follow the directions on a pesticide product label.

(4) ~~[To be certified, a]~~ A pesticide applicator shall be at least ~~[eighteen]~~ 18 years of age.

(5) A ~~[commercial]~~ certified pesticide applicator may use restricted use, general use, or any other classification of pesticide, including FIFRA Section 25(b) products.

(6) A person who is at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family member, according to the family exemption of the EPA WPS, if they only apply pesticides on the privately owned agricultural establishment of a certified pesticide applicator who is also an immediate family member.

(7) An EPA WPS trainer is a certified pesticide applicator of any type who trains workers and handlers in the WPS requirements under 40 CFR 170.

(8) An EPA WPS trainer may also be a graduate of an EPA approved WPS Train the Trainer Program, as set forth in 40 CFR 170.

(9) Commercial and non-commercial EPA WPS trainers shall have the Agricultural Pest Control: Plant ~~[Pesticide]~~ pesticide category on their license, pursuant to Subsection ~~[R68-7-8]~~ R68-7-7(1)(a).

#### **R68-7-7. Pesticide Certification Categories.**

Pesticide applicators shall ~~[also]~~ be certified by the department in one or more of the pest control categories defined ~~[below]~~ in this section:

(1) Agricultural Pest Control.

(a) Plant. This category includes applicators applying pesticides to control pests in the production of agricultural crops including field crops, vegetables, fruits, pasture, rangelands, and non-crop agricultural lands.

(b) Animal. This category includes applicators applying pesticides on animals including beef and dairy cattle, swine, sheep, horses, goats, poultry, and to places on or in which animals inhabit. Doctors of veterinary medicine, or their employees, engaged in applying pesticides for hire, publicly representing themselves as pesticide applicators, or engaged in the use of pesticides, are included in this category.

(2) Forest Pest Control. This category includes applicators applying pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and Turf Pest Control. This category includes applicators applying pesticides to control ornamental and turf pests in the maintenance and production of ornamental trees, shrubs, flowers and turf. This includes controlling pests on sidewalks, driveways, and other similar locations.

(4) Seed Treatment. This category includes applicators applying pesticides on seeds in seed treatment facilities.

(5) Aquatic Pest Control.

(a) Surface Water. This category includes applicators applying pesticides to control pests in standing or running water. This pesticide category does not include applicators engaged in public health related activities included in Subsection ~~[R68-7-8(8)]~~ R68-7-7(8).

(b) Sewer Root Control. This category includes applicators applying pesticides to control roots in sewers or other related systems.

(6) Right-of-Way Pest Control. This category includes applicators applying pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.

(7) Structural and Health Related Pest Control. This category includes applicators applying pesticides in, on, or around any public or private food handling establishment; dwelling, educational institution, or medical institution; industrial building; business establishment; packing house; food-processing facility; prison; manufacturing facility; grain elevator; or any other structure or area, or immediately adjacent structure or area, to control pests. This category excludes any ~~[fumigation—pesticide applications]~~ pesticide applications included in Subsection R68-7-7(13) Fumigation Pest Control and Subsection R68-7-7(15) Wood Destroying Organisms Pest Control. This category includes applicators applying pesticides on vertebrate pests in buildings and structures, and immediately adjacent to, or no further than three feet from, buildings and structures. If the label for a structural pesticide permits the use of the pesticide more than three feet from the structure, then the pesticide may be used beyond three feet from the structure, but may not exceed the maximum distance permitted by the label.

(8) Public Health Pest Control.

(a) Commercial. This category is limited to commercial pesticide applicators who apply pesticides for the management and control of pests due to issues of medical and public health importance. This category is only valid when the pesticide applicator is actively contracted by a government entity, and is actively engaged in applying pesticides for that government entity.

(b) Non-Commercial. This category is limited to state and federal employees, county or city governments, or persons under their direct supervision, who apply pesticides in government-sponsored public health programs for the management and control of pests due to issues of medical and public health importance.

(9) Regulatory Pest Control. This category is limited to state and federal employees who:

(a) apply pesticides in a mechanical ejection device; or

(b) apply pesticides in a protective collar or other method to control regulated pests.

(10) Demonstration, Consultation, and Research Pest Control. This category includes ~~[individuals]~~ applicators who demonstrate or provide instruction to the public in the proper use, techniques, benefits, and methods of applying restricted use pesticides. This category includes agricultural compliance specialists, educational and university personnel, commercial business representatives, consultants and advisors, and persons conducting field research with restricted use pesticides. In addition to certification in this pesticide category, individuals shall also meet specific standards that may be applicable to their particular pesticide category.

(11) Aerial Application Pest Control. This category includes applicators applying pesticides by airplane, drone, helicopter, or any other type of aircraft. Aerial applicators are required to be certified in the Aerial Application Pest Control category, along with any other applicable pest control category for any intended pesticide application. Aerial pesticide applicators shall also possess a valid commercial pilot license, or equivalent remote pilot certifications, issued by the Federal Aviation Administration (FAA).

(12) Vertebrate Animal Pest Control. This category includes applicators applying pesticides for the outdoor control of vertebrate pests, such as rodents, birds, bats, predators, or domestic

animal pests. This category excludes any pesticide applications included in Subsection R68-7-7(9) Regulatory Pest Control, and specifically excludes the use of sodium cyanide and sodium fluoroacetate.

(13) Fumigation Pest Control.

(a) Stored Commodities. This category includes applicators applying fumigants to control pests in, on, or around stored grains, grain elevators, mills, structures, railroad cars, manufactured products, or similar areas or items.

(b) Structural. This category includes applicators applying fumigants to control pests while additionally tenting, sealing with filling, or completely enclosing a structure.

(c) Soil. This category includes applicators applying fumigants in and on the soil of agricultural locations.

(14) Wood Preservation Pest Control. This category includes applicators applying preservative pesticides to wood products, such as fence posts, electrical poles, railroad ties, or any other form of wood product.

(15) Wood Destroying Organisms Pest Control. This category includes applicators applying pesticides to control wood destroying pests, termites, carpenter ants, wood-boring or tunneling insects, bees, wasps, wood-decaying fungi, and any other pests destroying wood products.

**R68-7-8. Standards of Competence for Certification of Pesticide Applicators and Pesticide Businesses.**

(1) Pesticide applicators shall be at least 18 years of age ~~[in order]~~ to obtain a commercial, non-commercial, or private pesticide applicator license.

(2) The basic standards for certification of pesticide applicators have been established by the EPA, and shall be the minimum standards required for certification of pesticide applicators in Utah.

(3) Commercial and non-commercial pesticide applicators shall demonstrate competency and practical knowledge by successfully completing the written pesticide applicator core test and any additional pesticide category tests. The pesticide applicator tests shall include core standards applicable to each pesticide category, and the standards specifically identified for each pesticide category, or subcategory, as set forth in 40 C[.]F[.]R 171.103, and the EPA[-] approved Utah State Pesticide Applicator Certification Plan, including;

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

(i) the general format and terminology of pesticide labels and labeling;

(ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;

(iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;

(iv) understanding labeling requirements that a certified applicator must be physically present at the site of the application;

(v) understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;

(vi) understanding that applicators shall comply with any use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application;

(vii) understanding the meaning of product classification as either general or restricted use and that a product may be unclassified;

(viii) understanding and complying with product-specific notification requirements; and

(ix) recognizing and understanding the difference between mandatory and advisory labeling language;

(b) safety measures to avoid or minimize adverse health effects, including each of the following:

(i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;

(ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;

(iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;

(iv) common types and causes of pesticide mishaps;

(v) precautions to prevent injury to applicators and other individuals in or near treated areas;

(vi) need for, and proper use of, protective clothing and personal protective equipment;

(vii) symptoms of pesticide poisoning;

(viii) first aid and other procedures to be followed in case of a pesticide mishap; and

(ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;

(c) the potential environmental consequences of the use and misuse of pesticides, including the influence of each of the following:

(i) weather and other indoor and outdoor climatic conditions;

(ii) types of terrain, soil, or other substrate;

(iii) presence of fish, wildlife, and other non-target organisms; and

(iv) drainage patterns;

(d) the proper identification and effective control of pests, including each of the following:

(i) the importance of correctly identifying target pests and selecting the proper pesticide product for effective pest control; and

(ii) verifying that the labeling does not prohibit the use of the product to control the target pests;

(e) characteristics of pesticides, including each of the following:

(i) types of pesticides;

(ii) types of formulations;

(iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(iv) hazards and residues associated with use;

(v) factors that influence effectiveness or lead to problems such as pesticide resistance; and

(vi) dilution procedures;

(f) application equipment, including each of the following:

(i) types of equipment and advantages and limitations of each type; and

(ii) use, maintenance, and calibration procedures;

(g) selecting appropriate application methods, including each of the following:

(i) methods used to apply various forms and formulations of pesticides;

(ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, sodium cyanide, or sodium fluoroacetate requires additional certification;

(iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and

(iv) prevention of drift and pesticide loss into the environment;

(h) knowledge of all applicable state, tribal, and federal laws and regulations.; and

(i) professionalism, including understanding the importance of each of the following:

(i) maintaining chemical security for restricted use pesticides;

(ii) how to communicate information about pesticide exposures and risks with customers and the public; and

(iii) appropriate product stewardship for certified applicators.

(4) The standards for commercial, non-commercial, and private applicators do not apply to the following persons for the purposes of this rule:

(a) persons conducting research involving restricted use pesticides who have received state approval;

(b) doctors of medicine and doctors of veterinary medicine applying pesticides, drugs, or medication during ~~[the course of]~~ their normal practice, and who do not publicly represent themselves as pesticide applicators;

(c) persons using a general use disinfectant, sanitizer, or deodorizer commercially, and not for the control of insects, weeds, rodents, or similar pests, or use in settings outside of a structure; or

(d) persons using a general use fungicide for interior structural cleaning or interior structural mold remediation.

(5) Aerial Pesticide Applicator. An aerial pesticide applicator shall demonstrate competence and practical knowledge of aerial pest control in a wide variety of environments by successfully completing the aerial pesticide applicator test. Aerial pesticide applicators shall ~~[have knowledge of]~~know the significance of drift, and of the potential for non-target injury and environmental contamination. Aerial pesticide applicators shall obtain the Aerial Application Pest Control category certification, along with any additional pesticide category certifications for which they shall apply pesticides. Aerial pesticide applicators shall comply with each standard set forth by the FAA, and shall submit proof of current registration with the FAA as an additional requirement for receiving an aerial pesticide applicator certification.

(6) Private Pesticide Applicator. A private pesticide applicator shall demonstrate competence and practical knowledge by successfully completing the private pesticide applicator test, and any required additional pesticide category tests. This knowledge shall include the basic standards for certification of private applicators set forth in 40 CFR 171.105. This includes:

(a) familiarity with pesticide labels and labeling and their functions, including each of the following:

(i) the general format and terminology of pesticide labels and labeling;

(ii) understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;

(iii) understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;

(iv) understanding when a certified applicator shall be physically present at the site of the application based on labeling requirements;

(v) ~~[U]~~understanding labeling requirements for supervising non-certified applicators working under the direct supervision of a certified applicator;

(vi) understanding that applicators shall comply with each use restriction and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use restricted use pesticides for fumigation or aerial application, or predator control devices containing sodium cyanide or sodium fluoroacetate, if applicable;

(vii) understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified;

(viii) understanding and complying with product-specific notification requirements; and

(ix) recognizing and understanding the difference between mandatory and advisory labeling language;

(b) safety measures to avoid or minimize adverse health effects, including each of the following:

(i) understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;

(ii) understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;

(iii) recognition of likely ways in which dermal, inhalation, and oral exposure may occur;

(iv) common types and causes of pesticide mishaps;

(v) precautions to prevent injury to applicators and other individuals in or near treated areas;

(vi) need for, and proper use of, protective clothing and personal protective equipment;

(vii) symptoms of pesticide poisoning;

(viii) first aid and other procedures to be followed in case of a pesticide mishap; and

(ix) proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;

(c) the potential environmental consequences of the use and misuse of pesticides, including the influence of the following:

(i) weather and other climatic conditions;

(ii) types of terrain, soil, or other substrate;

(iii) presence of fish, wildlife, and other non-target organisms; and

(iv) drainage patterns;

(d) the proper identification and effective control of pests, including each of the following:

(i) the importance of correctly identifying target pests and selecting the proper pesticide product; and

(ii) verifying that the labeling does not prohibit the use of the product to control the target pests;

(e) characteristics of pesticides, including ~~[all of]~~the following:

(i) types of pesticides;

(ii) types of formulations;

(iii) compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(iv) hazards and residues associated with use;

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(v) factors that influence effectiveness or lead to problems such as pesticide resistance; and

(vi) dilution procedures;

(f) application equipment, including each of the following:

(i) types of equipment and advantages and limitations of each type; and

(ii) uses, maintenance, and calibration procedures;

(g) selecting appropriate application methods, including each of the following:

(i) methods used to apply various forms and formulations of pesticides;

(ii) knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification;

(iii) how selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse; and

(iv) prevention of drift and pesticide loss into the environment;

(h) knowledge of each applicable state, tribal, and federal laws and regulations, including understanding the WPS and the circumstances where compliance is required;

(i) certified applicator responsibilities related to supervision of non-certified applicators, including each of the following:

(i) understanding and complying with requirements in 40 C.F.R. 171.201 and 40 CFR 171.501 for private applicators who supervise non-certified applicators using restricted use pesticides;

(ii) providing use-specific instructions to non-certified applicators using restricted use pesticides under the direct supervision of a certified applicator; and

(iii) explaining appropriate state, tribal, and federal laws and regulations to non-certified applicators working under the direct supervision of a certified applicator;

(j) understanding stewardship and the importance of each of the following:

(i) maintaining chemical security for restricted use pesticides; and

(ii) how to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons;

(k) practical knowledge of pest control applications to agricultural commodities including each of the following:

(i) specific pests of relevant agricultural commodities;

(ii) how to avoid contamination of ground and surface waters;

(iii) understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas;

(iv) understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities; and

(v) relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

(7) A ~~licensed~~ private pesticide applicator that functions in a supervisory role shall be responsible for the actions of any non-certified pesticide handlers under their instruction and control.

(8) A private pesticide applicator shall provide non-certified pesticide handlers under their supervision instructions on the EPA WPS pesticide handler applicator training, including 40 CFR

171.201 and 40 CFR 170.501, and keep records of having provided these instructions for a period of two years.

(9) A private pesticide applicator shall be physically present to supervise the application of any pesticide by a non-certified handler, if such presence is required by the label of the pesticide being applied.

### **R68-7-9. Commercial Pesticide Applicator Licensing and Certification Procedures.**

(1) Commercial Pesticide Applicator and Commercial Pesticide Business License Required.

(a) Each person performing the physical act of applying a pesticide, shall be certified by the department and have a valid license issued by the department. No person shall apply, advertise for, solicit, or hold oneself out as willing to engage in the business of applying any pesticide for hire or compensation to the land or property of another at any time without becoming certified as a pesticide applicator, obtaining a commercial pesticide applicator license, and:

(i) obtaining a commercial pesticide business license, as described in Section 4-14-111 issued by the department; or

(ii) working for a company that has already obtained a commercial pesticide business license.

(b) The fees for a commercial pesticide applicator license and a commercial pesticide business license, shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(c) A commercial pesticide applicator license is required for any individual who applies pesticides for a commercial business. No person shall purchase, use, or demonstrate the use of, any restricted use pesticide, or shall apply any pesticide for a commercial business, without becoming certified and obtaining a commercial pesticide applicator license issued by the department.

(2) An applicant for a commercial pesticide applicator license shall:

(a) complete an application on the department's website or on forms prepared and provided by the department;~~and~~

(b) pay the licensing fees~~;~~ and

(c) ~~A~~a license will only be issued after the applicant has successfully passed the required pesticide applicator tests to become certified, or after recertifying according to the Continuing Education Unit (CEU) requirements.

~~(4)~~3 A testing fee, retest fee, or any related fee, may be determined by department approved testing centers, according to their own individual policies.

~~(3)~~4 An applicant for a commercial pesticide business license shall:

(a) complete an application form provided by the department;

(b) pay the licensing fee;

(c) be in good standing with the department;

(d) demonstrate good character; and

(e) provide evidence that the owner or qualifying party:

(i) is a certified pesticide applicator in ~~the State of~~ Utah;

(ii) is not a designated qualifying party or employee with any other pesticide applicator business;

(iii) has been a certified pesticide applicator for at least two years out of the ten years immediately ~~prior to~~ before the date of the commercial pesticide business application; or

(iv) holds an associate degree, or higher, in horticulture, agricultural sciences, biological sciences, pest management, or a related and relevant science degree.

(f) A person applying for a commercial pesticide business license may be exempted from the two year certification requirement if the individual's and entity's sole use of pesticides is limited to:

(i) providing ornamental and turf herbicide spot treatment services as part of a lawn maintenance service; and

(ii) using herbicides with labels that contain the signal word "caution" or "warning." [?]

(g) A commercial pesticide business operating under more than one business identity or name, from a single business location, shall be licensed separately for each business identity or name.

(h) A commercial pesticide business-with a single business identity or name, but operating from more than one business location, shall be licensed at each separate business location. Business locations that are used only for pesticide storage and mixing purposes are exempt from licensing requirements, but shall be disclosed to the department.

(i) The department may require a commercial pesticide business license applicant to change their requested business name. This may occur if the applicant requests a business name that is the same, or closely resembles, the name of a currently licensed commercial pesticide business. The department may additionally require a commercial pesticide business, or commercial pesticide business license applicant, to change their business name if the business name could reasonably cause public confusion, public alarm, or public offense. Any determination made pursuant to this subsection shall be at the sole discretion of the department in coordination with the state Division of Corporations. The purpose of this subsection is to ensure compliance with current guidance from the Division of Corporations. The department shall prioritize licensing a business name that is registered with the Division of Corporations.

(j) Each licensed commercial pesticide business location shall have a minimum of one certified commercial pesticide applicator at that location who is certified in each pesticide category for which pesticide applications are made.

(k) A franchised commercial pesticide business-licensee shall have a separate commercial pesticide business license and a separate certified commercial pesticide applicator at each business location. Additionally, franchised businesses shall be distinctly identifiable from one another, to avoid departmental and public confusion, by adding unique words or numbers to distinguish the different businesses.

(l) If a commercial pesticide business-licensee- uses a Doing Business As (DBA) name, it shall be listed on the pesticide business application along with the company name. A business may list more than one assumed name on a single registration application. Any DBA shall be registered and active with the Division of Corporations.

#### **R68-7-10. Commercial Pesticide Applicator and Commercial Pesticide Business Testing Procedures.**

(1) Commercial Pesticide Applicator Testing. To become certified, an applicant for a commercial pesticide applicator license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the required pesticide applicator tests and department application forms. Each pesticide applicator test shall be proctored at a department approved testing center.

(a) An applicant shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(b) An applicant shall find a testing center from a list of approved testing centers on the department's website.

(c) An applicant shall schedule each required pesticide applicator test with a testing center.

(d) Fees for testing may be established and charged by the testing center, including those operated by the department.

(e) An applicant may acquire study materials from the department website or purchase them from a separate vendor.

(f) An applicant shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(g) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute a violation of this rule and may serve as a basis for a denial of a license application-. Applicants are subject to state and federal law and department rules and policies regardless of whether the applicant successfully passes or not.

(h) The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(i) At least one pesticide category test shall be taken and successfully completed with a minimum score of 70% before a license may be obtained.

(j) The steps to re[-]certify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted.

(k) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(l) [w]When the completion form has been submitted, a license may be issued.

(m) The rules of a testing center, if more restrictive than those of the department, shall take precedence over those of the department during the administration of pesticide applicator tests.

(n) If the minimum score of 70% is not obtained after two attempts, the person taking the tests shall wait at least 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(2) Commercial Pesticide Business Testing. The test shall be taken by the- owner, principal agent, manager, or designated qualifying party, and that individual shall be bound by the rules for a commercial pesticide business contained in Subsection R68-7-10(1).

(a) Business license tests may be taken on any computer with internet access.

(b) In the event the individual taking the test does not successfully pass the test with a minimum score of 70%, a commercial pesticide business license shall not be issued.

#### **R68-7-11. Commercial Pesticide Applicator and Commercial Pesticide Business License Issuance.**

(1) A temporary pesticide applicator permit shall be issued automatically by email following the successful completion of the pesticide applicator core test in conjunction with each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70% before any pesticide category tests may be attempted. A temporary pesticide applicator permit is invalid if only the pesticide applicator core test is successfully completed and no additional pesticide category test is successfully completed.

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(2) The pesticide applicator and pesticide business is responsible for verifying that their license has been processed by the department.

(3) A commercial pesticide applicator license or a commercial pesticide business license shall be issued when the following conditions have been met:

(a) the applicant has submitted an application form to the department;

(b) any required fees have been paid;

(c) the applicant is in good standing with the department;

(d) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications and categories for which they have applied; and

(e) the applicant for the qualifying party for the pesticide business license meets the requirements in Section 4-14-111.

(4) A commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department -for cause, which may include any combination of the unlawful acts listed- in Section R68-7-20.

(5) If an application for a commercial pesticide applicator license or commercial pesticide business license is denied, the applicant shall be informed of the reason by email or mail.

(6) A pesticide applicator ~~is required to~~ shall have their license in their immediate possession when making a pesticide application.

(7) If a pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(8) A commercial pesticide business license shall be required for each commercial pesticide business location, other than locations used only to store and load pesticides.

(9) A new commercial pesticide applicator or commercial pesticide business license applicant who completes an application completed between November 1 and December 31 shall be licensed for the remainder of that year and the following three calendar years.

(10) Commercial Pesticide Applicator and Commercial Pesticide Business License Recertification and Renewal.

(a) Each commercial pesticide applicator and commercial pesticide business license shall expire on December 31 of the third calendar year following its issuance.

(b) Commercial pesticide applicators shall recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category tests and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulating the required amount of 24 total CEU credits during the licensure period. A minimum of two credits in law, six in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(d) The qualifying party for a commercial pesticide business shall complete the related commercial pesticide business test every three years.

(11) Records Maintained. Commercial applicators shall keep and maintain records of any pesticide applications.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) the name and address of the person or entity for whom the pesticide is applied;

(ii) the address of the pesticide application location, if the pesticide application location differs from Subsection R68-7-11(11)(a)(i) ;

(iii) the total square footage or total size of the area to be treated with pesticides;

(iv) a description of the specific target sites, crops, commodities, or stored products at the pesticide application location to which any pesticides are applied;

(v) the time and date, including the month, day, and year when the pesticide was applied;

(vi) the brand name of the pesticides, EPA registration number, and mix rate for any pesticides applied;

(vii) the total amount of pesticides, including diluted or ready-to-use (RTU) pesticides, applied per location and per application;

(viii) the purpose of the pesticide application, the pesticide target site, and pest to be treated;

(ix) the name, commercial pesticide business address, and commercial pesticide applicator license number of the certified commercial pesticide applicator who applied the pesticides; and

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department upon request.

(d) Records shall be furnished in a uniform format.

(12) Notwithstanding the requirements of this section, the department may give consideration to political subdivisions of the state, or a non-profit organization, regarding their need to obtain a [E]commercial [P]esticide [B]usiness [L]icense or the requirement of their applicators to obtain a [E]commercial [P]esticide [A]pplicator [L]icense.

(a) Consideration shall be given to political subdivisions if their charter includes a fee for pesticide services or products.

(b) Non-profit organizations may not need to obtain the commercial pesticide business license or the commercial pesticide applicator license to receive reimbursement for applications made on public land owned by the federal government or the state.

(c) Application or distribution of restricted use pesticides shall be done in accordance with this rule.

### **R68-7-12. Non-Commercial Pesticide Applicators.**

(1) Non-Commercial Pesticide Applicator License Required.

           (a) A non-commercial pesticide applicator license is required for applying restricted use pesticides for a city, county, state, or federal government entity, or for corporations, businesses, or any other entity[;] that does not require a commercial pesticide applicator license.

           (b) No person shall purchase, use, or demonstrate the use of any restricted use pesticide without becoming certified and obtaining a non-commercial pesticide applicator license issued by the department.

           (c) Each person performing the physical act of applying restricted use pesticides shall be certified and have a valid non-commercial pesticide applicator license.



(2) Non-Commercial Pesticide Applicator Application and Fee Requirements. The fees for a non-commercial pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) An application for a non-commercial pesticide applicator license shall be made on the approved department form.

(b) A non-commercial pesticide applicator license shall only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to CEU requirements.

(c) Each individual performing the physical act of applying restricted use pesticides shall be licensed as a non-commercial pesticide applicator.

(b)(d) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(3) Non-Commercial Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant should schedule required pesticide applicator tests with a testing center approved by the department.

(4) Non-Commercial Pesticide Applicator Testing Procedures.

(a) A new applicant for a non-commercial pesticide license shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved pesticide applicator tests and department application forms. Pesticide applicator tests shall be proctored at approved testing centers.

(b) An applicant for a non-commercial pesticide applicator license shall first pay licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a non-commercial pesticide applicator license shall find a testing center from a list of approved testing centers on the department's website.

(d) An applicant for a non-commercial pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under these rules. Applicants are subject to this rule, regardless ~~if~~ of whether the applicant successfully passes or not.

(f) The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(g) At least one pesticide category test must be taken and successfully completed with a minimum score of 70% before a non-commercial pesticide applicator license may be obtained.

(h) The steps to re-[certify solely by testing are the same as for an initial applicant. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(i) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(j) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(k) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(5) Non-Commercial Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(6) Non-Commercial Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the pesticide applicator core test and each pesticide category test and provided each other department requirement is met. The temporary permit will expire 30 days from the date it was issued. The pesticide applicator core test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted. A temporary pesticide applicator permit is not valid if only the pesticide applicator core test is successfully completed, and no additional pesticide category test is successfully completed.

(b) The pesticide applicator is responsible to verify their license is processed by the department.

(c) A non-commercial pesticide applicator license shall be issued when the following conditions have been met:

(i) an application form has been submitted to the department;

(ii) any fees have been paid;

(iii) the applicant is in good standing with the department; and

(iv) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied

(d) The non-commercial pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, which may include any combination of the unlawful acts given in Section R68-7-20.

(e) If an application for a non-commercial pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator ~~is required to~~ shall have their license in their immediate possession when making a pesticide application.

(g) If the pesticide applicator requests a duplicate license from the department, a fee determined by the department, pursuant to Subsection 4-2-103(2), shall be paid. The pesticide applicator must also be in good standing, having no unresolved violations or fines, before a replacement license shall be issued.

(h) A new non-commercial pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Non-Commercial Pesticide Applicator License Recertification and Renewal.

(a) Each non-commercial pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Non-Commercial pesticide applicators must recertify before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test~~(s)~~ and successfully completing each required test with a minimum score of 70%; or

(ii) participate in approved CEUs and accumulate the required amount of 24 total CEU credits during the valid license time period. A minimum of two- credits in law, six -in safety, and ten in pesticide use are required, while any combination of the three categories may be used for the remaining six credits.

(8) Records Maintained. Non-Commercial applicators shall keep and maintain records of any- restricted use pesticide applications.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall -include the following information:

(i) the name and address of the person for whom the restricted use pesticide is applied;

(ii) the address of the restricted use pesticide application location, if the pesticide application location differs from the location provided pursuant to Subsection R68-7-12(8)(b)(i);

(iii) the complete square footage of the area to be treated with restricted use pesticides;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date, including the month, day, and year when the restricted use pesticide was applied;

(vi) the brand name of the restricted use pesticides, EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the total amount of restricted use pesticides, including diluted or ready-to-use (RTU) pesticides, applied per application;

(viii) the purpose of the restricted use pesticide application, the pesticide target site, and pest to be treated; and

(ix) the name and non-commercial pesticide applicator license number of the certified non-commercial pesticide applicator who applied the pesticides.

(c) ~~[\*]~~Records shall be kept for a period of at least two years from the date of the pesticide application and shall be available for inspection by the department , upon request.

(d) Records shall be furnished in a uniform format.

### **R68-7-13. Private Pesticide Applicators.**

(1) Private Pesticide Applicator License Required.

(a) A private pesticide applicator license is required for applying restricted use pesticides on the owned, rented, or leased agricultural property of an individual. No person shall purchase, use, demonstrate the use of, or supervise the use of any restricted use pesticide without becoming certified and obtaining a private pesticide applicator license issued by the department. Each person performing the physical act of applying restricted use pesticides shall be ~~[eighteen]~~18 years of age, or older, and possess a valid private pesticide applicator license, except:

(i) a person of at least 16 years of age may apply restricted use pesticides while under the direct supervision of a certified pesticide applicator, who is also an immediate family member, according to the family exemption of the EPA WPS, and only applies pesticides on the privately owned agricultural establishment of a

certified pesticide applicator who is also an immediate family member; or

(ii) any person, ~~[eighteen]~~18 years of age, or older, employed by, or working on, a privately owned, rented, or leased agricultural property who has been trained by an actively certified Utah pesticide applicator, or trainer that has successfully completed an EPA approved Train the Trainer course, and has been instructed on the requirements of the EPA WPS for pesticide handlers.

(b) A private pesticide applicator is considered as having each- ~~of the agricultural-related pesticide [category] categories~~ on their license, specifically: Agricultural Pest Control: Plant, Agricultural Pest Control: Animal, Forest Pest Control, Ornamental and Turf Pest Control, Aquatic Pest Control: Surface Water, Structural and Health Related Pest Control, and Vertebrate Pest Control. ~~[except for the Fumigation Pest Control and Aerial Application Pest Control categories.]~~ A private pesticide applicator shall successfully complete the respective pesticide applicator tests for ~~[the Fumigation Pest Control and Aerial Application Pest Control]~~ any additional pesticide categories before applying any pesticides restricted by those categories.

(c) Issuance of a private pesticide applicator license shall be conditioned upon the applicant complying with the certification requirements determined by the department as necessary to prevent unreasonable adverse effects on the environment, and to prevent unreasonable injury to any person. A private pesticide applicator license certifies the applicator to give instructions on the EPA WPS to the workers and pesticide handlers of a private agricultural establishment.

(d) Private Pesticide Applicator Application and Fee Requirements. The fees for a private pesticide applicator license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(i) Applications for a private pesticide applicator license shall be made on the approved department form and shall be submitted to the department along with the required fee. A license will only be issued after the applicant has successfully passed the required pesticide applicator tests, or after recertifying according to the CEU requirements.

(ii) A testing fee, retest fee, or any related fee, may be determined by approved testing centers, according to their own individual policies.

(2) Private Pesticide Applicator Initial Certification.

(a) Fees for testing may be established and charged by any testing center, including those operated by the department.

(b) The applicant may acquire any necessary study materials from the department website.

(c) The applicant shall schedule required pesticide applicator tests with a testing center approved by the department.

(3) Private Pesticide Applicator Testing Procedures.

(a) A new applicant for a private pesticide license must be ~~[eighteen]~~18 years of age, or older, and shall demonstrate competency and knowledge of pesticide applications, laws, and other relevant subjects by successfully completing the approved private pesticide applicator test and department application forms. Each pesticide applicator test shall be proctored at an approved testing center.

(b) An applicant for a private pesticide applicator license shall first pay any licensing fees to the department, and obtain a receipt of license payment.

(c) An applicant for a private pesticide applicator license shall find a testing center from a list of approved testing centers on

the department's website. A test may also be proctored by a local Utah State University Extension agent.

(d) An applicant for a private pesticide applicator license shall present their receipt of license payment from the department, and valid government issued identification, to the proctor at the applicant's chosen testing center.

(e) Cheating, ejection from testing, or failure to follow the rules of the department or testing center shall, at the discretion of the department, constitute fraud under this rule. Applicants are subject to this rule, regardless ~~[if]~~of whether the applicant successfully passes or not.

(f) The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(g) The private pesticide applicator test must be taken and successfully completed with a minimum score of 70% before a private pesticide applicator license may be obtained.

(h) Upon the successful completion of the appropriate pesticide applicator tests, the applicant shall complete the department's completion form, which can be found online in the testing program.

(i) The steps to re[-]certify solely by testing are the same as for an initial applicant. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any additional pesticide category tests may be attempted.

(j) Upon the successful completion of the private pesticide applicator test, the applicant shall complete the department's completion form, and the department's pesticide applicator application form, online.

(k) The rules of a testing center, if more restricting than those of the department, shall take precedence over those of the department during the administration of the pesticide applicator tests.

(l) If the minimum score of 70% is not obtained after two attempts, the person taking the tests must wait 24 hours, pay any additional retest fees to the testing center, and begin retesting on any failed tests.

(4) Private Pesticide Applicator Certification Tests and Review. The pesticide applicator tests and methods of testing shall be determined and approved by the department. The review of applications shall be made by the department for determining eligibility.

(5) Emergency Use Permit. An individual may be able to acquire an Emergency Use Permit which allows a single individual, at a singular location, the permission to apply a restricted use pesticide in a situation determined to be an emergency by the department.

(a) Determination is at the sole discretion of the department.

(b) Any subsequent purchase of any restricted use pesticide, or additional pesticide application of any restricted use pesticide, or use of any restricted use pesticide by the individual obtaining the Emergency Use Permit is not allowed without the written consent of the department.

(c) This permit shall be issued only in an emergency as a substitute for a private pesticide applicator license.

(d) An Emergency Use Permit issued by the department shall be in accordance with 40 CFR 166.

(6) Private Pesticide Applicator License Issuance.

(a) A temporary pesticide applicator permit shall be issued automatically by email for the successful completion of the private pesticide applicator test and each pesticide category test and provided each other department requirement is met. The temporary permit will

expire 30 days from the date it was issued. The private pesticide applicator test must be successfully completed with a minimum score of 70%, before any pesticide category tests may be attempted.

(b) The pesticide applicator is responsible to verify their license is approved by the department.

(c) A private pesticide applicator license shall be issued when the following conditions have been met:

(i) the applicant has successfully passed the appropriate tests to apply pesticides in the classifications for which they have applied;

(ii) any fees have been paid; and

(iii) the applicant is in good standing with the department.

(d) The private pesticide applicator license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department -for cause, as set forth in Section R68-7-20.

(e) If an application for a private pesticide applicator license is denied, the applicant shall be informed of the reason by email or mail.

(f) A pesticide applicator ~~[is required to]~~shall have their license in their immediate possession when making a pesticide application.

(g) Duplicate licenses from the department are available for a fee as set forth in Subsection 4-2-103(2). The pesticide applicator shall also be in good standing with the department, and have no unresolved violations or fines, before a replacement license may be issued.

(h) A new private pesticide applicator application completed between November 1 and December 31 of the same year shall be licensed for the remainder of that year and the following three calendar years.

(7) Private Pesticide Applicator License Recertification and Renewal.

(a) Each private pesticide applicator license shall expire on December 31 of the third calendar year following its issuance.

(b) Private pesticide applicators shall complete required recertifications before their license expires, and may be subject to re-examination at any time during their valid license period.

(c) Recertification options include:

(i) completion of the original certification process by taking the required pesticide core and pesticide category test~~[(s)]~~ and successfully completing each required test with a minimum score of 70%; or

(ii) participation in approved CEUs and accumulate the required amount of six total CEU credits during the valid license time period. A minimum of one credit in Law, one in Safety, and one in ~~[P]~~pesticide ~~[U]~~use are required, while any combination of the three categories may be used for the remaining three credits.

(8) Records Maintained. Private pesticide applicators shall keep and maintain records of any restricted use pesticide applications, and of any pesticide applications required by WPS.

(a) These records shall be recorded within 24 hours after the pesticide application is made.

(b) The application records shall include the following information:

(i) If the licensee is subject to WPS, the location of any pesticide applications, detailing the address, the metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(ii) If the licensee is not subject to the WPS, the location of any restricted use pesticide applications, detailing the address, the

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metes and bounds, GPS coordinates, or a map showing the number of applications and the sites treated;

(iii) the complete size description of the pesticide application area, using either acres, square footage, section, or other legally descriptive and easily understandable terms common to the industry;

(iv) the specific sites at the pesticide application location to which any restricted use pesticides are applied;

(v) the time and date of the pesticide application, including the month, day, and year when the restricted use pesticide was applied, and the pesticide application start and end times;

(vi) the pesticide product name, as it is written on the pesticide label, of the restricted use pesticides, the EPA registration number, and mix rate for any restricted use pesticides applied;

(vii) the active ingredient of the restricted use pesticide;

(viii) the total amount of restricted use pesticides, including diluted or RTU pesticides, applied per application;

(ix) the amount of restricted use pesticide used per acre or square feet;

(x) the purpose of the restricted use pesticide application, the pesticide target site, the pesticide target pest, and, if applicable, the crop to be treated;

(xi) the duration, or length of time, required for the restricted entry interval;

(xii) the name and pesticide applicator license number of the certified pesticide applicator who applied the pesticides, or who directly supervised the use of any restricted use pesticides; and

(xiii) the name of any individual who applied pesticides under the exemptions provided in Subsection R68-7-13(1)(a)(i) or Subsection R68-7-13(1)(a)(ii).

(c) Records shall be kept for a period of at least two years from the date of the pesticide application and shall be made available for inspection by the department-, within 48 hours of a request.

(d) Pesticide application records provided by any commercial pesticide business to the agricultural establishment shall also be kept for two years, and will provide the same information required by Subsection R68-7-13(8).

(e) Records shall be kept recording the maintenance history of pesticide application equipment, any respirator medical information, respirator fit testing, and any other records required by the label of the product used or by EPA WPS.

(f) Records shall be kept in a uniform format.

### **R68-7-14. Other Individuals.**

(1) Employees of Federal Agencies.

(a) Federal government employees requesting to be a pesticide applicator in Utah shall be required to certify as a non-commercial pesticide applicator by successfully passing the written pesticide applicator core test and any applicable pesticide category tests. Federal government employees who possess a valid and current pesticide applicator license from another state may be exempt, and a reciprocal pesticide applicator license may be issued.

(b) Any federal government agency with an EPA approved pesticide applicator certification plan that meets or exceeds the Utah pesticide applicator certification standards may qualify for reciprocal pesticide applicator certification in Utah.

(c) Federal government employees requesting reciprocal licensing status shall apply to the department and confirm that the application is approved ~~[prior to]~~ before conducting any activities under this rule or Title 4, Chapter 14, Utah Pesticide Control Act.

(2) Certification of Out-of-State Applicants.

(a) An out-of-state pesticide applicator may apply as a Utah pesticide applicator by taking the applicable Utah pesticide applicator tests in their respective state. Out[-]of[-]state proctors shall be approved by the department and the pesticide applicator applicant shall bear the costs involved with out-of-state testing and licensing.

(b) If a pesticide applicator possesses a current and valid pesticide applicator certification from another state, and requests to apply pesticides in Utah, they shall complete the proper application process to the department, including:

(i) payment of any required fees;

(ii) a true copy of the applicant's credentials, both front and back, as proof of certification in the applicant's state of residence;

(iii) a front and back copy of their government issued identification; and

(iv) a letter of good standing, or other acceptable government documents, from the applicant's state pesticide licensing program, sent directly to the department by the licensing entity, specifically stating the applicant is in good standing and is currently licensed as a pesticide applicator in that state.

(c) The department may, upon review of the applicant's required credentials and other materials, issue a Utah Pesticide Applicator License to the applicant in accordance with the pesticide categories or pesticide use situations for which the applicant is certified in another state, without requiring testing.

(d) Out-of-state pesticide applicators who apply pesticides in Utah shall be subject to Utah law.

(3) Changes to License Information.

(a) Each certified commercial, non-commercial, and private pesticide applicator shall notify the department of any change to the pesticide applicator's name, address, phone number, email address, or change of employer within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(b) Each commercial pesticide business and RUP dealer shall notify the department of any changes including ownership, company name, owner or manager's name, company address, phone number, email address, or any other required information, within 30 calendar days of the change. Failure to do so shall be considered a violation of this rule.

(c) Business licenses are non-transferable, and in the case of a change of business ownership, a new application is required, along with the payment of any associated fees.

(i) The department shall determine if the name on the license may be retained by the new owner.

(ii) The department shall determine the necessary fees for a new license.

(iii) The new owner shall either qualify as the qualifying party or have an employee of the business that qualifies as a qualifying party. The qualifying party for the business must be an employee of the business as defined in Section 4-14-102, and not a contractor or third party. The qualifying party may not be the designated qualifying party, or employee, of another pesticide applicator business.

(d) The designated representative for a ~~[P]~~pesticide ~~[B]~~business ~~[L]~~license applicant shall meet the requirements of this section, including taking any applicable tests.

### **R68-7-15. Restricted Use Pesticide Dealer Licensing.**

Restricted Use Pesticide Dealer License Required.

(1) It is unlawful for any person to act, represent, or advertise themselves as a restricted use pesticide dealer at any time without obtaining a restricted use pesticide dealer license.

(a) A separate license is required for each individual business location in the state where restricted use pesticides are sold or distributed.

(b) Any manufacturer, registrant, or distributor who has no restricted use pesticide dealer business licensed within this state, and who distributes a restricted use pesticide directly into Utah, shall obtain a restricted use pesticide dealer license for their principal out-of-state business location.

(c) Any manufacturer, registrant, or distributor who sells only through, or to, a pesticide dealer, is not required to obtain a restricted use pesticide dealer license.

(2) Restricted Use Pesticide Dealer License Issuance. Applications for a restricted use pesticide dealer license shall be on the approved department form. The fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(a) The applicant shall certify on the application that the business understands and recognizes the rules concerning the sale of restricted use pesticides and the records that shall be kept and maintained for two years.

(b) The applicant shall take online training ~~[prior to]~~ before the initial issuance of their license and with every renewal. If a new manager is hired, the manager shall take online training.

~~(b)~~ (c) If the department finds the applicant qualified to sell or distribute restricted use pesticides, and the applicant has paid any required licensing fees, the department may issue a ~~[R]~~restricted ~~[U]~~use ~~[P]~~pesticide ~~[D]~~dealer ~~[L]~~license. The ~~[R]~~restricted ~~[U]~~use ~~[P]~~pesticide ~~[D]~~dealer ~~[L]~~license shall expire on December 31 of the third calendar year from the time of licensure, unless it has been revoked or suspended by the department for cause, as set forth in Section R68-7-20.

(3) Restricted Use Pesticide Dealer License Renewal. Renewal fees for a restricted use pesticide dealer license shall be determined in accordance with Subsection 4-2-103(2) and Section 63J-1-504. If a restricted use pesticide dealer fails to complete and submit the necessary renewal forms and certifications to the department before the end of their license expiration date, a late fee may be assessed and added to the renewal fee, in accordance with Subsection 4-2-103(2) and Section 63J-1-504.

(4) Records Maintained. Each licensed restricted use pesticide dealer location shall keep a ~~[recording]~~ record of any restricted use pesticide sales. This restricted use pesticide sales record shall be submitted to the department on the department's website[-], and shall contain the following information:

(a) the company name of the restricted use pesticide dealer;

(b) the store or location name of the restricted use pesticide dealer making the sale;

(c) the complete restricted use pesticide dealer license number;

(d) the expiration date of the certified pesticide applicator's certification or license;

(e) the categories in which the pesticide applicator is certified relevant to the pesticides sold;

(f) the complete date of the sale, including the month, day, and year;

(g) the first and last name of the individual who made the sale;

(h) the brand name of the restricted use pesticide sold, the complete EPA registration number of the restricted use pesticide, and the quantity sold;

(i) the restricted use pesticide product container size;

(j) the first and last name of the certified pesticide applicator who made the purchase;

(k) the complete pesticide applicator license number of the certified pesticide applicator who made the purchase; and

(l) the complete address and contact information of the certified pesticide applicator who made the purchase, including street name and house number, city, state, zip code, phone number, and email address.

(m) If the individual who purchased the restricted use pesticide was authorized by letter, the authorization letter shall be kept on file for a minimum of two years. The authorization letter shall contain the name, pesticide applicator license number, signature of the pesticide applicator who wrote the authorization letter, and the full name of the individual being authorized to purchase the restricted use pesticide. The authorization letter may only be used once per restricted use pesticide purchase. The restricted use pesticide dealer shall verify the information contained in the authorization letter, and shall verify the identity of the authorized individual by a government issued identification.

(n) If the individual who purchased the restricted use pesticide used a temporary pesticide applicator permit, a copy of the temporary pesticide applicator permit shall be kept on file for a minimum of two years.

(o) Records shall be kept for a period of two years from the date of the restricted use pesticide sale, and shall be made available for inspection by the department. The department, upon request and within two business days, shall be furnished a copy of any sales records completed by the restricted use pesticide dealer.

(5) Submission of Electronic records. On or before July 1 of each year, restricted use pesticide dealers are required to submit their restricted use pesticide sales records for the period starting the previous July 1 through June 30 of the current year.

(6) Exemption. Section R68-7-15 shall not apply to a certified pesticide applicator who sells restricted use pesticides only as an integral part of their commercial pesticide application business services when the pesticides are dispensed only through their equipment used for pesticide application.

~~(c)~~ (7) Restricted Use Pesticide Dealers Responsible for the Acts of Their Employees. Each restricted use pesticide dealer shall be responsible for the acts of each person under their employ in the solicitation and sale of restricted use pesticides, and any claims and recommendations for the use of restricted use pesticides. A restricted use pesticide dealer license may be subject to denial, suspension, or revocation for any violation of Title 4, Chapter 14, Utah Pesticide Control Act or rules promulgated thereunder, whether committed by the restricted use pesticide dealer or by the dealer's officer, agent, or employee.

#### **R68-7-16. Responsibilities of Pesticide Applicator Businesses and Pesticide Applicators.**

(1) Pesticide Applicator Business Duties and Responsibilities.

(a) A pesticide applicator business shall ensure the qualifying party of the business, as described in Section 4-14-111, receives the training the qualifying party requires to comply fully with state law, individual pesticide label restrictions, and any applicable labeling directions.

(b) Evidence of any pesticide training and attendance shall be recorded and kept on file, and shall include the name of the employee, their respective pesticide applicator license number, the pesticide topics and specific products covered, and the signatures of the trainees and the trainer. The agenda and copies of the pesticide

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training material shall be retained for two years after the termination of any employee.

(c) It is the business owner's responsibility to verify that each employed pesticide applicator is properly certified in the appropriate pesticide categories.

(d) Each pesticide service vehicle shall carry complete, appropriate, legible, and up-to-date labels for each pesticide applied directly from that pesticide service vehicle.

(i) Original labels are preferred, and it is prohibited to remove any label from any container still containing any pesticide concentrate.

(ii) If any pesticide labels are printed from an internet source, the revision number or date should be verified with the label on the container to ensure the correct version is used.

(iii) Electronic copies of labels are not acceptable.

(2) Responsibilities of the pesticide business and employees.

(a) A pesticide business, their qualifying party, or their pesticide applicator may be held responsible for the acts or omissions of an employee of the pesticide business. It is the responsibility of the pesticide business to properly train, equip, and prepare their employees, and to maintain records of employee training and equipment.

(b) Failure to respond to or fully disclose information pursuant to any requests by the department within two business days, for information relating to the training and equipment of a pesticide business and their employees shall be evidence of a failure to properly train or equip. The pesticide business owner, qualifying party, or designated pesticide business supervisor has the burden of proof by a preponderance of the evidence that the pesticide business, qualifying party, or pesticide business employee has fulfilled the required duties as prescribed by this rule or a written order of the department.

(3) Use of pesticide business name and license number.

(a) A pesticide business shall prominently display the pesticide business license issued by the department at the primary pesticide business office and at each branch office.

(b) In addition to the requirements of Subsection R68-7-16(3)(a), a pesticide business shall prominently display the pesticide business name and corresponding license number, as recorded on the license issued by the department, on:

(i) customer proposals or contracts that include pest management services;

(ii) service records and service notifications; and

(iii) pesticide business service vehicles and trailers used in providing pest management services.

(c) Pesticide business names and corresponding license numbers displayed on a pesticide business service vehicle or trailer used in providing pest management services shall conform to the following:

(i) are affixed to the service vehicle or trailer used in providing pest management services within 30 days after the department issues the license, or issues a business license change, or after the service vehicle or trailer is acquired, whichever is sooner;

(ii) are in a color that contrasts with the color of the service vehicle and trailer;

(iii) are prominently displayed on both sides of the service vehicle or trailer;

(iv) use at least two-inch letters for the principal words in the pesticide business name and at least one and one-half inch letters for other words in the pesticide business name;

(v) use at least two-inch numbers for the pesticide business license number; and

(vi) use letters and numbers that are weatherproof.

(d) A pesticide business that always uses a pesticide business service vehicle and trailer together ~~is required to~~ shall only mark either the service vehicle or trailer as described in Subsection R68-7-16(3)(j)(c). A pesticide business that uses a vehicle only for sales, solicitations, or solely for inspections, and does not carry a pesticide or pesticide application equipment, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in Subsection R68-7-16(3)(c).

(e) When complying with Subsection R68-7-16(3)(c), a pesticide business may use a slogan, trade name, or trade mark in addition to the pesticide business name and corresponding license number. When complying with Subsection R68-7-16(3)(c), a pesticide business may use a word or phrase to indicate its formerly licensed pesticide business name, if it had a formerly licensed pesticide business name.

(4) Pesticide Application Notification.

(a) ~~Prior to~~ Before the time of each application of a restricted use pesticide with a Danger or Danger-Poison signal word, the certified commercial pesticide applicator, or an employee of the licensed pesticide business shall provide the customer with a written statement containing the following information:

(i) the pesticide business name, pesticide business license number, and telephone number;

(ii) the name and pesticide applicator license number of the licensed pesticide applicator who will make the application;

(iii) the date and time of the pesticide application;

(iv) the type of pesticide application service and brand name and EPA registration number of pesticides applied; and

(v) instructions to the customer to contact the pesticide business telephone number if more specific information is desired regarding the pesticide product applied.

(b) The written statement required in Subsection R68-7-16(4)(a) shall be provided to the customer by any of the following means:

(i) leave statement at the residence;

(ii) in the case of a multi-unit residence, leave the statement with the property manager or their authorized representative; or

(iii) mail to the property manager or their authorized representative if management is located at a location other than the pesticide application site, at least seven calendar days ~~prior to~~ before the date of the pesticide application.

### **R68-7-17. Termiticide Record Keeping: Additional Requirements.**

(1) In addition to the recordkeeping requirements contained in Sections R68-7-11 and R68-7-12, any pesticide applicator shall retain a record of a diagram of the structure treated for termites with termiticide that includes the dimensions of the structure, including the depth to the footer that the foundation rests upon.

(2) For post construction pesticide treatments, the diagram shall also illustrate the area where termites or termite activity was found.

(3) Any records of pesticide applications shall be maintained for a period of two years and organized separately for each individual structure.

(4) If a termiticide distribution system is used:

(a) the system shall meet the standards listed on the label and the use of the system shall be allowed only as stated on the label; and

(b) installation, design, and manufacture of the system shall be allowed by the termiticide label and manufacturer. If no mention of a system is on the label, a distribution application system shall not be used.

#### **R68-7-18. Minimum Standards for Fumigant Applications.**

(1) Application of fumigant products require strict adherence to the label, and when required by the label, a verified and written Fumigation Management Plan (FMP) shall be prepared in advance of treatment. An FMP shall provide details regarding the information prescribed by the label. Utah standards for fumigation treatments of any space that can be occupied by a person, or non-target species, require the following:

(a) at least two persons present at the time of releasing the fumigant and during the initial ventilation, one of whom shall be a certified pesticide applicator with the fumigation category, present at the time of the releasing of the fumigant and during the initial ventilation. During the interim, the premises shall be adequately safeguarded against entry by any other person;

(b) notification of local fire department or first responder ~~[prior to]~~ before fumigation of any building or enclosed space, other than a fumigating vault, the with the address of the fumigation job, time of gas release, kind of gas to be used, and the beginning time of the aeration of the premises.

(c) Premises sealed. Premises to be fumigated shall be sealed in a manner that confines the fumigant to the space intended to be fumigated.

(d) Inspection of premises ~~[prior to]~~ before releasing fumigant. Immediately before releasing the fumigant, the certified pesticide applicator shall conduct a thorough inspection of the premises to verify that no person or non-target animals remain, and that effective precautions have been taken to safeguard occupants of neighboring buildings as set forth in Subsection R68-7-18(1)(c) ~~[below]~~.

(e) Fumigation of apartments within a multiple unit apartment building.

(i) Fumigation of apartments within a multiple unit apartment building may be fumigated only after- the apartments are vacated and the area to be fumigated is properly sealed.

(ii) The adjacent units shall be properly ventilated during the entire exposure period.

(f) Notification of dwellings or places of business within 100 feet of the building being fumigated.

(i) Dwellings or places of business within 100 feet of the building being fumigated shall be notified in writing in advance of the fumigation.

(ii) Premises within 10 feet shall be vacated during the fumigation and aeration periods.

(g) Warning signs.

(i) Warning signs shall be posted conspicuously at entrances of the premises to be fumigated and at the entrances of adjacent multiple units and structures within ten feet and kept there during the entire fumigation and ventilation period. Signs shall be in a bright and conspicuous color with a minimum size of 8 1/2 inches by 11 inches, bearing the word "poison," displaying the skull and crossbones, the name of the fumigant used, and the name, address, and telephone number of the certified pesticide applicator.

(ii) Before the fumigant is released, entrances leading directly to the fumigated space shall be closed, sealed, and locked, except exits to be used by the fumigating crew. These exits shall be closed, sealed, and locked promptly after the fumigant has been released.

(h) Masks worn.

(i) Each member of the fumigating crew shall be equipped with a serviceable mask of a type approved by the U.S. Mines, Safety, and Health Administration with the correct canister for the type of gas used.

(ii) Masks shall be worn while in the enclosed space during and after release of the fumigant, and until initial ventilation is completed.

(i) Re-entering fumigated premises.

(i) No one other than the certified pesticide applicator shall be permitted to re-enter the fumigated premises until the certified pesticide applicator has ascertained by personal inspection, with gas mask and with a chemical appropriate test, that the premises are safe for occupancy.

(ii) Aeration shall be conducted according to the product labeling and re-entry allowed according to levels specified on the label.

(j) Subsections R68-7-18(1)(a) through R68-7-18(1)(i) may not apply to fumigants used to control insects or other pests outside of buildings, or for spot fumigations, or restrictive treatments inside a building, such as grain bins.

(i) Strict adherence to the label instructions shall be adhered to during these applications.

(ii) During the ventilation period of a spot or restrictive fumigation, the premises shall not be occupied by anyone except the certified pesticide applicator.

(iii) A warning gas is recommended where the fumigant is comparatively odorless.

(2) Fumigation of burrowing rodents requires strict adherence to the label as well as a Fumigation Management Plan (FMP) that shall contain the following information:

(a) the purpose of the pesticide application indicating the exact pest to be controlled, and the type of burrow system to be treated;

(b) the pesticide used, stating the name of the pesticide, the EPA registration number, and dosage used;

(c) the property treated information recording the property or facility name and address, and verifying the manager's or property owner's name and contact information;

(d) the certified pesticide applicator information recording the certified pesticide applicator's name, company, pesticide applicator license number, phone numbers, and verifying with valid government issued identification;

(e) any emergency agency contact information, recording the phone numbers for the nearest hospital, fire department, police department, poison control center, and the registrant of the fumigant; and

(f) instructions given to personnel, verifying by written signatures that personnel have been instructed to:

(i) report any accident or incident related to exposure, provide a telephone number for emergency response reporting;

(ii) report to the proper authorities any theft of fumigant or equipment related to fumigation; and

(iii) follow label directions, paying particular attention to the Monitoring, Notification, Sealing, Application Procedures, Fumigation Period, and Use Restrictions portions of the label instructions.

(g) Burrowing Rodent Fumigation Record Keeping: Additional Standards. In addition to the recordkeeping requirements contained in Sections R68-7-11 and R68-7-12, the applicator shall keep as part of the record a scaled diagram of the property treated that includes dimensions of the property, any structures present, and mark each burrow treated on the diagram.

**R68-7-19. Transportation, Storage, Handling, Usage, and Disposal of Pesticides and Pesticide Containers.**

Any pesticide ~~[applying person]~~applicator shall provide a secure pesticide and device storage area. The storage area may include an area on a service vehicle. Any pesticide applying entities shall also have, at a minimum, a pesticide spill kit in each pesticide service vehicle, pesticide service trailer, and at each pesticide business location.

(1) No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, other non-target species, or the environment.

(2) Pesticide containers shall be secured during transport by use of side or end racks, bracing, chocks, tie downs, or other means to prevent their sliding, falling, tipping, rolling, or falling off the vehicle with normal vehicle acceleration, deceleration, or change in direction.

(3) Portable tanks shall be secured to prevent their sliding, falling, tipping, or rolling with normal vehicle acceleration, deceleration, or change in direction. Stacking or wedging against ends, sidewalls, or doors of van bodies shall not be relied upon for securement.

(4) Pesticides in leaking, broken, corroded, or otherwise damaged containers shall not be displayed, offered for sale or transported, and shall be handled or disposed of in a manner that would not damage or injure humans, other non-target species, or the environment. Pesticides with obscured, illegible, or damaged labels shall not be displayed, offered for sale, or sold.

(5) No person shall distribute or sell any pesticide unless it is in the registrant's or manufacturer's unopened, original container, and the registered pesticide label is affixed to the container.

(6) No person shall transport, handle, store, load, apply, or dispose of any pesticide, pesticide container, apparatus, or rinsate in such a manner as to pollute water supplies or waterways, or cause damage or injury to land, humans, desirable plants and animals, or wildlife, except that a pesticide labeled for aquatic use and used as directed shall not be considered a violation of this subsection. Disposing of pesticides at disposal sites approved by the appropriate agency complies with the requirements of this subsection. Toxicity, volatility, and mobility of pesticides shall be considered in complying with this subsection.

(7) No person shall pollute streams, lakes, or other water supplies during pesticide loading, mixing, and application and shall use appropriately functioning devices and procedures to prevent back siphoning.

(8) No pesticides shall be applied by aircraft or air blast sprayers to property abutting or adjacent to schools in session, hospitals, nursing homes, or other similar establishments, when occupied, under conditions that may result in contamination of these establishments or their premises.

(9) No person shall apply pesticides if physical drift or volatilization may cause damage to adjacent land, injure humans or other species, or the environment.

(10) Requirements for unattended pesticides and their containers:

(a) Pesticides and their containers shall be maintained in accordance with generally accepted industry standards and practices.

(b) ~~[The provisions of]~~Subsections R68-7-19(10)(d) and (e) and Subsection R68-7-19(11) shall not apply to empty pesticide containers once decontaminated.

(c) For the purposes of Subsections R68-7-19(10)(d) and (e) and Subsection R68-7-19(11), pesticides and their containers at the loading area shall not be considered unattended if the operator maintains either visual control or repeatedly returns at closely spaced intervals to ensure safe monitoring of the pesticides and containers.

(d) Unattended pesticides labeled with the signal word "danger/poison" and their containers shall be constructed, stored and locked to prevent children, unauthorized persons, livestock, or other animals from gaining entry.

(e) Pesticides labeled with the signal word "danger" when not accompanied by the signal word "poison,"<sup>[7]</sup> pesticides labeled with the signal word "warning,"<sup>[7]</sup> pesticides labeled with the signal word "caution,"<sup>[7]</sup> and their containers, shall be stored in secured storage, out of the reach of children, in an enclosure as described in Subsection R68-7-19(10)(d). Metal containers, ~~[twenty-eight]~~28 gallons and larger, with tight screw-type bungs or secured or locked valves shall be considered secured storage.

(11) Requirements for posting of storage area for pesticides and their containers labeled with the signal words "danger/poison":

(a) For purposes of this subsection, warning signs shall show the skull and crossbones symbol and the words: "Danger/Poison (Pesticide or Chemical) Storage Area/Keep Out" in at least two-inch tall letters.

(b) Warning signs shall be posted:

(i) at each entrance or exit from a storage area and on each exterior wall, so that the sign is visible from any direction; and

(ii) if the pesticide storage area is contained in a larger, multipurpose structure, warning signs shall be clearly visible on each entrance of the storage area.

(12) Each service vehicle and business location operated by a commercial pesticide business that carries, transports, or stores any~~[any]~~ pesticide concentrate or mixed pesticide solution must have, at minimum, a spill kit containing:

(a) a dustproof five-gallon bucket with a lid;

(b) waterproof gloves;

(c) three spill socks, each approximately ~~[three feet by four inches]~~three inches by 48 inches;

(d) ten medium weight absorbent pads, each approximately 15"x18"; and

(e) one medium weight trash bag to contain used absorbent material.

**R68-7-20. Unlawful Acts.**

Any person who has committed any of the following acts is in violation of Title 4, Chapter 14, Utah Pesticide Control Act, or rules promulgated thereunder, and is subject to the penalties provided in Section 4-2-301 through Section 4-2-305, up to, and including, citations, fines, and the possible suspension, revocation, or denial of any pesticide applicator, pesticide business, or pesticide dealer license:

(1) been convicted under Section 14(b) of FIFRA;

(2) been subject to a final order imposing a civil penalty under Section 14(a) of FIFRA;

(3) been found in violation of a final state enforcement action for violations of state law;



(4) made false, fictitious, or fraudulent claims, including any written or spoken misrepresentation of the use or effect of pesticides, the certification of any pesticide applicator, or the methods or manner in which pesticides may be applied or utilized;

(5) applied any known ineffective or improper pesticides;

(6) applied any pesticides in a faulty, careless, or negligent manner;

(7) failed to comply with ~~the provisions of~~ Title 4, Chapter 14, Utah Pesticide Control Act, these rules, or any lawful order of the department;

(8) failure to keep or maintain records required by these rules, or to make reports when and as required, or to notify the department within 30 days of any changes required under ~~[Section R68-7-4]~~ Section R68-7-14;

(9) proffered false or fraudulent records, invoices, or reports to the department;

(10) engaged in the business, solicitation, advertisement, or representation of applying a pesticide for hire or compensation on the lands or property of another without having a valid commercial pesticide applicator license;

(11) purchased, used, or supervised the use of, a pesticide which is labeled for restricted use without having qualified as a certified pesticide applicator;

(12) used fraud, deceit, or misrepresentation in any portion of the application process for, or renewal of, a registration, license, permit, or certification with the department;

(13) refused or neglected to comply with any limitations or restrictions on or in a ~~duy~~ issued license or permit;

(14) used, or caused to be used, any pesticide in a manner inconsistent with its labeling or rules of the department, if those rules further restrict the uses provided on the labeling;

(15) impersonated any federal, state, county, or other government official;

(16) distributed any pesticide labeled for restricted use to any person unless that person or their agent: has a valid pesticide applicator license, permit to use or supervise the use of, or distribute a restricted use pesticide;

(17) applied any pesticides on or in any building, structure, or property without the consent of the owner, manager, or responsible party, with the exception of any government agency that applies a pesticide to abate a public health problem under the direction of the department;

(18) for a pesticide applicator, applied a termiticide at less than the label rate;

(19) for an employer of a commercial or non-commercial pesticide applicator, to allow an employee to apply pesticide before that individual has successfully completed the required pesticide applicator certification process;

(20) a certified pesticide applicator failed to possess– a current pesticide applicator license on their person during a pesticide application;

(21) allowed a pesticide application to run off, or drift, from the target pesticide application area, whether or not damage or injury occurred;

(22) failed to register a pesticide business with the department, or follow the rules set forth in this rule for the licensing of a commercial pesticide business;

(23) handled or applied any pesticide for which a person does not have an appropriate, complete, legible, and current label at hand or affixed to the pesticide;

(24) Failed to comply with the federal pesticide container and containment regulations found in 40 CFR 156 and 165;

(25) Failed to perform fumigation applications according to the standards required by this rule;

(26) Failed to display the pesticide business license name and pesticide business license number in accordance with this rule;

(27) Failed to notify a customer of the application of a restricted use pesticide and the information detailed in Section R68-7-16;

(28) The qualifying party of a commercial pesticide business~~licensee~~ failed to train or prepare a commercial pesticide applicator to comply fully with the following:

(a) any Utah pesticide statute;

(b) any Utah pesticide rule;

(c) any pesticide label;

(d) any pesticide labeling directions; and

(e) any equipment they will be using.

(29) Failure to timely and fully respond to requests by the department for information relating to training and equipping of pesticide applicators;

(30) transported, stored, handled, used, or disposed of a pesticide or pesticides container that is inconsistent with this rule;

(31) cheated on any pesticide test required by the department or otherwise failed to comply with testing requirements;

(32) refused or neglected to change contact and employment information within 30 days; or

(33) violated the EPA WPS.

#### **R68-7-21. Penalty Matrix.**

In the disposition of administrative cases, the department shall use a penalty matrix to determine appropriate penalties. The penalty amount shall be from \$50-500 per violation. The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effects at the time of the incident giving rise to the violation. The median penalty shall be assessed unless a proportionate adjustment is warranted or there are aggravating or mitigating factors present.

(1) The department may also choose to issue a warning, in lieu of penalty, where the penalty matrix allows. Any warning in lieu of penalty shall be issued in the department's sole discretion.

(2) The department may consider circumstances enhancing or reducing the penalty based on the seriousness of the violation. Aggravating and mitigating factors include the following:

(a) the number of separate alleged violations for a given inspection or incident date;

(b) the magnitude of the harm, or potential harm, including quantity or degree, to humans, non-target species, property, or the environment caused by the violation;

(c) the similarity of the current alleged violation to violations committed by the pesticide applicator or business; and

(d) the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(3) The department will review past violation trends and update the penalty matrix based on compliance history annually. A copy of the penalty matrix shall be made available from the department upon request.

#### **KEY: inspections, pesticides**

**Date of Last Change:** ~~September 1, 2021~~ 2022

**Notice of Continuation:** February 3, 2021

**Authorizing, and Implemented or Interpreted Law:** 4-14-106

**NOTICE OF PROPOSED RULE****TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R151-4</b>	<b>Filing ID:</b> <b>54753</b>
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**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Administration	
<b>Street address:</b>	160 E 300 S, 2nd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	Box 146701	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6701	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Masuda Medcalf	801-530-7663	mmedcalf@utah.gov

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

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

R151-4. Department of Commerce Administrative Procedures Act Rule

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

The reason for the amendment is to update this rule to become consistent with recent legislative amendments as noted below and making clerical changes for consistency 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):**

Various changes have been made for consistency with the Utah Rulewriting Manual including adding real tables, removing "provision of," "purposes of," "thereof," "him or herself," replacing "7" with "seven," "must" with "shall," "with respect to" with "as to," "where" with "if," where deemed appropriate "which" with "that," "prior to" with "before," "subsequent to" with "after," "by means of" with "by;" and otherwise clarifying and simplifying existing language.

The following changes are due to recent statutory amendments:

1) in Subsection R151-4-201(2)(iii), removes "Occupational" from the name for the Division of Professional Licensing per S.B. 43 passed in the 2022 General Session; and changing the diversion program

name to "Utah Professionals Health Program, per H.B. 285 passed in the 2020 General Session."

2) in Subsection R151-4-901(2), removes the Regulatory Sandbox, which was repealed in H.B. 243 passed in the 2022 General Session; removes "Occupational" from the name for the Division of Professional Licensing; and changing the diversion program name to "Utah Professionals Health Program" as noted above.

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

This rule does not amend fees or any revenue generation for the state and will not affect the state budget.

**B) Local governments:**

Local governments are typically involved in administrative proceedings before the Department of Commerce (Department) and are not impacted by this amendment.

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

This rule is procedural in nature and has no discernable impact on the costs required for a small businesses to take part in proceedings before the Department.

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

This rule is procedural in nature and has no discernable impact on the costs required for a non-small businesses to take part in proceedings before the Department.

**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 is procedural in nature and has no discernable impact on the costs required for other persons to take part in proceedings before the Department.

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

As noted in the sections above, this rule is procedural and has no discernable costs.

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

Regulatory Impact Table			
Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Commerce, Margaret W. Busse, has reviewed and approved this regulatory impact analysis.			

**Citation Information**

<b>6. 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:</b>		
Section 13-1-6	Subsection 63G-4-102(6)	

**Public Notice Information**

<b>8. 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.)</b>	
<b>A) Comments will be accepted until:</b>	08/31/2022

<b>9. This rule change MAY become effective on:</b>	09/07/22
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.	

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Margaret W. Busse, Executive Director	<b>Date:</b>	07/13/2022
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**R151. Commerce, Administration.****R151-4. Department of Commerce Administrative Procedures Act Rule.****R151-4-101. Title and Organization.**

This rule is:

(1) known as the "Department of Commerce Administrative Procedures Act Rule;" and

(2) organized into the following Parts:

(a) Part 1, General Provisions, including Sections R151-4-101 through R151-4-114;

(b) Part 2, Pleadings, including Sections R151-4-201 through R151-4-205;

(c) Part 3, Motions, including Sections R151-4-301 through R151-4-306;

(d) Part 4, Filing and Service, including Sections R151-4-401 through R151-4-402;

(e) Part 5, Discovery - Formal Proceedings, including Sections R151-4-501 through R151-4-516;

(f) Part 6, Depositions - Formal Proceedings, including Sections R151-4-601 through R151-4-611;

(g) Part 7, Hearings, including Sections R151-4-701 through R151-4-712;

(h) Part 8, Orders, including Sections R151-4-801 through R151-4-803; and

(i) Part 9, Agency Review and Judicial Review, including Sections R151-4-901 through R151-4-907.

**R151-4-102. Definitions.**

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule:

(1) "Agency head" means the executive director of the department or the director of a division.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for:

(a) licensure;

(b) certification;

(c) registration;

(d) permit; or

(e) other right or authority granted by the department.

(4) "Department" means:

(a) the Utah Department of Commerce; or

(b) a division of the department.

(5) "Division" means a division of the department.

(6) "Electronic" means a:

(a) facsimile transmission; or

(b) PDF file attached to an email.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

## NOTICES OF PROPOSED RULES

(8) "Motion" means a request for any action or relief in an adjudicative proceeding.

(9)(a) "Party in interest" means:

(i) a party;

(ii) a relative of a party; or

(iii) an individual with a financial interest in the outcome of the proceeding; and

(b) does not include:

(i) a party's counsel; or

(ii) an employee of a party's counsel.

(10) "Petition" means the charging document setting forth:

(a) statement of jurisdiction;

(b) statement of one or more allegations;

(c) statement of legal authority; and

(d) request for relief.

(11) "Pleading" means the following:

(a) a notice of agency action or request for agency action;

(b) a request for agency review or agency reconsideration;

and

(c) a response or reply submitted to a pleading.

### **R151-4-103. Authority.**

This rule is adopted in accordance with Subsection 63G-4-102(6) and Section 13-1-6 to govern adjudicative proceedings before the department.

### **R151-4-104. Supplementing Provisions.**

~~[Any provision of]~~ This rule may be supplemented by a division rule unless expressly prohibited by this rule.

### **R151-4-105. Purpose and Scope.**

(1) This rule is intended to secure the just, speedy, and economical determination of issues presented in adjudicative proceedings before the department.

(2) In the event of a conflict between this rule and a statute, the statute governs.

### **R151-4-106. Utah Rules of Civil Procedure.**

The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

### **R151-4-107. Computation of Time.**

(1) Periods of time in department proceedings shall:

(a) exclude the first day of the act, event, or default from which the time begins to run; and

(b) include the last day unless it is a Saturday, Sunday, or legal holiday~~[-]; in [which event] that case~~ the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.

(3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.

(ii) Except as provided in Subsection R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.

(b) No additional time is provided if service is accomplished by electronic means.

(4) Subsection (3) does not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1).

### **R151-4-108. Timeliness of Administrative Proceedings.**

In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day:

(1) the notice of agency action is issued; or

(2) the initial decision ~~[with respect]~~as to a request for agency action is issued.

### **R151-4-109. Extension of Time and Continuance of Hearing.**

(1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

(2)(a) Except as provided in Subsection R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day:

(i) the notice of agency action was issued; or

(ii) the initial decision ~~[with respect]~~as to a request for agency action was issued.

(b) An extension of a time period or a continuance may exceed the time restriction in Subsection R151-4-109(2)(a) only if:

(i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was to delay the hearing~~[-]; in [which] that~~ case the hearing will go forward with or without counsel;

(C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding~~[-]; in [which] that~~ case the continuance ~~[must]~~shall address the expiration of the continuance upon the conclusion of the criminal proceeding; or

(D) the board or commission designated to act as the factfinder at hearing is unavailable to meet on a date that:

(I) allows the parties a reasonable period of time for discovery, motion practice, or hearing preparation; and

(II) falls within the 240-day deadline for resolution; and

(ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(c)(i) If the presiding officer considers that extenuating circumstances not contemplated in Subsection R151-4-109(2)(b) justify a continuance beyond the 240-day deadline, the presiding officer shall file a written request for continuance with the executive director.

(ii) A party may not directly petition the executive director for a continuance.

(iii) The executive director's decision on the presiding officer's request for continuance shall be issued on an interlocutory basis, not subject to a request for reconsideration or judicial review until after a final order on the merits is issued.

(d) The failure to conclude a hearing within the required time period is not a basis for dismissal.

(3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

(4) The factors in Subsection (1) do not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1)(a). A request for an extension to file a request for agency review is governed by Subsection R151-4-901(1)(c).

#### **R151-4-110. Representation of Parties.**

(1) A party may:

(a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

#### **R151-4-111. Review of Emergency Orders.**

Unless otherwise provided by statute or rule:

(1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:

(i) the division has previously:

(A) commenced an emergency adjudicative proceeding in the matter; and

(B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and

(ii) the affected party timely submits a written request for a hearing.

(b) A hearing under this section shall be conducted in conformity with the procedures of Section 63G-4-206.

(2)(a) Upon request for a hearing under this section, the division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day the hearing to consider the emergency order concludes, the presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

#### **R151-4-112. Declaratory Orders.**

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

(B) the facts and circumstances related to the question;

(C) the statute, rule, or order to be applied to the question;

and

(D) whether oral argument is sought in conjunction with the petition; and

(ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

(v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

(a) questions involving circumstances set forth in Subsection[s] 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions that are not within the jurisdiction of the department;

(c) questions that have been addressed by the department in an order, rule, or policy;

(d) questions that can be addressed by informal advice;

(e) questions that are addressed by statute;

(f) questions that would be more properly addressed by statute or rule;

(g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or

(h) questions that are irrelevant, insignificant, meaningless, or spurious.

(4) The recipient of a declaratory order may request agency review.

#### **R151-4-113. Record of an Adjudicative Proceeding.**

The record of an adjudicative proceeding includes:

(1) each pleading, motion, brief, exhibit, and any other document filed by a party;

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:

(a) by a presiding officer; or

(b) on agency review or reconsideration.

#### **R151-4-114. Informal Adjudicative Proceedings in General and Prohibition of Discovery.**

(1) Any provision ~~[of this rule that is]~~ specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.

(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

(3) Discovery is prohibited in informal adjudicative proceedings, but the department or a division may issue subpoenas or other orders to compel production of evidence in accordance with Subsection 63G-4-203(1)(c).

**R151-4-201. Docket Number and Title.**

(1) The department shall assign a docket number to each notice of agency action and, ~~[where]~~if appropriate, to each request for agency action.

(2) At a minimum the docket number shall consist of:

(a) a letter code identifying where the matter originated, as follows:

- (i) CORP-Corporations;
- (ii) CP-Consumer Protection;
- (iii) DOPL-~~[Occupational and]~~Professional Licensing, including additional designations that the division may implement for ~~[diversion]~~the Utah Professionals Health Program, lien recovery fund, or other programs;
- (iv) NAFA-New Automobile Franchise Act;
- (v) PVFA-Powersport Vehicle Franchise Act;
- (vi) RE-Real Estate;
- (vii) AP-Real Estate Appraisers;
- (viii) MG-Mortgage; and
- (ix) SD-Securities;

(b) a numerical code indicating the calendar year the matter arises; and

(c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.

(3) The department shall give each adjudicative proceeding a title in substantially the following form:

[TABLE 1]

BEFORE THE (DIVISION)  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

In the Matter of \_\_\_\_\_ (Notice of Agency Action)  
(the application, \_\_\_\_\_ (Request for Agency Action)  
petition or license  
of John Doe) \_\_\_\_\_ No. AA-2000-001]

TABLE 1	
BEFORE THE (DIVISION) OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH	
In the Matter of (the application, petition, or license of John Doe)	(Notice of Agency Action) (Request for Agency Action)
No. AA-2000-001	

**R151-4-202. Content and Size of Pleadings and Motions and Limitation of Number of Pages.**

(1) A pleading or motion shall be double-spaced, typewritten, presented on standard 8 1/2 x 11 inch white paper, and contain:

- (a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading or motion; and
- (b) an appropriate request for relief when relief is sought.

(2) A motion to dismiss or motion for summary judgment may not exceed 25 pages, not counting any attachment, unless a longer motion is permitted by the presiding officer. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the presiding officer.

(3) If the motion is a motion to dismiss or motion for summary judgment, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other opposing

memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.

(4) If the motion is a motion to dismiss or motion for summary judgment, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the presiding officer.

(5) A memorandum supporting agency review in accordance with Section R151-4-904 may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(6) A response to a request for agency review and the memorandum supporting that response may not exceed 30 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(7) A reply memorandum filed in an agency review may not exceed 15 pages not counting the attachments, unless a longer memorandum is permitted by the presiding officer assigned to the agency review.

(8) The presiding officer may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum ~~[must]~~shall include a table of contents and a table of authorities with page references. The presiding officer may rule on a motion for overlength motion or memorandum without waiting for a response. No statement of facts and legal authorities beyond a concise statement of the relief requested is required in a motion for overlength motion or memorandum.

**R151-4-203. Signing of Pleadings and Motions.**

(1) Any pleading or motion shall be signed by the party or the party's representative and shall show the signer's address.

(2) The signature is a certification that:

- (a) the signer has read the pleading or motion; and
- (b) to the best of the signer's knowledge and belief, there are good grounds to support the pleading or motion.

**R151-4-204. Amendments to Pleadings.**

(1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.

(b) A party that does not qualify to amend a pleading under Subsection (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.

(2) A party shall respond to an amended pleading within the later of:

- (a) the time remaining for response to the original pleading; or
  - (b) ten days after service of the amended pleading.
- (3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

**R151-4-205. Response to a Notice of Agency Action.**

(1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(2)(a) A respondent in an informal adjudicative proceeding may file a response to a notice of agency action.

(b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.

(3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:

- (a) a response to a notice of agency action; or
- (b) a notice of receipt of request for agency action.

**R151-4-301. General Provisions.**

- (1) A party may file a motion that is relevant and timely.
- (2) Each motion shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated ~~[prior to]~~ before the hearing.
- (3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for:
  - (a) failure to prosecute;
  - (b) failure to comply with this rule, except ~~[where]~~ when this rule expressly provides that a matter is not a basis for dismissal;
  - (c) failure to establish a claim upon which relief may be granted; or
  - (d) other good cause basis.

**R151-4-302. Motion to Dismiss.**

- (1) A motion to dismiss on any grounds described in Rule 12(b)(1) through 12(b)(7) of the Utah Rules of Civil Procedure shall be filed ~~[prior to]~~ before filing a responsive pleading.
- (2) In a case that is under agency review:
  - (a) a motion to dismiss may be brought for:
    - (i) failure to comply with a jurisdictional deadline;
    - (ii) failure to file a hearing transcript; or
    - (iii) failure to file a required memorandum.
  - (b) A motion to dismiss may not be brought on an allegation or argument as to:
    - (i) the sufficiency of a pleading or a memorandum in support ~~[thereof]~~;
    - (ii) the sufficiency of the evidence; or
    - (iii) any other issue that requires substantive analysis.

**R151-4-303. Memoranda and Affidavits.**

- (1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.
- (2) Unless otherwise governed by a scheduling order issued by the presiding officer:
  - (a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;
  - (b) memoranda or affidavits in response to a motion shall be filed no later than 14 days after service of the motion; and
  - (c) a final reply shall be filed no later than seven days after service of the response.

**R151-4-304. Oral Argument.**

- (1) The presiding officer may permit or require oral argument on a motion.
- (2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day the party:
  - (a) who did not make the motion could have filed a response if that party does not file a response; or
  - (b) the party who made the motion:
    - (i) replies to the opposing party's response to the motion; or
    - (ii) could have replied to the opposing party's response to the motion.

**R151-4-305. Ruling on a Motion.**

- (1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument when ~~[ever]~~ possible.

(2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day the presiding officer makes the verbal ruling.

(3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

- (a) oral argument; or
- (b) if there is no oral argument, the final submission on the motion as outlined in Subsection R151-4-304(2).
- (4) The failure of the presiding officer to comply with the requirements of Section R151-4-305:
  - (a) is not a basis for dismissal of the matter; and
  - (b) may not be considered an automatic denial or grant of the motion.

**R151-4-306. Recusal or Motion to Disqualify a Board or Commission Member.**

(1) A board or commission member may ~~[recuse him or herself]~~ self recuse at any time from participation in an action before the board or commission, even if a party to the action has not requested the member's recusal or filed a motion to disqualify the member.

(2)(a) A party to an action before a board or commission may file a motion to disqualify a board or commission member. The motion ~~[must]~~ shall be accompanied by a certificate that the motion is filed in good faith and ~~[must]~~ shall be supported by an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show bias, prejudice, or conflict of interest.

(b) The motion ~~[must]~~ shall be filed after commencement of the action, but no later than 21 days after the last of the following:

- (i) the date of service of the action or hearing on the respondent; ~~[or]~~
- (ii) the date the moving party knew or should have known of the grounds upon which the motion is based; or ~~[or]~~

(iii) ~~[if]~~ if the last event occurs fewer than 21 days before a hearing, the motion ~~[must]~~ shall be filed as soon as practicable.

(c) No party may file more than one motion to disqualify in an action, unless the second or substitute motion is based on grounds that the party did not know of and could not have known at the time of the earlier motion.

(d) If timeliness of the motion is determined under Subsection (2)(b)(ii) or (2)(c), the affidavit or declaration supporting the motion ~~[must]~~ shall state when and how the party came to know of the reason for disqualification.

(3) Within ~~[7]~~ seven days of receipt of the motion by the presiding officer, the presiding officer shall provide a copy of the motion to the board or commission member who is the subject of the motion.

(4)(a) The decision on a motion to disqualify a board or commission member shall be made by the presiding officer ~~[—A]~~, and a written decision is not necessary.

(b) The division or moving party may not subject the board or commission member to questioning or examination on the motion, but the presiding officer or the board or commission may question the member verbally or in writing ~~[prior to]~~ before issuing a decision on the motion.

(5) A recused or disqualified board or commission member may not participate with fellow board or commission members in the action and is prohibited from voting on the action.

## NOTICES OF PROPOSED RULES

(6) A decision on a motion to disqualify a board or commission member is not subject to an interlocutory appeal or agency review.

(7) This section does not apply to any adjudicative proceedings under Title 13, Chapter 14, New Automobile Franchise Act, or Title 13, Chapter 35, Powersport Vehicle Franchise Act.

### **R151-4-401. Filing.**

(1)(a) Any pleading or motion shall be filed with the department or division ~~[in which]~~ where the adjudicative proceeding is ~~[being] conducted~~, ~~[which]~~ and maintains the official file.

(b) The filing of discovery documents is governed by Section R151-4-512.

(2)(a) A filing may be accomplished by:

(i) hand delivery of a paper copy, pursuant to Subsection (2)(b)(i);

(ii) first class or certified mail, postage prepaid, of a paper copy, pursuant to Subsection (2)(b)(i); or

(iii) fax or attachment to electronic mail pursuant to Subsection (2)(b)(ii).

(b)(i) A filing by hand delivery or first class or certified mail is complete when it is received and date stamped by the department or division, as applicable.

(ii) A filing by fax or electronic mail is complete upon transmission, if:

(A) compliant with Subsection (1);

(B) completed and received during the department's operating hours, 8 a.m. to 5 p.m. Mountain Time, on days other than Saturdays, Sundays, or state or federal holidays;

(C) the recipient receives the complete document; and,

(D) the party filing the document:

(I) also mails the document to the department or division the same day, as evidenced by a postmark; or

(II) ~~[prior to]~~ before any applicable filing deadline, is expressly excused by the presiding officer from mailing the document.

(c) The burden is on the party filing the document to ensure that a filing is properly completed.

### **R151-4-402. Service.**

(1)(a) A pleading or motion filed by the parties shall be concurrently served on each party and any administrative law judge who is assigned to the case. Documents issued by the presiding officer shall be concurrently served on each party.

(b) The party who files a pleading or motion is responsible for service of the pleading or motion.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery of a paper copy, by mail of a paper copy to the last known address of the intended recipient, or by attachment to electronic mail.

(b) Service by hand delivery is complete upon delivery to:

(i) the person who is required to be served;

(ii) any individual who is employed by, and physically present at, the business office of the person who is required to be served; or

(iii) a mailbox or drop box that is:

(A) assigned to the person who is required to be served; and

(B) physically located at the person's place of business.

(c) Service by mail is complete upon mailing, as evidenced by a postmark.

(d) Service by attachment to electronic mail is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on each document required to be served a certificate of service in substantially the following form:

[TABLE 2]

#### CERTIFICATE OF SERVICE

~~I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means to):~~

~~(Name(s) of parties of record)~~

~~(Address(es))~~

~~Dated this (day) day of (month), (year).~~

~~(Signature)~~

~~(Name and Title)~~

TABLE 2

#### CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below (by delivering a copy in person) (by mailing a copy, properly addressed by first class mail with postage prepaid, to) (by electronic means to):

(Name of parties of record)

(Address)

Dated this (day) day of (month), (year).

(Signature)

(Name and Title)

### **R151-4-501. Applicability.**

~~[(1) This part,] Sections R151-4-501 through R151-4-516, ~~applies~~ apply only to formal adjudicative proceedings.~~

### **R151-4-502. Scope of Discovery.**

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense:

(i)(A) of the party seeking discovery; or

(B) of another party;

(ii) that is set forth in a pleading; and

(iii) that is brought pursuant to a statement of fact, information, or belief.

(2)(a) Subject to Subsection R151-4-502(3) and Section R151-4-504, a party may obtain discovery of documents and tangible



things otherwise discoverable under Subsection R151-4-502(1) and prepared in anticipation of litigation or for hearing by another party or for another party or by that party's representative or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and

(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in Subsection R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under Subsection R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Section R151-4-504.

#### **R151-4-503. Disclosures Required by Prehearing Order.**

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic addressed in the information maintained by each individual; and

(b)(i) a copy of each discoverable document, data compilation, and tangible thing that:

(A) is in the party's possession, custody, or control; and

(B) supports the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in Subsection R151-4-503(1)(b)(i); and

(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony~~[, which is]~~ as governed by Section R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by Subsection R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

(i) the party has not fully completed the investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made disclosures.

(4) Disclosures required under Section R151-4-503 shall be made in writing, signed, and served.

#### **R151-4-504. Disclosures Otherwise Required.**

(1)(a) A party shall:

(i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and

(ii) provide a written report signed by the expert that contains a complete statement of each opinion the expert will offer at the hearing and the basis and reasons for them.

~~(b) [Such as] The expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report.~~

~~(c) The party offering the expert shall pay the costs for the report.~~

~~(b)d) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by Subsection R151-4-504(1) shall be made:~~

~~(i) within 30 days after the deadline for completion of discovery; or~~

~~(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-4-504(1)(a), within 60 days after the disclosure made by the other party.~~

~~(e)g) If either party fails to file its disclosure within the time frames in Subsection R151-4-504(1), the presiding officer:~~

~~(i) shall exclude the expert testimony from the proceeding; and~~

~~(ii) may not continue the hearing to allow additional time for the disclosures.~~

(2)(a) In addition to the disclosures required by Subsection R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures ~~[provisions]~~ of Utah Rules of Civil Procedure, Rule 26.

(b)(i) The disclosures required by Subsection R151-4-504(2) shall be made at least 45 days before the hearing.

(ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:

(A) use of a deposition designated by another party; and

(B) admissibility of materials identified under Subsection R151-4-504(2)(a).

(iii) An objection not timely made is waived.

#### **R151-4-505. Other Discovery Methods.**

Parties may obtain discovery by one or more of the following methods:

(1) depositions upon oral examination;

(2) production of documents or things;

(3) permission to enter upon land or other property for inspection and other purposes; and

(4) physical and mental examinations.

#### **R151-4-506. Limits on Use of Discovery.**

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

(1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:

(a) more convenient;

(b) less burdensome; or

(c) less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the discovery is ~~[unduly]~~ burdensome or expensive, taking into account:

(a) the needs of the case;

(b) the amount in controversy;

- (c) the limitations on the parties' resources; and
- (d) the importance of the issues at stake in the litigation.

**R151-4-507. Protective Orders.**

(1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be ~~inquired into~~ discovered, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the presiding officer;
- (f) that a deposition after being sealed be opened only by order of the presiding officer;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

**R151-4-508. Timing, Completion, and Sequence of Discovery.**

(1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.

(2)(a) Discovery, except for prehearing disclosures governed by Section R151-4-504, shall be completed within 120 calendar days after the day:

- (i) the notice of agency action was issued; or
- (ii) the initial decision ~~[with respect]~~ as to a request for agency action was issued.
- (b) Factors the presiding officer shall consider in determining whether to shorten this time period include:
  - (i) whether a party's interests will be prejudiced if the time period is not shortened;
  - (ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and
  - (iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.
- (c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in Section R151-4-109:

- (i) whether the complexity of the case warrants additional discovery time; and
- (ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) The presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in Section R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise

provided by this rule, discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

**R151-4-509. Supplemented Disclosures and Amended Responses.**

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

- (a) ordered by the presiding officer; or
- (b) a circumstance described in Subsection~~[s]~~ (2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

- (i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and
- (ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) ~~[With respect]~~ As to testimony of an expert from whom a report is required under Section R151-4-504:

- (i) the duty extends to information contained in the report; and
- (ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under Section R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

- (a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and
- (b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

**R151-4-510. Prehearing Conference - Scheduling the Hearing Date.**

(1) Each notice of agency action or initial decision ~~[with respect]~~ as to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, ~~[which]~~ that shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision ~~[with respect]~~ as to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

- (i) cancellation of the prehearing conference; and
- (ii) a default order; and
- (c) may contain the date, consistent with Section R151-4-108, of the scheduled hearing.

(2)(a) The prehearing conference may be in person or telephonic.

(b) Each Party, or their counsel, shall participate in the conference.

(c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.

(3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within two business days after the conference is concluded, ~~[which]~~ that shall address each of the following:

- (a) if necessary, scheduling an additional prehearing conference;

(b) setting a deadline for the filing of prehearing motions and cross[-] motions, including motions for summary judgment, ~~[which deadline shall]~~ allowing for motions to be submitted and ruled on ~~[prior to]~~ before the hearing date;

(c) modifying, if appropriate, a deadline for disclosures;

(d) resolving discovery issues;

(e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;

(f) if not already scheduled, scheduling a hearing date in compliance with Section R151-4-108; and

(g) dealing with other necessary matters.

(4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.

(5)(a) The presiding officer shall schedule prehearing matters consistent with Section R151-4-108.

(b) The presiding officer may:

(i) adjust time frames as necessary to accommodate Section R151-4-108; and

(ii) schedule appropriate prehearing matters to occur concurrently.

#### **R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.**

(1)(a) Each disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented by an attorney; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(2)(a) Each request for discovery or response, or objection to discovery shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented by an attorney; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with this rule and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or ~~[unduly]~~ burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection.

(b) A party is not obligated to take an action ~~[with respect]~~ as to a request, response, or objection until it is signed.

#### **R151-4-512. Filing of Discovery Requests or Disclosures.**

(1) Unless otherwise ordered by the presiding officer:

(a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;

(b) except as described in Subsection R151-4-512(1)(c), a party may not file any of the disclosures required by the prehearing order, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service; and

(c) a party shall file the disclosures required by Section R151-4-504.

(2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

#### **R151-4-513. Subpoenas.**

(1) Each subpoena:

(a) shall be issued and signed by the presiding officer;

(b) shall state the title of the action;

(c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;

(d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and

(e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.

(2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

(3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.

(b) A person who resides in Utah may be required to appear at a deposition:

(i) in the county where the person resides, is employed, or transacts business in person; or

(ii) at any reasonable location as the presiding officer may order.

(c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or

(ii) at any reasonable location as the presiding officer may order.

(4) A subpoena shall be served in accordance with the requirements of the jurisdiction ~~[in which]~~ where service is made.

(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney

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designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If ~~this~~an objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

### **R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.**

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of Subsection R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of Subsection R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer ~~must~~shall first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, ~~with respect~~as to each specific item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) an objection.

(iii) The party submitting the request may move for an order under Section R151-4-516 ~~with respect~~as to any:

(A) objection;

(B) failure to respond to any part of the request; or

(C) failure to permit inspection as requested.

(e) A party who produces documents for inspection shall:

(i) produce them as they are kept in the usual course of business; or

(ii) organize and label them to correspond with the categories in the request.

### **R151-4-515. Physical and Mental Examination of Persons.**

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the

legal control of a party is in controversy, the presiding officer may order the party or person to:

(i) submit to a physical or mental examination by a physician; or

(ii) produce for examination the person in the party's custody or legal control.

(b) The order:

(i) may be made only on motion for good cause shown and upon notice to the person to be examined and to each party; and

(ii) shall specify:

(A) the time, place, manner, conditions, and scope of the examination; and

(B) the person ~~or persons~~ by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination ~~is entitled, on request, to~~may request to receive from the party against whom the order is made a ~~like~~ report of an examination ~~previously or thereafter made,~~ of the same condition unless, ~~in the case of~~as to an examination of a person not a party, the party shows that the party ~~is unable to~~cannot obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of any other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) Subsection R151-4-515(2):

(i) applies to any examination made by agreement of the parties unless the agreement expressly provides otherwise; and

(ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

### **R151-4-516. Motion to Compel Discovery - Sanctions.**

(1)(a) The discovering party may move for an order compelling discovery if:

(i) a party fails to make disclosures required by a prehearing order;

(ii) a party fails to make the disclosures required by Section R151-4-504;

(iii) a deponent fails to answer a question;

(iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Utah Rules of Civil Procedure, Rule 30; or

(v) a party, in response to a request for inspection under Section R151-4-514, fails to respond that an inspection will be permitted as requested or fails to permit an inspection as requested.

(b) When taking a deposition, the proponent of ~~the~~a question may complete or adjourn the examination before applying for an order.

(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by Section R151-4-507.

(d) An evasive or incomplete answer is treated as a failure to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

(i) the department may seek civil enforcement in the district court under Section 63G-4-501; or

(ii) the presiding officer may, for good cause, issue an order:

(A) that the related matters and facts shall be taken to be established;

(B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or

(C) prohibiting the disobedient party from introducing designated matters in evidence;

(D) striking out pleadings or motions, or portions of pleadings or motions;

(E) dismissing the proceeding or a portion of the proceeding; or

(F) rendering a judgment by default against the disobedient party.

#### **R151-4-601. Applicability - Scope.**

(1) This part, Sections R151-4-601 through Section R151-4-611, applies only to formal adjudicative proceedings.

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who ~~have knowledge of~~ know facts relevant to the claims or defenses of a party in the proceeding.

(b) The attendance of witnesses may be compelled by subpoena.

(c) A party may not depose an expert witness.

#### **R151-4-602. General Provisions - Persons who may be Deposed.**

(1) Before a party may request leave to take a person's deposition, the party ~~must~~ shall first make efforts to obtain discovery from that person by ~~means of~~ an interview. For purposes of this section, "interview" means an unsworn, oral examination of a person with knowledge of facts relevant to the claims or defenses of a party in the proceeding, whether in person or by remote means.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

(a) has refused a reasonable request by the moving party for an interview;

(b) has failed to attend a scheduled interview;

(c) has failed to provide reasonable availability for an interview;

(d) has refused to answer reasonable questions propounded to the person by that party in an interview; or

(e) will be unavailable to testify at the hearing.

(3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding and the complexity of the proceeding.

(4) The moving party has the burden of proof in a motion for leave to take a deposition.

(5) Any participant in an interview conducted in accordance with this section may create an audio recording of the interview as long as the person recording the interview gives verbal notice to the other participants that the interview is being recorded. Any participant that creates an audio recording of the interview shall

provide a copy of the recording to each party to the proceeding within 10 days of the interview.

(6) The parties to a proceeding may stipulate to take a deposition rather than conduct an interview, even if the requirements of this section have not been met.

#### **R151-4-603. Notice of Deposition - Requirements.**

(1) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Utah Rules of Civil Procedure, Rule 30.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

(i) shall designate the person before whom the deposition shall be taken;

(ii) shall designate the manner of recording, preserving and filing the deposition; and

(iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

(i) any objections;

(ii) any changes made by the witness;

(iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by Utah Rules of Civil Procedure, Rule 30.

(3) The notice to a party deponent may be accompanied by a request in compliance with Section R151-4-514 for the production of documents and tangible things at the deposition.

(4) Utah Rules of Civil Procedure, Rule 30(b)(6), shall apply ~~where~~ if a deponent is:

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

(5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

#### **R151-4-604. Examination and Cross Examination.**

Examination and cross examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and Utah Rules of Civil Procedure, Rule 30.

#### **R151-4-605. Motion to Terminate or Limit Examination.**

The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to Utah Rules of Civil Procedure, Rule 30.

#### **R151-4-606. Submission to Witness - Changes - Signing.**

A deposition shall be submitted to the witness, changed, and signed pursuant to Utah Rules of Civil Procedure, Rule 30.

#### **R151-4-607. Certification - Delivery - Exhibits.**

(1) The transcript or recording of a deposition shall be certified and delivered pursuant to Utah Rules of Civil Procedure, Rule 30.

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(2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Utah Rules of Civil Procedure, Rule 30.

### **R151-4-608. Persons Before Whom Depositions May Be Taken.**

Depositions shall be taken before an individual certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act.

### **R151-4-609. Use of Depositions.**

(1) Pursuant to the other provisions of Section R151-4-609, a part of a deposition, if admissible under the ~~[rules of e]~~Utah Rules of Evidence applied as though the witness were present and testifying, may be used against a party who:

(a) was present or represented at the taking of the deposition; or

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

(a) to contradict or impeach the testimony of the deponent as a witness; or

(b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness ~~[is unable to]~~cannot attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part that ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

### **R151-4-610. Objections to Admissibility.**

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

### **R151-4-611. Effect of Errors and Irregularities in Depositions.**

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) An objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner ~~[in which]~~that the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

### **R151-4-701. Hearings Required or Permitted.**

A hearing shall be held in an adjudicative proceeding ~~[in which]~~if a hearing is:

(1) required by statute or rule and not waived by the parties; or

(2) permitted by statute or rule and timely requested.

### **R151-4-702. Time to Request Permissive Hearing.**

A request for a hearing permitted by statute or rule ~~[must]~~shall be received no later than:

(1) the time period for filing a response to a notice of agency action if a response is required or permitted;

(2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(3) the filing of the request for agency action.

### **R151-4-703. Hearings Open to Public - Exceptions.**

(1) A hearing in an adjudicative proceeding is open to the public unless closed by:

(a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, Administrative Procedures Act; or

(b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, Open and Public Meetings Act.

(2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.

(b) Deliberations are closed to the public.

### **R151-4-704. Bifurcation of Hearing.**

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

### **R151-4-705. Order of Presentation in Hearings.**

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

(1) opening statement of the party with the burden of proof;

(2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(3) case-in-chief of the party with the burden of proof and cross examination of witnesses by the opposing party;

(4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(5) if the presiding officer finds it to be necessary, rebuttal evidence by the party that has the burden of proof;

(6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;

(7) closing argument by the party with the burden of proof;

- (8) closing argument by the opposing party; and
- (9) final argument by the party with the burden of proof.

**R151-4-706. Testimony Under Oath.**

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

**R151-4-707. Electronic Testimony.**

(1) As used in this section, electronic testimony means testimony by contemporaneous transmission from a different location including by telephone, or by other audio or video conferencing technology.

(2) For good cause and with appropriate safeguards, the presiding officer may permit electronic testimony in hearings in administrative proceedings.

(3) With appropriate safeguards, electronic testimony is permissible in an informal proceeding on the request of a party.

**R151-4-708. Standard of Proof.**

Unless otherwise provided by statute or a rule applicable to a specific proceeding, the standard of proof in a proceeding under this rule, whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

**R151-4-709. Burden of Proof.**

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

**R151-4-710. Default Orders.**

(1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.

(2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.

(3) A default order is not required to be accompanied by a separate order.

**R151-4-711. Record of Hearing.**

(1) The presiding officer shall make a record of prehearing conferences and hearings.

(2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by ~~means of~~:

- (i) a certified court reporter as defined by Title 58, Chapter 74, State Certification of Court Reporters Act; or
- (ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make the record of a hearing in an informal proceeding by:

- (i) a method required for a formal proceeding; or
- (ii) the minutes of the proceeding or an order prepared or adopted by the presiding officer.

(3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.

(4)(a) If a party is required by Section R151-4-902 to obtain a transcript of a hearing for agency review, the party ~~must~~ shall ensure that the record is transcribed:

- (i) in a formal adjudicative proceeding, by a certified court reporter; or
- (ii) in an informal adjudicative proceeding, by:

- (A) a certified court reporter; or
- (B) a person who is not a party in interest.

(b) ~~Where~~ If a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(c) Pages and lines in a transcript shall be numbered for referencing purposes.

(d) The party requesting the transcript shall bear the cost of the transcription.

(5) The original transcript of a record of a hearing shall be filed with the presiding officer.

**R151-4-712. Fees.**

(1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:

- (i) \$18.50 for each day in attendance; and
- (ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents ~~per~~ a mile for each mile actually and necessarily traveled.

(b) A witness subpoenaed by a party other than the department may:

- (i) demand one day's witness fee and mileage in advance; and
  - (ii) be excused from appearance unless the fee is provided.
- (2) Interpreters and translators may receive compensation for their services.

(3) An officer or employee of the United States, the state of Utah, or a county, incorporated city, or town within the state of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.

(4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

**R151-4-801. Requirements and Timeliness.**

(1) For default orders and orders issued ~~to~~ after a default order, the requirements of Subsections 63G-4-203(1)(i)(iii), 63G-4-203(1)(i)(iv), and 63G-4-208(1)(e) through (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day the hearing concludes.

(3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day the hearing concludes.

(4) The failure of the presiding officer to comply with the requirements of this section:

- (a) is not a basis for dismissal of the matter; and
- (b) may not be considered an automatic denial or grant of a motion.

**R151-4-802. Effective Date.**

The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

**R151-4-803. Clerical Mistakes.**

(1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:

- (a) its own initiative; or

- (b) the motion of a party.
- (2) Mistakes described in this section may be corrected:
  - (a) at any time ~~[prior to]~~before the docketing of a petition for judicial review; or
  - (b) as governed by Utah Rules of Appellate Procedure, Rule 11(h).

**R151-4-901. Availability of Agency Review and Reconsideration.**

(1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(b) This 30-day deadline is jurisdictional~~[—F]~~, the three-day mailing rule in Subsection 151-4-107(3) does not apply and does not extend the jurisdictional deadline.

(c) Pursuant to Subsection 63G-4-102(9), the executive director may extend the deadline only for good cause shown.~~[—For purposes of this section, g]~~

~~(d) Good cause to justify an extension means special circumstances beyond the control of the person requesting agency review that prevents a timely filing of the request.~~

(2)(a) Agency review is not available for an order or decision entered by:

- (i) the Utah Motor Vehicle Franchise Advisory Board; or
- (ii) the Utah Powersport Vehicle Franchise Advisory Board~~[—or~~
- ~~(iii) the Utah Department of Commerce under Title 13, Chapter 55, Regulatory Sandbox Program.]~~

(b) Agency review is not available for an order or decision entered by the Division of ~~[Occupational and]~~ Professional Licensing for:

- (i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;
- (ii) a request for modification of a disciplinary order;
- (iii) a request under ~~[Subsection 58-1-404(4)]~~Title 58, Chapter 4a, for entry into the ~~[Diversion Program]~~Utah Professionals Health Program; or
- (iv) a determination made on an application for a division determination regarding criminal record in accordance with Section 58-1-310.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

- (i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;
- (ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;
- (iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-3a-209; or
- (iv) denial of reinstatement under the Uniform Limited Cooperative Association Act pursuant to Section 16-16-1213.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under Subsections R151-4-901(2)(a), R151-4-901(2)(b)(ii), and R151-4-901(2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under Subsections R151-4-901(2)(b)(i) and R151-4-901(2)(b)(iii).

**R151-4-902. Request for Agency Review - Transcript of Hearing - Service.**

- (1) A request for agency review shall:

- (a) comply with Subsection 63G-4-301(1)(b) and this section; and
- (b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

- (a) appropriate legal authority; and
- (b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party ~~[must]~~shall demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to show that the finding is not supported by substantial evidence.

(c) A party challenging a legal conclusion ~~[must]~~shall support the argument with citation to:

- (i) relevant authority; and
- (ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

- (i) certify that the transcript has been ordered;
- (ii) notify the department when the transcript will be available; and
- (iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5) Grounds for agency review that include any legal argument ~~[must]~~shall be supported by specific citations to the transcript of the proceeding, indicating when the argument was raised and preserved in the proceeding. Examples of legal argument include:

- (a) an objection to a ruling of the presiding officer;
- (b) an argument regarding one or more procedures attendant to the proceeding; or
- (c) an argument as to the legal validity, including the constitutionality, of a statute or rule.

(6)(a) A party seeking agency review shall, in the manner described in Sections R151-4-401 and R151-4-402, file and serve on the parties copies of correspondence, pleadings, motions, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

**R151-4-903. Stay Pending Agency Review.**

(1)(a) With a timely filing of a request for agency review of an order, the party seeking review may file a motion for a stay of the order pending the completion of agency review.

(b) If a motion to stay is not timely filed and subsequently granted, the order subject to review shall remain in effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date the stay is requested.



(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the executive director determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party requesting the stay.

(d) The executive director may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the executive director shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety, and welfare.

(b) The executive director may issue:

(i) an order granting the motion for a stay;

(ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;

(iii) a partial stay; or

(iv) an order denying the motion for a stay.

#### **R151-4-904. Agency Review - Memoranda.**

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

(i) this rule; and

(ii) a scheduling order entered by the department.

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

#### **R151-4-905. Agency Review - Standards of Review.**

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

#### **R151-4-906. Agency Review - Type of Relief - Order on Review.**

(1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

#### **R151-4-907. Stay Pending Judicial Review.**

(1) A party seeking judicial review of an order may file with the executive director a motion for a stay of the order pending judicial review. The motion for a stay shall be filed with the executive director on the same date that a timely petition for judicial review is filed with the court.

(2) Unless otherwise provided by statute, a motion for a stay of an order pending judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay is granted, the aggrieved party will not pose a significant danger to public health, safety, and welfare.

(3)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date that the motion is filed.

(b) Failure to oppose a timely motion under this section[?] shall result in an order granting the stay unless the executive director determines that a stay would not be in the public interest.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

(4) The executive director may grant a motion for a stay of an order pending judicial review if the criteria in Subsections R151-4-907(1) and (2) are met.

**KEY: administrative procedures, adjudicative proceedings, government hearings**

**Date of Last Change: 2022[September 20, 2021]**

**Notice of Continuation: September 22, 2020**

**Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)**

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Repeal and Reenact

**Rule or Section Number:** R380-411

**Filing ID:** 54745

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration (Health)
<b>Building:</b>	Martha Hughes Cannon Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 141000
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000

Contact persons:		
Name:	Phone:	Email:
Richard Oborn	385-232-4259	roborn@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R380-411. Administrative Hearing Procedures
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The Department of Health and Human Services (Department) is repealing and reenacting Rule R380-411 alongside Rule R380-412, the Compassionate Use Board rule, to ensure the administrative hearing procedures are updated for the consolidated Department. (EDITOR'S NOTES: A corresponding 120-day (emergency) filing for Rule R380-411 that is effective as of 07/12/2022 is under ID 54747; and the proposed repeal and reenactment of Rule R380-412 is under ID 54746 in this issue, August 1, 2022, of the Bulletin.)
<b>4. Summary of the new rule or change</b> (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 updates the administrative hearing procedures for the Center for Medical Cannabis with the consolidated Department's standards and procedures. It also amends language to adhere to the Utah Rulewriting Manual.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department does not anticipate that this rule will result in a fiscal impact to the state budget. This rule updates the administrative hearing procedures with the consolidated Department's standards and is not fiscal in nature.
<b>B) Local governments:</b>
This proposed rule will not result in a fiscal impact to local governments because this rule does not establish requirements for local agencies.
<b>C) Small businesses</b> ("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 amendment does not fiscally impact the 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) 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and 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**

**6. 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 26-1-24	Section 63G-4-102	
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**Public Notice Information**

**8. 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:** 08/31/2022

**9. This rule change MAY become effective on:** 09/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/11/2022
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**R380. Health, Administration.**

**R380-411. Administrative Hearing Procedures.**

**~~R380-411-1. Introduction and Authority.~~**

~~(1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis.~~

~~(2) This rule is authorized by Section 26-1-24 and Section 63G-4-102.~~

**~~R380-411-2. Definitions.~~**

~~(1) The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.~~

~~(2) The following definitions also apply:~~

~~(a) "Action" means a denial, termination, suspension, or reduction of a license, or card, or 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. An action does not include an issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code.~~

~~(b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health.~~

~~(c) "Aggrieved person" means any person affected by the agency's action.~~

~~(d) "Applicant" means any person who has applied for a medical cannabis card or a registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.~~

~~(e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.~~

~~(f) "Presiding Officer" means the agency head, or designee, as approved by the Executive Director; to conduct administrative a hearing pursuant to this rule.~~

~~(g) "Medical record" means a record that contains medical data submitted by an applicant.~~

~~(h) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.~~

**~~R380-411-3. Administrative Adjudicative Procedures.~~**

~~(1) Except as provided in this rule, or as otherwise designated by rule, or statute, or converted, pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.~~

~~(2) The agency head shall serve as the presiding officer for an informal hearing, except that the agency head may designate a presiding officer, as approved by the executive director.~~

~~(3) Closure of an application submitted to the agency, due to the applicant's failure to complete the application, or to provide required information, is not an action under this rule.~~

~~(4) Any provision of this rule does not apply to an action that is governed by another statute that conflicts with the procedures in this rule.~~

**~~R380-411-4. Commencement of Proceedings, Response.~~**

~~(1) If a person is aggrieved by an action of the agency, the person may file a request for agency action and hearing within the shortest of 30 calendar days, of either receiving the initial agency determination, or the agency's mailing, or electronic notification via email, of the initial agency determination. The person shall request an agency action, and hearing, by submitting the request on a form created by the Center.~~

~~(2) If the informal adjudicative proceeding is commenced by a notice of agency action, each party in the action, except the Center, shall file a response to the allegations contained in the notice of agency action, and state whether a hearing is requested.~~

~~(3) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for agency action, the Agency must consider the request, and grant or deny it, or set the request for further proceedings.~~

~~(4) If a medical issue is in dispute, each request shall include supporting medical documentation. The Agency shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for agency action, or strike the party's response, to a notice of agency action if it does not receive supporting medical documentation in a timely manner.~~

~~(5) Notice of Agency Action:~~  
~~(a) An agency shall provide a written notice of action to each aggrieved person. Such action includes, but is not limited to:~~  
~~(i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;~~  
~~(ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;~~  
~~(iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and~~  
~~(iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.~~  
~~(b) The notice must include:~~  
~~(i) a statement of the action the agency intends to take;~~  
~~(ii) the date the intended action becomes effective;~~  
~~(iii) the reason for the intended action;~~  
~~(iv) the specific regulation that support the action, or the change in federal law, state law, or Department rule which requires the action;~~  
~~(v) the right to submit a response, and request an administrative hearing;~~  
~~(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and~~  
~~(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.~~  
~~(c) The agency shall mail the notice, or electronically notify the person at the email address on file with the EVS; at least 10 calendar days before the date of the intended action.~~  
~~(6) The agency may issue an order on an emergency basis pursuant to Section 63G 4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.~~

**R380 411-5. Hearing and a Request for a Hearing.**

~~(1) The Center shall conduct an informal hearing for all issues, except those specifically designated as a formal hearing pursuant to this rule. The presiding officer may convert the proceeding to a formal hearing, if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G 4-202. If a hearing under this rule is converted to a formal hearing, pursuant to Section 63G 4-202, the formal hearing shall be conducted pursuant to these rules; except as otherwise provided in Sections 63G 4-204 through 63G 4-208, or other applicable statutes.~~  
~~(2) An aggrieved person shall request a hearing by submitting the request on a Center "Request for Hearing/Agency Action" form and mailing it to the Center. The request must explain why the aggrieved person is seeking agency relief.~~  
~~(3) A Request for Hearing/Agency Action, or a Response, and Request for Hearing that response, which an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the agency receives it; unless the sender can demonstrate through competent evidence of the mailing date.~~  
~~(4) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.~~  
~~(5) The Agency shall conduct a hearing in connection with an agency action, if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact, if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking~~

~~action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.~~

~~(6) The Agency may dismiss a request for a hearing, if the aggrieved person:~~  
~~(a) withdraws the request in writing;~~  
~~(b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;~~  
~~(c) fails to appear, or participate, in a scheduled proceeding without good cause;~~  
~~(d) prolongs the hearing process without good cause;~~  
~~(e) cannot be located, or agency mail is returned without a forwarding address; or~~  
~~(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the agency requests.~~  
~~(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.~~

**R380 411-6. Notice of Hearing.**

~~(1) The Agency shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least 10 calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person must inform the Agency of a current address, email address, and telephone number.~~

**R380 411-7. Prehearing Procedures.**

~~(1) The Agency shall conduct a Settlement Conference between the Agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing, or agency action. If a settlement cannot be reached, including a withdrawal, dismissal or granting of the request for action, the Agency shall notify the presiding officer to set a date for the administrative hearing.~~  
~~(2) The presiding officer may elect to conduct a preliminary conference to:~~  
~~(a) formulate or simplify the issues;~~  
~~(b) obtain admissions of fact, and documents that will avoid unnecessary proof;~~  
~~(c) arrange for the exchange of proposed exhibits or prepared expert testimony;~~  
~~(d) outline procedures for the hearing; or~~  
~~(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.~~  
~~(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.~~  
~~(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the preliminary conference, or at any time during the process.~~  
~~(5) Ex parte communication with the presiding officer are prohibited. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters.~~  
~~(6) The Agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding; at least three days before the hearing.~~

~~(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least 10 calendar days before the scheduled hearing that identifies:~~

- ~~(a) any fact witness;~~
- ~~(b) any expert witness;~~
- ~~(c) any exhibit and report that each party intends to offer into evidence at the hearing.~~

~~(8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.~~

#### **R380-411-8. Conduct of Hearing.**

~~(1) The Agency shall conduct a hearing pursuant to Section 63G-4-203 for an informal adjudicative proceeding.~~

~~(2) The agency head shall appoint an impartial presiding officer to conduct a hearing. Previous involvement in the initial determination of the action precludes an officer from appointment.~~

~~(3) A telephonic hearing will be held at the discretion of the presiding officer.~~

~~(4) The presiding officer shall take testimony under oath or affirmation.~~

~~(5) Each party has the right to:~~

- ~~(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;~~
- ~~(b) introduce exhibits;~~
- ~~(c) impeach any witness, regardless of which party first called the witness to testify; and~~
- ~~(d) rebut the evidence against the party.~~

~~(6) Each party may admit any relevant evidence and use hearsay evidence to supplement, or explain other evidence, as may be required for full disclosure of each fact relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding, unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law, and may exclude irrelevant, immaterial, and unduly repetitious evidence.~~

~~(7) The presiding officer shall control the evidence, to obtain full disclosure of the relevant facts, and to safeguard the rights of each party. The presiding officer may determine the order in which he receives the evidence.~~

~~(8) 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 participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:~~

- ~~(a) restrict the person's participation in the hearing;~~
- ~~(b) strike pleadings or evidence; or~~
- ~~(c) issue an order of default.~~

~~(9) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer, at no cost to the agency.~~

~~(10) The party who initiates the hearing process through a request for agency action, has the burden of proof as the moving party.~~

~~(11) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.~~

~~(12) The presiding officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.~~

#### **R380-411-9. Record.**

~~(1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the Center.~~

~~(2) Any proceedings other than a hearing may be recorded at the discretion of the hearing officer.~~

~~(3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.~~

#### **R380-411-10. Proposed Decision and Final Agency Review.**

~~(1) At the conclusion of the hearing, the presiding officer shall take the matter under advisement, and submit a recommended decision to the Agency Head. The recommended decision is based on the testimony and evidence entered at the hearing, Agency policy and procedure, and legal precedent.~~

~~(2) The recommended decision must contain findings of fact and conclusions of law.~~

~~(3) The Agency or the director's designee may:~~

~~(a) adopt the recommended decision, or any portion of the decision;~~

~~(b) reject the recommended decision, or any portion of the decision, and make an independent determination based upon the record; or~~

~~(c) remand the matter to the presiding officer to take additional evidence; and the presiding officer thereafter shall submit to the Agency director or the director's designee, a new recommended decision.~~

~~(4) The agency head or their designee's decision constitutes final administrative action, and is subject to judicial review.~~

~~(5) The Agency shall send a copy of the final administrative action to each party, or representative, and notify them of their right to judicial review.~~

~~(6) Each party shall comply with a final decision from the director reversing the agency's decision, within 10 calendar days.~~

#### **R380-411-11 Amending Administrative Orders.**

~~(1) The Agency may amend an order if the presiding officer determines that the order contains a clerical error.~~

~~(2) The Agency shall notify each party its intent to amend the order by serving a notice of agency action signed by the hearing officer.~~

~~(3) The Agency Director shall review the amended order and the Agency Director or the Agency Director's designee shall issue a final agency amended order.~~

~~(4) The Agency shall provide a copy of the final amended order to each party.~~

#### **R380-411-12. Reconsideration.**

~~A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-301.~~

#### **R380-411-13. Judicial Review.**

~~A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-400.~~

#### **R380-411-14. Declaratory Orders.**

~~(1) The Agency may issue a declaratory order pursuant to Rule R380-1.~~

~~(2) If the Agency does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.~~

~~(3) The Agency may not issue a declaratory order if an adjudicative proceeding that involves the each party and the same issue is pending before the agency, or a federal, or state court.]~~

**R380-411-1. Purpose and Authority.**

(1) This rule establishes administrative hearing procedures for the Center for Medical Cannabis that are in addition to the procedures contained in Rule R497-100.

(2) Sections 26-1-24 and 63G-4-102 authorize this rule.

(3) If another statute governs an action that conflicts with the procedures in this rule, this rule does not apply.

**R380-411-2. Definitions.**

(1) The definitions in Sections R380-400-2, R497-100-2, and 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of a license or card, under 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. An action does not include an issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code. Closure of an application submitted to the agency, due to the applicant's failure to complete the application, or to provide required information, is not an action under this rule.

(b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health and Human Services.

(c) "Aggrieved person" means any person affected by the agency's action.

(d) "Applicant" means any person who has applied for a medical cannabis card or a registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.

(e) "Medical record" means a record that contains medical data submitted by an applicant.

**R380-411-3. Commencement of Proceedings, Response.**

(1) If an agency action aggrieves the person, the person may file a request for an administrative hearing within 30 calendar days of receiving notice of the agency action, by submitting the request on a form created by the agency.

(2) When an aggrieved person submits a request for administrative hearing, they shall file a response to the allegations contained in the notice of agency action.

(3) If a medical issue is in dispute, each request for hearing shall include supporting medical documentation.

(4)(a) An agency shall provide a written notice of action to each aggrieved person. Such actions include:

(i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;

(ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;

(iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and

(iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.

(b) The notice must include:

(i) a statement of the action the agency intends to take;

(ii) the date the intended action becomes effective;

(iii) the reason for the intended action;

(iv) the specific regulation that support the action, or the change in federal law, state law, or department rule which requires the action;

(v) the right to submit a response, and request an administrative hearing;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.

(c) The agency shall mail the notice, or electronically notify the person at the email address on file with the EVS, at least ten calendar days before the date of the intended action.

(5) The agency may issue an order on an emergency basis pursuant to Section 63G-4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.

**R380-411-4. Request for a Hearing.**

(1) An aggrieved person shall request a hearing by submitting the request on a center "Request for Hearing" form and mailing or emailing it to the Center. The request shall explain why the aggrieved person is seeking agency relief.

(2) The agency deems a request for hearing which an aggrieved person sends via mail filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the agency deems the request filed on the date that the agency receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(3) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.

(4) The presiding officer may dismiss a request for a hearing, if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;

(c) fails to appear, or participate, in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located, or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the agency requests.

(5) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.

**R380-411-5. Prehearing Procedures.**

(1) The agency shall conduct a settlement conference between the agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing. If the agency cannot reach a settlement, including a withdrawal, dismissal, or granting of the request for action, the agency shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a prehearing conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact, and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;



(d) outline procedures for the hearing; or  
 (e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the prehearing conference, or at any time during the process.

(5) The agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding pursuant to the timeframes established by the presiding officer.

(6) The presiding officer may require each party to file a signed prehearing disclosure form before the scheduled hearing that identifies:

(a) any fact witness;

(b) any expert witness; and

(c) any exhibit and report that each party intends to offer into evidence at the hearing.

(7) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

**KEY:** medical cannabis, medical cannabis hearing, marijuana  
**Date of Last Change:** ~~June 10, 2020~~ 2022  
**Authorizing, and Implemented or Interpreted Law:** 63G-3; 63G-4-102; 26-1-24; 26-61a

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Repeal and Reenact

<b>Rule or Section Number:</b>	<b>R380-412</b>	<b>Filing ID:</b> <b>54746</b>
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### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<b>Building:</b>	Martha Hughes Cannon Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 141000	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Richard Oborn	385-232-4259	roborn@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

#### 2. Rule or section catchline:

R380-412. Compassionate Use Board

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

The Department of Health and Human Services (Department) is repealing and reenacting Rule R380-412 alongside Rule R380-411, to ensure the administrative hearing procedures are updated for the consolidated Department.

(EDITOR'S NOTES: A corresponding 120-day (emergency) filing for Rule R380-412 that is effective as of 07/12/2022 is under ID 54748; and the proposed repeal and reenactment of Rule R380-411 is under ID 54745 in this issue, August 1, 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 and reenact updates 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:

The Department does not anticipate that this rule will result in a fiscal impact to the state budget. This rule updates 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 amendment does not fiscally impact the 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) 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and 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**

**6. 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 26-1-24	Section 63G-4-102	
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**Public Notice Information**

**8. 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:** 08/31/2022

**9. This rule change MAY become effective on:** 09/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/11/2022
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**R380. Health, Administration.**

**R380-412. Compassionate Use Board.**

**[R380-412-1. Authority and Purpose:**

Pursuant to Subsections 26-1-5(1) and 26-61a-105(6), this rule establishes a process and criteria for a petition to the Board to qualify for expedited final review and approval or denial by the Department.

**~~R380-412-2. Compassionate Use Board Expedited Review Criteria.~~**

To qualify for expedited review by the Department, an individual submitting the petition shall meet the following criteria:

(1) diagnosis with a terminal illness and a life expectancy of six months or less;

(2) present symptoms not adequately managed with standard therapies that may reasonably be expected to be alleviated by medical cannabis; and

(3) have a QMP recommending medical cannabis who is directly and regularly involved in the individual's medical care.

**~~R380-412-3. Compassionate Use Board Expedited Review Process.~~**

(1) Each individual submitting a petition for expedited review by the Department shall complete a form available from the Department.



(2) Within five business days of receiving a complete petition for expedited review, the Department shall review the petition and either approve the petition and issue a medical cannabis card to the applicant or prepare the petition for Board review.]

**R380-412-1. Purpose and Authority.**

(1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis Compassionate Use Board.

(2) Sections 26-1-5, 26-61a-105, 26-1-24, and 63G-4-102, authorize this rule.

**R380-412-2. Definitions.**

(1) The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial of a medical cannabis card for compassionate use or denial of a petition for expedited review under Section 26-61a-105.

(b) "Aggrieved person" means any person affected by the department's action.

(c) "Board" means the Compassionate Use Board in the Utah Department of Health and Human Services as created under Section 26-61a-105.

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

(e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.

(f) "Final administrative order" means a ruling by the presiding officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

(g) "Medical record" means a record that contains medical data submitted by an aggrieved person.

(h) "Presiding officer" means the department head, or a designee who is a licensed physician, as approved by the Executive Director; to conduct an administrative hearing pursuant to this rule.

**R380-412-3. Administrative Adjudicative Procedures.**

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

(2) A presiding officer shall preside over the informal hearing.

(3) Closure of a petition submitted to the presiding officer due to the aggrieved person's failure to complete the petition, or to provide required information, is not an action under this rule.

(4) If another statute governs an action that conflicts with the procedures in this rule, this rule does not apply.

**R380-412-4. Criteria for Expedited Review.**

To qualify for expedited review by the board, an individual submitting the petition shall meet the criteria set forth in Subsection 26-61a-105(6) as determined by the board.

**R380-412-5. Timeframe for Expedited Review.**

(1) Each individual submitting a petition for expedited review by the board shall complete a petition on a form available from the board.

(2) Within five business days of receiving a complete petition for expedited review, the board shall review the petition and either approve the petition and issue a medical cannabis card for compassionate use to the aggrieved person or deny the petition for

expedited review and prepare the petition for board review on its regular schedule.

**R380-412-6. Administrative Appeal from Denials for Expedited Review.**

(1) If the board denies a petition for expedited review, the aggrieved person may file a request for administrative hearing to challenge only the decision to deny expedited review.

(2) The aggrieved person shall file a request for administrative hearing to the presiding officer within ten business days of receiving the notice of agency action Denying Expedited Review.

(3) Upon receipt of a request for administrative hearing to challenge the denial of a petition for expedited review, the presiding officer shall review the petition, the decision of the board and any other documents submitted by the parties and issue a written decision upholding or overturning the board's decision to deny expedited review.

(4) If the presiding officer upholds the board's decision to deny expedited review, the presiding officer shall submit the petition to the board for review on its regular schedule.

(5) If the presiding officer overturns the board's decision to deny expedited review, the board shall review the petition to obtain a medical cannabis card for compassionate use within five business days after receiving the presiding officer's decision. The board shall either approve the petition and issue a medical cannabis card for compassionate use to the aggrieved person or deny the petition.

(6) If the board denies the petition to issue a medical cannabis card for compassionate use, the board shall issue a notice of agency action that meets the requirements of Subsection R380-412-7(4) to notify the aggrieved person of the denial. The aggrieved person may request an administrative hearing to challenge the denial by following the procedure set forth in Sections R380-412-7 through R380-412-11.

**R380-412-7. Commencement of Proceedings.**

(1) If the board denies recommendation of a medical cannabis card for compassionate use the aggrieved person may file a request for an administrative hearing within 30 calendar days of receiving the notice of the denial by submitting the request on a form created by the board.

(2) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for agency action, the board shall consider the request, and grant or deny it, or set the request for further proceedings.

(3) If a medical issue is in dispute, each request shall include supporting medical documentation. The board shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for agency action, or strike the party's response, to a notice of agency action if it does not receive supporting medical documentation in a timely manner.

(4)(a) The board shall provide a written notice of action to each aggrieved person. The notice shall include:

(i) a statement of the action the board intends to take;

(ii) the date the intended action becomes effective;

(iii) the reason for the intended action;

(iv) the specific regulation that supports the action, or the change in federal law, state law, or department rule which requires the action;

(v) the right to submit a response, and request an administrative hearing, including the time limitations to do so;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstance under which the medical cannabis card, will be approved by the board, pursuant to this rule.

**R380-412-8. Hearing and a Request for a Hearing.**

(1) The presiding officer may convert the proceeding to a formal hearing, if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G-4-202. If a hearing under this rule is converted to a formal hearing, pursuant to Section 63G-4-202, the formal hearing shall be conducted pursuant to these rules; except as otherwise provided in Sections 63G-4-204 through 63G-4-208, or other applicable statutes.

(2) An aggrieved person shall request a hearing by submitting the request on a board "Request for Hearing" form and mailing it to the board. The request shall explain why the aggrieved person is seeking department relief.

(3) The board deems a request for hearing which an aggrieved person sends via mail filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the board deems the request filed on the date that the board receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) The presiding officer shall conduct a hearing in connection with a board action, if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact, if the aggrieved person submits facts that do not conflict with the facts that the board relies upon in taking action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.

(6) The presiding officer may dismiss a request for a hearing, if the aggrieved person:

(a) withdraws the request in writing;  
(b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;

(c) fails to appear, or participate, in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located, or mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the board requests.

(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration pursuant to Section 63G-4-302.

**R380-412-9. Prehearing Procedures.**

(1) The board shall conduct a settlement conference between the board, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing, or agency action. If the parties cannot reach a settlement, including a withdrawal of the request for hearing or the dismissal or granting of the request for action, the board shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a prehearing conference to:

(a) formulate or simplify the issues;  
(b) obtain admissions of fact, and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The parties may enter into a written stipulation resolving all, or part, of the adjudicative action during the prehearing conference, or at any time during the process.

(5) This rule prohibits ex parte communication with the presiding officer. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters.

(6) The presiding officer shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding, at least three days before the hearing.

(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least ten calendar days before the scheduled hearing that identifies:

(a) any fact witness;  
(b) any expert witness; and  
(c) any exhibit and report that each party intends to offer into evidence at the hearing.

(8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

**R380-412-10. Notice of Hearing.**

The presiding officer shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least ten calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person shall inform the presiding officer of a current address, email address, and telephone number.

**R380-412-11. Procedures for Informal Proceedings.**

(1) The presiding officer shall hold informal adjudicative proceedings in compliance with Section 63G-4-203.

(a) Unless specified otherwise in another applicable rule, the 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 ten business days following receipt of the notice of agency action or request for agency action.

(b) An attorney or a non-attorney may represent a party. The department shall not appoint attorneys.

(c) The parties may not engage in discovery, but the presiding officer may issue subpoenas or other orders to compel the production of necessary evidence. The presiding officer may require that parties exchange documents before the hearing to expedite the process. Each party to the proceedings shall be responsible for the appearance of witnesses.

(d) Each party shall have access to information contained in the board's files and to materials and information gathered in any investigation, to the extent permitted by law.

(e) This rule prohibits intervention, except where a federal statute or rule requires that the state permit intervention.

(f) The presiding officer shall provide a hearing to any party entitled to request a hearing in accordance with Section 63G-4-203.

(g) In the hearing, the presiding officer shall take testimony under oath or affirmation.

(h) In the hearing, the presiding officer shall permit parties to testify, present evidence, and comment on the issues.

(i) Each party may offer any relevant evidence, including hearsay evidence. A party cannot base their case exclusively on inadmissible hearsay. A party must present a residuum of evidence that would be admissible under the rules of procedure with the applicable court of competent jurisdiction.

(j) The presiding officer may exclude irrelevant, immaterial and repetitious evidence.

(k) The presiding officer may question any party or witness.

(l) 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.

(m) When a party claims to possess but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

(n) The presiding officer may issue an order of default against any party that fails to obey an order entered by the presiding officer.

(o) The presiding officer shall hold hearings only after the presiding officer mails a timely notice to each party.

(p) 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 department's rules, the presiding officer shall issue a signed order in writing that conforms to Subsection 63G-4-203(1)(i). This order shall be the final administrative order of the department.

(q) Hearings shall be open to the parties. Hearings are not open to the public.

(r) The presiding officer shall base the order on the facts appearing in the board's files that were available to the other party and on the facts presented in evidence at the hearings.

(s) The presiding officer shall promptly mail a copy of the presiding officer's order to each of the parties.

(3) When the board commences an informal adjudicative proceeding by a notice of agency action issued by the board, the board shall have the burden of providing, by a preponderance of the evidence, that the board's decision was reasonable, unless statute or department rule specify otherwise. The board may demonstrate this by showing that the board's decision was not arbitrary and capricious.

(4) The parties shall mail motions and pleadings filed with the presiding officer by a party to each of the other parties named in the action.

(5) The presiding officer deems motions or pleadings received by the presiding officer after regular business hours of Monday through Friday, 8 a.m. to 5 p.m., excluding state holidays, received the following business day.

(6) This rule prohibits ex parte communication with the presiding officer 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 or made a part of the record.

(7) Any aggrieved person shall inform the presiding officer of their current address, email address, and telephone number.

#### **R380-412-12. Record.**

(1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the department.

(2) The presiding officer may record any proceedings other than a hearing at their own discretion.

(3) If a party requests a transcribed copy of the recording of a hearing, that party may request the audio recording of the hearing and have it transcribed at the party's sole cost.

#### **R380-412-13. Agency Review.**

The department shall not allow agency review under Section 63G-4-301.

#### **R380-412-14. 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 notify each party its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The presiding officer shall review the amended order and the presiding officer shall issue a final agency amended order.

(4) The presiding officer shall provide a copy of the final amended order to each party.

#### **R380-412-14. Reconsideration.**

A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-302.

#### **R380-412-15. Judicial Review.**

A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-405.

**KEY:** medical cannabis, [~~compassionate use board~~]medical cannabis hearing, [~~medical~~]-marijuana

Date of Last Change: 2022[~~June 3, 2021~~]

Authorizing, and Implemented or Interpreted Law: 63G-3; [~~26-61a~~]63G-4-102; 26-1-~~[5(4)]~~24; 26-61a-~~105(6)~~

#### **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** New

**Rule or Section Number:** R380-500

**Filing ID:** 54732

#### **Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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:

R380-500. Agency Authority

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

This rule clarifies the rule authority for the Department of Health and Human Services (Department).

### 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 clarifies that the Department of Health and Human Services shall have the authority for all rules made effective under Title 26B, Department of Health and Human Services Code; Title 26, Utah Health Code; and Title 62A, Utah Human Services Code.

(EDITOR'S NOTES: A corresponding 120-day (emergency) filing for Rule R380-500 that is effective as of 07/01/2022 is under ID 54733 in the July 15, 2022, issue of the Bulletin.)

## Fiscal Information

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

#### A) State budget:

There are no anticipated costs or savings to the state budget associated with this rule. This rule is the result of the consolidation of the Department and is technical in nature.

#### B) Local governments:

There are no anticipated costs or savings for local government agencies associated with this rule. This rule is the result of the consolidation of the Department and is technical in nature.

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

There are no anticipated costs or savings for small businesses associated with this rule. This rule is the result of the consolidation of the Department and is technical in nature.

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

There are no anticipated costs or savings for non-small businesses associated with this rule. This rule is the result of the consolidation of the Department and is technical in nature.

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

There are no anticipated costs or savings for persons other than small businesses, non-small businesses, state, or local government entities, associated with this rule. This rule is the result of the consolidation of the Department and is technical 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 associated with this rule.

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

##### Regulatory Impact Table

Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

#### H) Department head comments on fiscal impact and approval of regulatory impact analysis:

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

#### Citation Information

**6. 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 26B-1-103	Section 26B-1-1202	
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#### Public Notice Information

**8. 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.)

<b>A) Comments will be accepted until:</b>	08/31/2022
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<b>9. This rule change MAY become effective on:</b>	09/07/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/01/2022
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**R380. Health and Human Services, Administration.**

**R380-500. Agency Authority.**

**R380-500-1. Purpose.**

This rule clarifies the rule authority for the Department of Health and Human Services.

**R380-500-2. Authority.**

(1) Effective July 1, 2022, in accordance with Sections 26B-1-103 and 26B-1-202 the Department of Health and Human Services shall have the authority for all rules made effective under:

(a) Title 26B, Department of Health and Human Services Code;

(b) Title 26, Utah Health Code; and

(c) Title 62A, Utah Human Services Code.

(2) Effective July 1, 2022 any rule reference to the Department of Health or the Department of Human Services will refer to the Department of Health and Human Services.

**KEY: administrative procedures, health administration**

**Date of Last Change: 2022**

**Authorizing, and Implemented or Interpreted Law: 26B-1-103; 26B-1-202**

#### NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R432-31</b>	<b>Filing ID:</b> <b>54759</b>
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#### Agency Information

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Family Health and Preparedness, Licensing
<b>Room number:</b>	1st Floor
<b>Building:</b>	Multi-Agency State Office Bldg.
<b>Street address:</b>	195 N 1950 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 144103
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4103

#### Contact persons:

Name:	Phone:	Email:
Erica Pryor	801-273-2994	ericapryor@utah.gov
Kristi Grimes	385-214-9187	kristigrimes@utah.gov

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

#### General Information

##### 2. Rule or section catchline:

R432-31. Life with Dignity Order

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

The purpose of this amendment is to modify and replace outdated language with the Utah Rulewriting Manual standards.

##### 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 revisions include more specific language consistent with the Utah Rulewriting Manual standards.

#### Fiscal Information

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

**A) State budget:**

State government process was thoroughly reviewed. This change will not impact the current process for licensure and re-licensure surveys. No change to the state budget is expected because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

**B) Local governments:**

Local government city business licensing requirements were considered. This proposed rule amendment should not impact local governments' revenues or expenditures because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. The Provider Order for Life Sustaining Treatment (POLST) Standards are regulated by the Department of Health and Human Services and not local governments. There will be no change in local business licensing or any other items with which local government is involved. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment should not impact costs for non-small businesses because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

After conducting a thorough analysis, it was determined that this rule amendment will not result in a fiscal impact to compliance costs for affected persons because this amendment modifies and replaces outdated language with the Utah Rulewriting Manual standards. There are no substantive changes being made regarding the fiscal impact of this rule.

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

**Regulatory Impact Table**

<b>Fiscal Cost</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

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

**Citation Information**

**6. 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:**



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

**8. 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.)

<b>A) Comments will be accepted until:</b>	08/31/2022
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<b>9. This rule change MAY become effective on:</b>	09/07/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/12/2022
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**R432. Health, Family Health and Preparedness, Licensing.****R432-31. ~~Life with Dignity Order~~ Provider Order for Life-Sustaining Treatment.****R432-31-1. Authority and Purpose.**

(1) This rule is adopted pursuant to ~~Utah Code~~ Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act and Section 75-2a-106.

(2) This rule establishes the forms and systems for ~~Life with Dignity Orders~~ Provider Order for Life-Sustaining Treatment (POLST).

**R432-31-2. Definitions.**

(1) The definitions found in Section[s] ~~UCA~~ 26-21-2 and Title 75, ~~Chapter 2a, Advance Health Care Directive Act~~ apply to this rule.

(2) ~~In addition,~~ "[h] Licensed [h] Health [e] Care [f] Facility" means a facility or entity licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

**R432-31-3. ~~Life with Dignity Order~~ POLST Forms.**

(1) An individual who desires to execute a ~~Life with Dignity Order~~ POLST ~~must~~ shall use a form or electronic format approved by the Department. The form ~~may~~ shall not be altered in layout or style, including font style and size, without the express written permission of the Department.

(2) Any person, health care provider, or health care facility may obtain a form from the Department and, if made available by the Department, from a website established for that purpose.

(3) A health care provider, licensed health care facility, or EMS provider ~~may~~ shall act upon a copy of a ~~Life with Dignity Order~~ POLST as if it were the original.

**R432-31-4. Facility Policies and Procedures.**

(1) Health care facilities ~~must~~ shall establish and implement policies and procedures that conform to Section 75-2a-106.

(2) Health care facilities policies and procedures ~~must~~ shall ~~assure that~~:

(a) ~~the facility~~ determine[s] upon admission whether each individual has a ~~Life with Dignity Order~~ POLST;

(b) assure that the facility is not required to offer ~~all~~ each individual[s] the opportunity to complete a ~~Life With Dignity Order~~ POLST;

(c) ~~the facility determines which~~ identify individuals who may be offered the opportunity to complete a ~~Life with Dignity Order~~ POLST, which may include individuals who;

(i) have a serious illness and are likely to face a life-threatening health crisis;

(ii) have specific preferences for end-of-life treatments;

or

(iii) have declining cognitive abilities and lack a surrogate to make decisions for them;

(d) ~~the facility identifies~~ identify circumstances under which an individual with a ~~Life with Dignity Order~~ POLST shall be offered the opportunity to ~~modify~~ change the order;

(e) assure that the facility maintains the ~~Life with Dignity Order~~ POLST in the individual's medical record;

(f) ~~the facility identifies~~ identify circumstances under which ~~the facility~~ would not follow a ~~Life With Dignity Order~~ POLST;

(g) assure that only qualified providers, as per ~~Utah Code~~ Subsection 75-2a-106(2), assist with the completion of a ~~Life With Dignity Order~~ POLST. Qualified providers include[s];

(i) the physician, APRN, ~~advanced practice registered nurse,~~ or ~~physician assistant~~ PA of the person to whom the ~~life with dignity order~~ POLST relates; or

(ii) a health care provider who is acting under the supervision of a person described in Subsection (2)(g)(i) and is a licensed nurse, ~~physician assistant,~~ PA or mental health professional[-];

(h) assure that a ~~Life With Dignity order~~ POLST ~~shall~~ be signed personally by the physician[-] or, APRN[-] or ~~subject to 75-2a-106(11),~~ ~~physician assistant~~ PA of the person to whom the ~~life with dignity order~~ POLST relates; and

(i) assure that if the licensed health care facility's services do not include the supervision of a physician, ~~physician assistant~~ PA or ~~advanced practice registered nurse~~ APRN, the facility shall make a referral to the primary care provider to create, replace or ~~modify~~ change a ~~Life With Dignity Order~~ POLST.

**R432-31-5. Training.**

Each licensed health care facility shall appropriately train relevant health care, quality improvement[-] and record keeping staff on the requirements of Title 75, Chapter 2a, the Advance Health Care Directive Act[-], this rule[-] and the facility's policies and procedures established pursuant to this rule.

**R432-31-6. Transferability of ~~Life with Dignity Orders~~ POLST.**

(1)(a) A ~~Life with Dignity Order~~ POLST is fully transferable between ~~all~~ any licensed health care facilities.

(b)2 The health care providers assuming the individual's care at the receiving licensed health care facility shall read the ~~Life with Dignity Order~~ POLST.

(e)3 The receiving provider ~~must~~ shall have policies and procedures to address the circumstances under which the provider will not follow the instructions contained in the ~~Life With Dignity Order~~ POLST.

## NOTICES OF PROPOSED RULES

(2)(a)4 A licensed health care facility that discharges~~;~~ but does not transfer to another licensed health care facility, an individual who has a Life with Dignity Order, a resident in any circumstance, shall provide a copy of the individual's Life with Dignity Order POLST to the individual. ~~or, if~~ If the individual lacks the capacity to make~~—a~~ health care decisions, as defined in ~~s~~Section 75-2a-104, the facility shall also provide a copy to the individual's surrogate.

(b)5 A licensed health care facility that transfers an individual with a ~~Life with Dignity Order~~ POLST to another licensed health care facility shall provide a copy of the ~~Life with Dignity Order~~ POLST to the receiving ~~licensed health care~~ facility.

(3)6 A licensed health care facility shall allow an individual to complete, amend~~;~~ or revoke a ~~Life with Dignity Order~~ POLST at any time upon request.

### **R432-31-7. Presentation of ~~Life with Dignity Orders~~ POLST to EMS Personnel.**

(1) Except for home health agencies, personal care agencies and home-based hospice agencies, a licensed health care facility in possession of a ~~Life with Dignity Order~~ POLST ~~must~~shall present the individual's ~~Life with Dignity Order~~ POLST to EMS personnel upon ~~the arrival of EMS personnel who are present~~ to treat or transport the individual~~;~~ and~~].~~

(2) For an individual who resides at home, if the home health agency, personal care agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel ~~must~~shall present the individual's ~~Life with Dignity Order~~ upon the arrival of ~~]~~ POLST to the EMS personnel ~~who are present to treat or transport the individual~~].

### **R432-31-8. Home Placement of ~~Life with Dignity Orders~~ POLST.**

(1) If an individual under the care of a home health agency, personal care agency or a hospice agency possesses a ~~Life with Dignity Order~~ POLST, the agency ~~must~~shall ensure that a copy of the ~~Life with Dignity Order~~ POLST is left at the individual's place of residence.

(2) For an individual adult who resides at home, including an emancipated minor, it is recommended that a copy of the ~~Life with Dignity Order~~ POLST be posted on the front of the refrigerator or over the individual's bed.

(3) For a minor who resides at home, it is recommended that a copy of the ~~Life with Dignity Order~~ POLST be placed in a ~~tube~~container and placed on the top shelf of the door ~~of~~inside the refrigerator.

### **R432-31-9. ~~Life with Dignity~~ POLST Bracelets and Necklaces.**

(1) The Department may contract with a vendor or vendors to provide an approved ~~Life with Dignity~~ POLST bracelet or necklace.

(2) An individual with a ~~Life with Dignity Order~~ POLST may obtain an approved ~~Life with Dignity~~ POLST bracelet or necklace from a vendor approved by the Department. The approved ~~Life with Dignity~~ POLST bracelet or necklace identifies the individual to EMS or other health care providers as possessing a ~~Life with Dignity Order~~ POLST.

### **R432-31-10. Prior Orders and Out of State Orders.**

(1) EMS and other health care providers ~~may~~shall recognize as valid ~~all~~any POLST forms or Medical Orders for Life-Sustaining Treatment, including the national POLST form. This also

includes~~;~~ Life With Dignity and EMS/DNR orders, including bracelets and necklaces, unless superseded by a subsequent ~~Life with Dignity Order or~~ POLST.

~~—(2) Licensed health care facilities must ensure that all individuals receiving services who have current POLST/Life With Dignity Orders, receive assistance to complete new orders to comply with current rule requirements by January 31, 2011.]~~

~~(3)(2)~~ Physicians ~~may~~shall complete and sign a new ~~Life With Dignity Orders~~ POLST for individuals with prior forms who no longer have capacity to complete new orders, and who do not have a surrogate~~]~~ or guardian to authorize the new order. The physician ~~must~~shall ~~indicate~~state on the new order that the individual's preferences from the prior order are still applicable.

~~(4)(3)~~ A form that an individual executed while in another state may be honored as if it were executed in compliance with this rule and Section 75-2a-106 if it:

- (a) is substantially similar to a ~~Life with Dignity Order~~ POLST or a ~~Physician's Order for Life-Sustaining Treatment~~ Medical Order for Life-Sustaining Treatment; and
- (b) was executed according to the laws of that state.

### **R432-32-11. Signature Requirement.**

(1) The POLST shall be signed by the patient or surrogate decision maker and by a medical provider, including an MD, DO, PA, or APRN to be valid.

(2) For pediatric patients, two different medical providers shall sign the POLST to make it effective.

(3) Electronic signatures are acceptable for POLST forms.

(4) In the event the surrogate decision maker cannot sign in person or electronically, a verbal signature may be noted if confirmed by two medical professionals caring for the patient.

(5) Photocopies and faxes of signed POLST forms are legal and valid.

**KEY: POLST, do not resuscitate, Life with Dignity Order**

**Date of Last Change: 2022**~~June 7, 2013~~

**Notice of Continuation: January 24, 2022**

**Authorizing, and Implemented or Interpreted Law: 26-21; 75-2a-106**

## **NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** New

**Rule or Section Number:** R714-570

**Filing ID:** 54742

## **Agency Information**

<b>1. Department:</b>	Public Safety
<b>Agency:</b>	Highway Patrol
<b>Building:</b>	Calvin Rampton Complex
<b>Street address:</b>	4501 S 2700 W
<b>City, state and zip:</b>	Salt Lake City, UT 84119-5994
<b>Mailing address:</b>	PO Box 141100
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1100



<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R714-570. Mental Health Resources for First Responders Grant Funding
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
This rule is required as a result of the passage of H.B. 23 during the 2022 General Session, and is authorized by Section 53-21-103.
<b>4. Summary of the new rule or change</b> (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 creates a program to assist first responder agencies through monetary grants using one-time funding appropriated by the legislature during the 2022 General Session. This rule establishes the Mental Health Resources for First Responders Grant Funding Committee to assist the Department of Public Safety in awarding funds to first responder agencies, criteria for first responder agencies to apply for grant funding, criteria for awarding grant funding to first responder agencies, parameters for mental health resources to be provided to retirees of first responder agencies, and requirements to ensure accountability for funding provided to first responder agencies.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Utah Highway Patrol (UHP) anticipates a cost to the state budget of \$5,000,000. The Utah Legislature appropriated one-time funding in the amount of \$5,000,000 to provide grant funding for first responder agencies to either establish a new program, or enhance an existing program, to provide mental health resources to first responders employed by the agencies.
<b>B) Local governments:</b>
UHP anticipates a cost savings of \$5,000,000 to local governments. Local first responder agencies will have the ability to apply for grant funding from the \$5,000,000 appropriation in order to establish a new program, or enhance an existing program, to provide mental health

resources to first responders employed by the agencies. Local law enforcement entities will apply for grant funding, and once approved, will be awarded grant funding. Those agencies awarded grant funding will see an inestimable fiscal benefit. In addition, this rule sets parameters for mental health resources to be provided to retirees of first responder agencies for a period of three years, which could result in an inestimable fiscal impact to local first responder agencies.

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

In Utah, it is estimated that there are 162 small business out-patient mental health centers (NAICS 621420), 138 small business offices of mental health physicians (NAICS 621112), 455 small business offices of mental health practitioners (NAICS 621330), and 1647 small business offices of physicians, ex. mental health (NAICS 621111). It is not clear which of these businesses might be qualified to provide mental health services to first responders in compliance with the requirements under Section 53-21-103.

First responder agencies applying for grant funding will be required to submit a request for proposal, request for qualifications or program description that meets the statutory criteria under Subsection 53-21-103(2) for consideration prior to grant funding being awarded. Through this process it will be determined which of these small businesses would meet the statutory criteria to provide required services. Those small businesses that meet statutory criteria and enter into a contract with a first responder agency to provide the required services could potentially see an inestimable fiscal benefit.

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

In Utah, it is estimated that there are 7 non-small business out-patient mental health centers (NAICS 621420), 1 non-small business offices of mental health physicians (NAICS 621112), 2 non-small business offices of mental health practitioners (NAICS 621330), and 104 non-small business offices of physicians, ex. mental health (NAICS 621111).

First responder agencies applying for grant funding will be required to submit a request for proposal, request for qualifications or program description that meets the statutory criteria under Subsection 53-21-103(2) for consideration prior to grant funding being awarded. Through this process it will be determined which of these non-small businesses would meet the statutory criteria to provide required services. Those small businesses that meet statutory criteria and enter into a contract with a first responder agency to provide the required services could potentially see an inestimable fiscal benefit.

**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**):

First responders who retire from a first responder agency or separate employment as a result of a critical incident will be entitled to mental health resources provided by the first responder agency for a period of three years. This could result in a fiscal benefit to a person who retires or separates employment and seeks mental health resources from the first responder agency with whom they were previously employed.

**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 because this rule identifies the process for first responder agency to seek grant funding to provide mental health resources to first responders employed by the agencies and establishes parameters for mental health resources to be provided to retirees of first responder agencies.

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

#### Regulatory Impact Table

Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Net Benefits</b>	<b>Fiscal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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**H) Department head comments on fiscal impact and 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

**6. 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 53-21-103		
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#### Public Notice Information

**8. 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:** 08/31/2022

**9. This rule change MAY become effective on:** 09/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

<b>Agency head or designee and title:</b>	Mike Rapich, Colonel UHP	<b>Date:</b>	07/08/2022
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#### R714. Public Safety, Highway Patrol.

##### R714-570. Mental Health Resources for First Responders Grant Funding.

##### R714-570-1. Purpose.

The purpose of this rule is to create a program to assist first responder agencies through monetary grants to provide mental health resources for first responders in accordance with Section 53-21-103.

##### R714-570-2. Authority.

This rule is authorized by Section 53-21-103.

##### R714-570-3. Definitions.

(1) Terms used in this rule are found in Section 53-21-103.

(2) In addition:

(a) "assessment" means an in-depth clinical interview and ongoing process of information gathering conducted by a licensed mental health therapist to determine if an individual is in need of mental health or substance use disorder treatment and to develop a treatment plan;

(b) "committee" means the Mental Health Resources for First Responders Grant Funding Committee established under this rule;

- (c) "retired" means the status of an individual who has:
  - (i) become eligible, applies for, and may receive an allowance under Title 49, Utah State Retirement and Insurance Benefit Act; or
  - (ii) separated employment as a result of a critical incident; and
  - (d) "screening" means a preliminary evaluation to determine whether key features of a substance use disorder or mental health disorder are present in an individual.

**R714-570-4. Mental Health Resources for First Responders Grant Funding Committee.**

This rule establishes the Mental Health Resources for First Responders Grant Funding Committee, which shall be responsible for assisting the department in awarding funds to first responder agencies to provide mental health resources for first responders in accordance with Section 53-21-103.

**R714-570-5. Committee Membership.**

- (1) The committee shall consist of seven members made up of one representative from each of the following groups or organizations:
  - (a) Utah Department of Public Safety Commissioner or designee;
  - (b) Utah Highway Patrol Colonel or designee;
  - (c) Utah Sheriffs Association;
  - (d) Utah Chiefs of Police Association;
  - (e) Utah State Fire Chiefs Association;
  - (f) Utah Association of Counties; and
  - (g) League of Cities and Towns.
- (2) Members of the committee shall:
  - (a) be approved by the Commissioner of the Utah Department of Public Safety;
  - (b) be appointed for four-year terms; and
  - (c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.
- (3) If a vacancy occurs during the four-year term of a committee member, a new member shall be appointed from the same group or organization to finish the term of that member.
- (4) The committee chair shall be the Utah Department of Public Safety Commissioner or designee.
- (5) Four members shall constitute a quorum for committee action.
- (6) The department's special counsel shall assist the committee as needed.

**R714-570-6. Committee Meetings.**

The committee shall meet at least quarterly to review and approve applications from first responder agencies.

**R714-570-7. Applications.**

- (1) Applications for grant funding shall:
  - (a) be made on department forms;
  - (b) include criteria required under Section 53-21-103;
  - (c) ensure that peer confidentiality is addressed;
  - (d) be sent to the committee in care of the department; and
  - (e) be submitted before March 31, 2023.
- (2) A group of first responder agencies may jointly apply for grant funding to provide mental health resources for first responders.

- (a) The group of agencies shall designate one first responder agency as the lead agency.
- (b) The lead agency shall:
  - (i) take responsibility for applying for grant funding in behalf of the group of first responder agencies in accordance with Subsection R714-570-7(1);
  - (ii) provide oversight of the mental health resources program for the group of agencies;
  - (iii) maintain accounting records; and
  - (iv) ensure that mental health resources are available to first responders employed by the group of first responder agencies, their family members, and first responders that have retired from the group of first responder agencies, as required under Section 53-21-102.

**R714-570-8. Criteria and Awards.**

- (1) The committee shall:
  - (a) review timely applications submitted by first responder agencies;
  - (b) prioritize grant funding as required under Subsection 53-21-103(6); and
  - (c) approve funding awards for first responder agencies that have submitted completed applications that meet the requirements under Section 53-21-103.
- (2) The committee shall notify each first responder agency that applied for grant funding of:
  - (a) the approval or denial of the application for funding; and
  - (b) the amount of funding that will be made available to first responder agency.
- (3) An agency awarded grant funding shall ensure that mental health resources are made available to first responders, family members of first responders and retired first responders within 60 days of receipt of grant funding.

**R714-570-9. Parameters for Services for Retirees.**

A first responder agency shall provide mental health resources for at least three years to a first responder who has retired from the first responder agency.

**R714-570-10. Agency Accountability.**

- (1) First responder agencies that receive funding shall:
  - (a) use the awarded resources only in the manner set forth in Section 53-21-103;
  - (b) maintain records for five years sufficient to show how the funding is used;
  - (c) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding; and
  - (d) provide a quarterly report to the committee that includes:
    - (i) the amount of grant funding awarded to the agency;
    - (ii) the amount of grant funding spent by the agency, and the purposes for which the grant funding was spent;
    - (iii) the amount of grant funding not yet spent by the agency;
    - (iv) the number of first responders, family members, and retired first responders served; and
    - (v) the types of services provided.
- (2) If the committee determines that an agency has used grant funding for purposes not specified in Section 53-21-103, the agency shall return the grant funding to the committee.

**KEY:** mental health resources, first responder, first responder agency  
**Date of Enactment:** 2022  
**Authorizing, and Implemented or Interpreted Law:** 53-21-103

## NOTICE OF PROPOSED RULE

**TYPE OF RULE:** Amendment

<b>Rule or Section Number:</b>	<b>R986-300-306</b>	<b>Filing ID:</b>	<b>54728</b>
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### Agency Information

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Employment Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-526-9653	ampeck@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

<b>2. Rule or section catchline:</b>
R986-300-306. Time Limits
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This amendment adopts language to reflect changes adopted by the federal Office of Refugee Resettlement (ORR).
<b>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):</b>
The changes clarify the date of eligibility for assistance in certain circumstances; and add language addressing Refugee Resettlement Program (RRP) assistance eligibility of Afghan and Ukrainian parolees and refugees due to changes in federal law and policy.

### 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 subsections. This new subsection 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 RRP assistance, 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 below.

#### 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 RRP financial assistance, 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 below.

#### 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**):

Based on information provided by the U.S. State Department, the Department of Workforce Services (Department) estimates that approximately 64 Ukrainian refugees will be eligible for assistance in fiscal year 2023, with 21 eligible in fiscal year 2024. The average amount of assistance provided is estimated to be \$192 per month, based on the Department's recent experience. In 2023, the monthly amount of assistance is estimated to be \$12,288, and the 2024 estimate is \$4,032 per month. The Department therefore estimates the total amount provided to refugees to be \$147,456 in FY2023 and \$48,384.00 in FY2024.

#### 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) 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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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	\$147,436	\$48,384	\$0
<b>Total Fiscal Benefits</b>	<b>\$147,436</b>	<b>\$48,384</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$147,436</b>	<b>\$48,384</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. 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	
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**Public Notice Information**

**8. 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:** 08/31/2022

**9. This rule change MAY become effective on:** 09/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	06/30/2022
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**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:

(i) a citizen[s] or national[s] of Afghanistan paroled into the United States between July 31, 2021 and September 30, 2022[;], or [including]

(ii) a spouse[s and] or child[ren] of a paroled individual[s] described in Subsection R986-300-306(1)(c)(i) who is paroled into the United States after September 30, 2022[, 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.]

(d) "Ukrainian Humanitarian Parolee" means:

(i) a citizen or national of Ukraine paroled into the United States between February 24, 2022 and September 30, 2023;

(ii) a non-Ukrainian individual who habitually resided in Ukraine and who was paroled into the United States between February 24, 2022 and September 30, 2023;

(iii) a spouse or child of an individual described in Subsection R986-300-306(1)(d)(i) or (ii) who is paroled into the United States after September 30, 2023; or

(iv) a parent, legal guardian, or primary caregiver of an unaccompanied refugee minor or an unaccompanied child described in Subsection R986-300-306(1)(d)(i) or (ii) who was paroled into the United States after September 30, 2023.

(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.



## NOTICES OF PROPOSED RULES

(c)(i) Notwithstanding Subsections R986-300-303(2)(b), 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, whichever is later.

(ii) The eligibility date for an Afghan Humanitarian Parolee is October 1, 2021, or the date the parolee entered the community in the United States, as determined by the ORR, whichever date is later.

(d)(i) Notwithstanding Subsections R986-300-303(2)(b), R986-300-306(2)(a), and (2)(b), a Ukrainian Humanitarian Parolee is eligible for RRP financial assistance only until the end of the individual's parole term.

(ii) The eligibility date for a Ukrainian Humanitarian Parolee is May 21, 2022, or the date of humanitarian parole, whichever is later.

(3) Regardless of eligibility date, RRP financial assistance cannot be paid for any months before the date of application for assistance.

**KEY:** refugee resettlement program, SNAP

**Date of Last Change:** [June 21], 2022

**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

<b>Rule or Section Number:</b>	<b>R986-700-721</b>	<b>Filing ID:</b>	<b>54749</b>
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### Agency Information

<b>1. Department:</b>	Workforce Services		
<b>Agency:</b>	Employment Development		
<b>Building:</b>	Olene Walker Building		
<b>Street address:</b>	140 E 300 S		
<b>City, state and zip:</b>	Salt Lake City, UT 84111		
<b>Mailing address:</b>	PO Box 45244		
<b>City, state and zip:</b>	Salt Lake City, UT 84145-0244		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Amanda B. McPeck	801-526-9653	ampeck@utah.gov	
<b>Please address questions regarding information on this notice to the agency.</b>			

### General Information

<b>2. Rule or section catchline:</b>
R986-700-721. Eligible Provider
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>

The change makes commercial preschools eligible to participate in the child care subsidy 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 provide that commercial preschools are eligible to participate in the child care subsidy program, and clarifies which child care centers are eligible.

### 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 due to the changes. The changes will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state 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 an indirect fiscal benefit for small businesses because assistance for preschool enrollment will enable more individuals to work and purchase goods and services. Most, if not all preschools are small businesses, who may receive an indirect benefit because more families will be able to afford preschool if they receive a subsidy and thus use a preschool's services. 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 below. There are no compliance costs for small businesses.

#### 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 assistance for preschool enrollment will enable more individuals to work and purchase goods and services. Preschools that are non-small businesses may receive an indirect benefit because more families will be able to afford preschool if they receive a subsidy and thus use a preschool's services. 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 below. There are no compliance costs 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**):

Based on the best available information, the Department of Workforce Services (Department) estimates that an additional 127 children per year will be able to receive subsidy payments if this rule amendment is enacted. The average subsidy payment is estimated to be \$339 per month per child, based on the Department's recent payments. The total subsidy is therefore estimated to be \$43,053 per month, or \$516,636 annually. Subsidy payments are made using funds granted to the state by federal funds.

**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 subsection does not create any new administrative fees.

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

**Regulatory Impact Table**

Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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	\$516,636	\$516,636	\$516,636

<b>Total Fiscal Benefits</b>	<b>\$516,636</b>	<b>\$516,636</b>	<b>\$516,636</b>
<b>Net Fiscal Benefits</b>	<b>\$516,636</b>	<b>\$516,636</b>	<b>\$516,636</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

This rule amendment provides financial assistance to parents seeking child care from commercial preschools in the form of child care subsidy payments. The funding for child care subsidy payments is provided through federal funding. Assistance for child care means that parents are more available to work, providing reliable employees for businesses. The Executive Director of the Department of Workforce Services, Casey Cameron, has reviewed and approved this regulatory impact analysis.

**Citation Information**

**6. 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-3-203    Section 35A-3-310   

**Public Notice Information**

**8. 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:** 08/31/2022

**9. This rule change MAY become effective on:** 09/07/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Casey Cameron, Executive Director	<b>Date:</b>	07/12/2022
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**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-721. Eligible Provider.**

~~[(1)]~~ A provider may only be eligible if the provider is:  
~~(1[a])~~ a provider regulated through CCL including a licensed:

- ~~(a[1])~~ home provider;
- ~~(b[1])~~ child care center, including an out-of-school time program and excluding an hourly center;~~[-or]~~
- ~~(c[1])~~ commercial preschool; or
- ~~(d)~~ home with a residential certificate; or
- ~~(2[b])~~ a license exempt center~~[-or]~~ school-age program ~~or~~ home provider which is not required by law to be licensed and is either;

NOTICES OF PROPOSED RULES

(~~a~~<sup>i</sup>) a license exempt center or school-age program as defined in Section R430-8-3, that has a current letter of exempt status from CCL identifying the provider as DWS Approved; or

(~~b~~<sup>ii</sup>) a DWS FFN provider as approved by CCL.

**KEY: child care, grant programs**

**Date of Last Change: ~~July 1~~, 2022**

**Notice of Continuation: August 28, 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-3-203; 35A-3-310~~;~~ ~~53F-5-210~~**

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 31, 2022.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through November 29, 2022, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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

NOTICE OF CHANGE IN PROPOSED RULE		
Rule or Section Number:	R307-508	Filing ID: 54500
Date of Previous Publication:	05/01/2022	

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

2. Rule or section catchline:
R307-508. Oil and Gas Industry: VOC Control Devices
3. Reason for this change (Why is the agency submitting this filing?):
The Division of Air Quality is responding to comments received during the public comment period.
4. Summary of this change (What does this filing do?):
Compliance date clarification for sources that have an Approval Order. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 1, 2022, issue of the Utah State Bulletin, on page 85. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

These changes are not expected to have a fiscal impact on the state budget beyond those of the original amendment. They provide clarification, but do not add any additional burdens.

**B) Local government:**

These changes are not expected to have any fiscal impact on local governments because this rule is not applicable to them.

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

These changes are not expected to have a fiscal impact on small businesses beyond those of the original amendment. They provide clarification, but do not add any additional burdens.

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

These changes are not expected to have a fiscal impact on non-small businesses beyond those of the original amendment. They provide clarification, but do not add any additional burdens.

**E) Persons other than small businesses, non-small businesses, or 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 changes are not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the proposed changes apply only to business operating in the gas and oil industry.

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

Compliance costs for affected persons will not be impacted by these changes.

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

Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head comments on fiscal impact and approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>6. 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:</b>		
Section 19-2-104		

**Public Notice Information**

<b>8. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	No formal comment period
<b>9. This rule change MAY become effective on:</b>	08/31/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	07/06/2022
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**R307. Environmental Quality, Air Quality.****R307-508. Oil and Gas Industry: VOC Control Devices.****R307-508-1. Purpose.**

Rule R307-508 establishes requirements for VOC control devices associated with well sites used to control emissions of VOCs.

**R307-508-2. Applicability.**

(1) Rule R307-508 applies to each VOC control device located at a well site as defined in 40 CFR 60.5430a Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) Rule R307-508 shall apply to centralized tank batteries, as defined in Section [Rule] R307-506-2.

(3) Rule R307-508 shall apply to VOC control devices subject to an Approval Order issued under Section R307-401-8 beginning December 1, 2023.

**R307-508-3. VOC Control Device Requirements.**

(1) A VOC control device required by Rule R307-506 or R307-507 must have a control efficiency of 95% or greater.

(a) The VOC control device shall operate with no visible emissions.

(b) The VOC control device must comply with Rule R307-503.

(2) A well site shall demonstrate compliance by meeting the performance test methods and procedures specified in 40 CFR 60.5413a.

(3) VOC control devices and all associated equipment shall be inspected monthly by audio, visual, or olfactory (AVO) means to ensure the integrity of the equipment is maintained and is operational. If equipment is not operational, corrective action shall be taken within 15 days of discovery.

**R307-508-4. Recordkeeping.**

(1) The owner or operator shall keep and maintain records of the VOC control device's control efficiency guaranteed by the manufacturer. These records shall be retained for the life of the control equipment on site.

(2) The owner or operator shall keep and maintain records of the manufacturer's written operating and maintenance instructions. These records shall be retained for the life of the control equipment.

(3) The owner or operator shall keep and maintain records of the VOC control device AVO inspections. These shall be retained for a minimum of three years. These records shall include:

- (a) the date of the inspection;
- (b) the status of the control device and associated equipment; and
- (c) date of corrective action taken, if applicable.

# NOTICES OF CHANGES IN PROPOSED RULES

**KEY:** air pollution, oil, gas

**Date of Last Change:** 2022

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)(a)

NOTICE OF CHANGE IN PROPOSED RULE		
<b>Rule or Section Number:</b>	<b>R307-509</b>	<b>Filing ID: 54501</b>
<b>Date of Previous Publication:</b>	<b>05/01/2022</b>	

## Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bo Wood	385-499-3416	rwood@utah.gov
Sheila Vance	801-518-3132	svance@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

## General Information

<b>2. Rule or section catchline:</b>
R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements
<b>3. Reason for this change</b> (Why is the agency submitting this filing?):
The Division of Air Quality is responding to comments received during the public comment period.
<b>4. Summary of this change</b> (What does this filing do?):
These changes remove the proposed requirement to perform leak detection and repair (LDAR) inspections in specific months in Duchesne and Uintah counties and the requirement to perform a LDAR inspection after a temporary shut in of a well. They also clarify the applicability of this rule to facilities with an Approval Order.

(EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 1, 2022, issue of the Utah State Bulletin, on page 87. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

## Fiscal Information

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

#### A) State budget:

There may be a fiscal savings due to the removal of the LDAR inspection requirements, but the exact amount is inestimable since the original requirements were never effective.

#### B) Local government:

These changes are not expected to have any fiscal impact on local governments because this rule is not applicable to them.

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

There may be a fiscal savings due to the removal of the LDAR inspection requirements, but the exact amount is inestimable since the original requirements were never effective.

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

There may be a fiscal savings due to the removal of the LDAR inspection requirements, but the exact amount is inestimable since the original requirements were never effective.

#### E) Persons other than small businesses, non-small businesses, or 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 changes are not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because the proposed changes apply only to business operating in the gas and oil industry.

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

Compliance costs for affected persons may be reduced due to the removal of the LDAR inspection requirements,

but the exact amount is inestimable since the original requirements were never effective.

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

**Regulatory Impact Table**

Fiscal Cost	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
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Fiscal Benefits	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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of the Department of Environmental Quality, Kim Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**6. 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 19-2-104

**Public Notice Information**

**8. 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:** No formal comment period

**9. This rule change MAY become effective on:** 08/31/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	07/06/2022
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**R307. Environmental Quality, Air Quality.**

**R307-509. Oil and Gas Industry: Leak Detection and Repair Requirements.**

**R307-509-1. Purpose.**

Rule R307-509 establishes requirements for conducting leak detection and repairs at well sites to control emissions of volatile organic compounds.

**R307-509-2. Definitions.**

"Difficult-to-Monitor" means difficult-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in Rule R307-210.

"Fugitive emissions" are considered any visible emissions observed using optical gas imaging or a Method 21 instrument reading of 500 ppm or greater.

"Fugitive emissions component" means any component that has the potential to emit fugitive emissions of VOC, including valves, connectors, pressure relief devices, open-ended lines, flanges, covers and closed vent systems, thief hatches or other openings, compressors, instruments, and meters.

"Shut-in or temporarily abandoned" means a well that is closed off such that it stops producing for longer than seven calendar days.

"Unsafe-to-Monitor" means unsafe-to-monitor as defined 40 CFR 60.5397a, which is incorporated by reference in Rule R307-210.

**R307-509-3. Applicability.**

(1) Rule R307-509 applies to each fugitive emissions component at a well site as defined in 40 CFR 60.5430a, Subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution and shall control emissions in accordance with Rules R307-506 and R307-507.

(a) A source meeting the requirements of 40 CFR 60.5397a is meeting the requirements of this rule.

## NOTICES OF CHANGES IN PROPOSED RULES

(2) Sources subject to Rule R307-509 are subject until the well is shut in. ~~[Rule R307-509 does not apply to a fugitive emissions component at a well that is shut in or temporarily abandoned.]~~

(3) Rule R307-509 shall apply to a fugitive emissions component that is subject to an Approval Order issued under Section R307-401-8 beginning December 1, 2023.

### **R307-509-4. Leak Detection and Repair Requirements.**

(1) Applicable sources shall comply with the following:

(a) The owner or operator shall develop an emissions monitoring plan that shall be available upon request to review for each individual well site. At a minimum, the plan shall include:

- (i) monitoring frequency;
- (ii) monitoring technique and equipment;
- (iii) procedures and timeframes for identifying and repairing leaks;
- (iv) recordkeeping practices; and
- (v) calibration and maintenance procedures for monitoring equipment.

(b) The plan shall address monitoring for difficult-to-monitor and unsafe-to-monitor components.

(c) The owner or operator shall conduct monitoring surveys on site to observe each fugitive emissions component for fugitive emissions.

(d) Monitoring surveys shall be conducted according to the following schedule:

(i) No later than 60 days after startup of production, as defined in 40 CFR 60 Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(ii) Semiannually after the initial monitoring survey. Consecutive semiannual monitoring surveys shall be conducted at least four months apart and no more than seven months apart. ~~[A fugitive emission component subject to Rule R307-509 in Duchesne and Uintah counties must perform one monitoring survey during the months of September, October, November or December.]~~

(iii) Annually after the initial monitoring survey for "difficult-to-monitor" components.

(iv) As required by the owner or operator's monitoring plan for "unsafe-to-monitor" components.

~~[(v) Within seven days of a well site becoming operational after being shut in or temporarily abandoned.]~~

(e) Monitoring surveys shall be conducted using one or both of the following to detect fugitive emissions:

(i) Optical gas imaging (OGI) equipment. OGI equipment shall be capable of imaging gases in the spectral range for the compound of highest concentration in the potential fugitive emissions source.

(ii) Monitoring equipment that meets U.S. EPA Method 21, 40 CFR Part 60, Appendix A.

(f) If fugitive emissions are detected at any time, the owner or operator shall repair the fugitive emissions component as soon as possible but no later than 15 calendar days after detection. If the repair or replacement is technically infeasible, would require a vent blowdown, a well shutdown or well shut-in, or would be unsafe to repair during operation of the unit, the repair or replacement shall be completed during the next well shutdown, well shut-in, after an unscheduled, planned, or emergency vent blowdown or within 24 months, whichever is earlier.

(g) The owner or operator shall resurvey the repaired or replaced fugitive emission component no later than 30 calendar days after the fugitive emission component was repaired.

### **R307-509-5. Recordkeeping.**

(1) The owner or operator shall maintain records of the emissions monitoring plan. These records shall be retained for the life of the well site.

(2) The owner or operator shall maintain records of the monitoring surveys, repairs, and resurveys. These records shall be retained for a minimum of three years.

**KEY: air pollution, oil, gas**

**Date of Last Change: 2022**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)**

## **End of the Notices of Changes in 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		
Rule or Section Number:	R380-300	Filing ID: 54752
Effective Date:	07/13/2022	

### Agency Information

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Janice Weinman	385-321-5586	jweinman@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Carmen Richins	801-273-2802	carmenrichins@utah.gov

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

### General Information

2. Rule or section catchline:
R380-300. Employee Background Screening
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The reason for the filing is to consolidate the Department of Health and the Department of Human Services employee background screening rules into one overarching rule.
4. Summary of the new rule or change (What does this filing do?):
This filing repeals and reenacts the employee background screening rule for the consolidated Department of Health and Human Services (Department).
5A) The agency finds that regular rulemaking would:
<input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or



X	place the agency in violation of federal or state law.
<b>B) Specific reasons and justifications for this finding:</b>	
In compliance with S.B. 45 passed in the 2022 General Session, the Department is officially consolidated beginning 07/01/2022 and the rule applying to employees of the Department needs to be enacted and in effect immediately as required by Section 26B-1-211, while the budgetary items are worked out for the regular proposed rule filing in September 2022.	

**Fiscal Information**

<b>6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There are no anticipated costs or savings because the changes reflected in this emergency rule filing will not substantively impact the process. This emergency rule is a result of the Department's consolidation, this rule consolidates the employee background screening process. Any remaining budgetary items will be coordinated with the regular proposed rule filing in September 2022.
<b>B) Local governments:</b>
There will be no aggregate cost or savings to local governments as a result of this rule enactment. These changes will not substantively impact existing operations.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There will be no aggregate cost or savings to small businesses as a result of this rule enactment. These changes will not substantively impact existing operations.
<b>D) Persons other than small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There will be no aggregate cost or savings to persons other than small businesses as a result of this rule enactment. These changes will not substantively impact existing operations.
<b>E) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
No compliance costs are associated with this filing. These changes will not substantively impact existing operations.
<b>F) Comments by the department head on the fiscal impact this rule may have on businesses</b> (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

**Citation Information**

<b>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:</b>		
Section 26B-1-211		

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/13/2022
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**R380. Health, Administration.****R380-300. Employee Background Screening.****[R380-300-1. Authority.]**

~~This rule is adopted pursuant to Title 26 Chapter 1 Section 17-1.~~

**R380-300-2. Purpose.**

~~(1) The purpose of this rule is to set forth the standards for the Department employee and volunteer background screening in accordance with Section 26-1-17.1.~~

**R380-300-3. Definitions.**

~~Terms used in this rule are defined in Title 26, Chapter 1. In addition:~~

~~(1) "Current Employee" means all staff, contracted employees, and volunteers who:~~

~~(a) have access to protected health information or personal identifying information;~~

~~(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~

~~(c) work in areas of privacy and data security;~~

~~(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~

~~(e) perform audit functions, whether internal or external, on behalf of the department.~~

~~(2) "Employee" means a current employee of the Department~~

~~(3) "New Employee" means job applicants who have been offered a position or reassignment with the department who:~~

~~(a) have access to protected health information or personal identifying information;~~

~~(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~

~~(c) work in areas of privacy and data security;~~

~~(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~

~~(e) perform audit functions, whether internal or external, on behalf of the department.~~

~~(4) "Office of Background Processing" means the background processing section within the department.~~



**~~R380-300-4. Background Screening Process—Current Employee.~~**

~~(1) The Department may conduct a background screening on current employees based on division's background screening guidelines determined by risk associated with the employees' work responsibilities.~~

~~(2) Current employees who require screening must:~~

~~(a) sign a criminal background screening authorization form;~~

~~(b) provide personal demographics required; and~~

~~(c) submit live scan fingerprints.~~

~~(3) Current employees may continue to work during the department's implementation of the background screening process.~~

~~(4) If the Office of Background Processing determines that a current employee is not eligible for continued employment, based on criminal record information obtained through the initial or ongoing background screening process, the Office of Background Processing shall send a notice of action to the employee and the employee's division director which shall include the action, the reconsideration process, and a statement that the information is confidential.~~

~~(5) The department may allow a current employee to continue to work with conditions, during the reconsideration process as defined in each division's background screening guidelines if the employee can demonstrate the work arrangement does not pose a threat to the department and the safety and health of Utah citizens.~~

~~(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.~~

**~~R380-300-5. Background Screening Process—New Employees.~~**

~~(1) Background screening is part of the department's hiring process and any offer of employment is conditional upon the results of the background screening.~~

~~(2) An employee who is reassigned to the department will be informed in writing that their offer of employment with the department is conditional upon the results of the background screening.~~

~~(3) The Office of Background Processing shall determine if the new employee is eligible for employment prior to the new employee:~~

~~(a) having access to protected health information or personal identifying information;~~

~~(b) having direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;~~

~~(c) working in areas of privacy and data security;~~

~~(d) handling financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or~~

~~(e) performing audit functions, whether internal or external, on behalf of the department.~~

~~(4) All new employees who have been offered employment with the department shall:~~

~~(a) sign a criminal background screening authorization form;~~

~~(b) provide personal demographics; and~~

~~(c) submit live scan fingerprints.~~

~~(5) If the Office of Background Processing determines that a new employee is not eligible for employment, based on information obtained through the background screening process, the Office of Background Processing shall send a notice of action to the employee,~~

~~Human Resources and the employee's division director which shall include the action and a statement that the information is confidential.~~

~~(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.~~

**~~R380-300-6. Sources for Background Review.~~**

~~(1) In accordance with Section 26-1-17.1, the department may review relevant information obtained from the following sources:~~

~~(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files; and~~

~~(b) federal criminal background databases available to the state.~~

~~(2) The department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.~~

~~(3) If the Office of Background Processing determines an employee is not eligible for continued employment based upon the criminal background screening and the employee disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the employee may challenge the information obtained from the background screening process through the appropriate agency.~~

~~(4) Ongoing monitoring of records referred to in 6(1) will immediately be discontinued upon separation of employment.~~

**~~R380-300-7. Current Employee Exclusions.~~**

~~(1) Convictions or Pending Charges.~~

~~(a) If an employee has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for deniable offenses outlined within each division's background screening guidelines, the employee may be terminated.~~

~~(b) If an employee has a warrant for arrest or an arrest for any of the identified deniable offenses, the department may terminate employment based on:~~

~~(i) the type of offense;~~

~~(ii) the severity of offense; and~~

~~(iii) potential risk to the department.~~

~~(2) Review of Relevant Information.~~

~~(a) Results of background screening may be reviewed to determine under what circumstance, if any, the current employee may continue to be employed. The following factors may be considered:~~

~~(i) types and number;~~

~~(ii) passage of time;~~

~~(iii) surrounding circumstances;~~

~~(vi) intervening circumstances; and~~

~~(v) steps taken to correct or improve.~~

~~(3) The Office of Background Processing may deny clearance based on the relevant information identified in subsection 6(1).]~~

**~~R380-300-1. Authority.~~**

~~Section 26B-1-211 authorizes this rule.~~

**~~R380-300-2. Purpose.~~**

~~(1) This rule clarifies the standards for background screenings for department staff, contracted employees and volunteers.~~

(2) Background screenings the department performs and maintains for the Office of Recovery Services and the Utah State Developmental center do not apply to this rule.

(3) The department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to certain individuals' employment or volunteer activities within the department

**R380-300-3. Definitions.**

The definitions in Section 26B-1-211 apply. In addition:

(1) "Background screening" means review of:

(a) fingerprint-based local, regional, and national criminal history background check and ongoing monitoring;

(b) the department's Management Information System created in Section 80-2-1001;

(c) the department's Licensing Information System created in Section 80-2-1002;

(d) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; and

(e) juvenile court records under Subsection 80-3-404(6).

(2) "Department" means the Department of Health and Human Services.

(3) "Director" means the director of each operational unit (OU) within the department, and includes each OU director's designee.

(4) "Employee" means all employees, contracted employees, and volunteers of the department who:

(a) have access to protected health information or personal identifying information;

(b) have direct access to patients, children, or vulnerable adults as defined in Section 62A-2-101;

(c) work in areas of privacy and data security;

(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information;

(e) perform audit functions, whether internal or external, on behalf of the department;

or

(f) are job applicants who have been offered a position with the department and the job requirements include those described in Rule R380-300.

(5) "Executive director" means the executive director of the department or a person designated by the executive director.

(6) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(7) "Non-criminal record" means any record within:

(a) the department's Management Information System created in Section 80-2-1001;

(b) the department's Licensing Information System created in Section 80-2-1002; or

(c) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1.

(8) "Office" means the Office of Background Processing within the department.

(9) "Screening Agent" means the individual or individuals who are responsible for initiating, monitoring and maintaining background clearance communications with the Office, entering applications, verifying and protecting personally identifying information and ensuring information is current for their agency, applicants and provider in the online system.

(10) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

**R380-300-4. General Background Screening Procedure.**

(1) The office shall run a background screening on every eligible employee and volunteer.

(2) If the office runs a background screening and finds no charges or convictions against the employee within the past 10 years, the office will not take into consideration criminal record findings outside of 10 years old. If there is any charge or conviction against the applicant within the past 10 years then any record may be reviewed by the Office.

(3) If the office runs a background screening and does not find any non-criminal record against the employee within the past 10 years, the office will not take into consideration the non-criminal record findings outside of 10 years old. If there is any non-criminal record against the applicant within the past 10 years then any record may be reviewed by the Office.

(4) An application that lacks a signed disclosure statement, applicant information, or applicable fees will not be processed by the Office until the requirements are provided to the office.

(5) An application for an initial background screening shall be submitted to the Office no later than two weeks from the date the applicant is hired as a department employee. The applicant shall be directly supervised as defined in 62A-2-101, prior to receiving conditional or full clearance approval from the office.

(a) An applicant is eligible to work unsupervised when the background screening is approved based on the standards established by this rule.

(b) An applicant with a pending screening must be directly supervised as defined in 62A-2-101 until the final determination has been made.

(c) An applicant initiating a Background Screening Review of a denied application shall work under direct supervision until there is a disposition made regarding the Background Screening Review.

(6) Each applicant or background screening agent shall promptly notify the office of updated application details or new investigations of abuse or neglect or any new criminal charge by:

(a) updating the online system with changes to name and contact information; and

(b) emailing the office of any new allegations or investigations of abuse or neglect or new criminal charges.

(7) The background screening agent shall verify the identity of the applicant via personally identifying information at the time that they enter the application.

(8) The office may review an employee's juvenile record for any employee under 22 years of age that has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor described within this rule.

(9) The juvenile record may be reviewed by the Office for any employee under 22 years of age that has a record of adjudication in juvenile court for an act that, if committed by an adult would be a felony or misdemeanor described within this rule.

(10) As described in Section R501-14-3(4), each employee must submit out of state child abuse and neglect registry records, or proof that they sought the record and were denied by the other state, for each state resided in during the 5 years immediately preceding the date of the screening application if the applicant intends to work for

the Division of Child and Family Services or will work in a youth residential program.

**R380-300-5. Background Screening for Employees Prior To July 1, 2022 Merger.**

(1) Every eligible employee and volunteer of the Utah Department of Health (UDOH) hired prior to the July 1, 2022 merger with the Utah Department of Human Services (DHS) who were subject to a background screening according to Section 26-1-17.1, Rule R380-300 and UDOH policy 08-21, shall not be subject to a new background screening solely based on the merger.

(a) Background screenings conducted or retained on newly hired or current employees prior to the merger date of July 1, 2022, are considered eligible employees. Each eligible employee will require a new background check under this rule if:

(i) the employee has any new arrests, charges, convictions or non-criminal events that occur on or after July 1, 2022; or

(ii) the employee transfers to a new position within the department.

(2) Every eligible employee and volunteer of the DHS hired prior to the merger with the UDOH on July 1, 2022 who were subject to background checks according to Section 62A-2-120 and Rule R495-885, shall not be subject to a new background screening solely based on the merger.

(a) Background clearances conducted or retained, on newly hired or current employees, prior to the merger date of July 1, 2022, are considered eligible employees. Each eligible employee will require a new background screening under this rule if:

(i) the employee has any new arrests, charges, convictions or non-criminal events that occur on or after July 1, 2022; or

(ii) the employee transfers to a new position within the department.

(3) Every eligible department employee hired on or after July 1, 2022 is subject to a complete background screening as outlined herein.

**R380-300-6. All Employees Base Clearance.**

(1) The office shall deny a background screening for any employee who has been convicted, pleaded guilty or no contest, or is subject to a plea in abeyance or diversion agreement for any of the following offenses:

(a) any felony within the past 2 years;

(b) any felony or class A misdemeanor within the past 3 years under the following codes:

(i) Section 76-4-4 Enticement of a Minor;

(ii) Section 76-5-100 Assault and Related Offenses;

(iii) Section 76-5-200 Criminal Homicide;

(iv) Section 76-5-300 Offenses Against the Person - Kidnapping, Trafficking and Smuggling;

(v) Section 76-5-400 Offenses Against the Person - Sexual Offenses;

(vi) Section 76-5b Sexual Exploitation Act;

(vii) Section 76-6-103 Aggravated Arson;

(viii) Section 76-6-203 Aggravated Burglary;

(ix) Section 76-6-302 Aggravated Robbery;

(x) Section 76-7-101 through 102 Offenses Against the Family - Bigamy and Incest

(xi) Sections 76-7-2-1 through 203 Offenses Against the Family - Nonsupport and Sale of Children

(xii) Sections 76-7-311 through 312 Offenses Against the Family - Abortion, Selling or Buying unborn child, Intimidation to obtain abortion;

(xiii) Section 76-9-4 Offenses Against Privacy;

(xiv) Section 76-9-702 Offenses Against Public Order and Decency - Lewdness;

(xv) Section 76-9-702.1 Offenses Against Public Order and Decency - Sexual Battery;

(xvi) Section 76-9-702.5 Offenses Against Public Order and Decency - Lewdness Involving a Child;

(xvii) Section 76-9-702.7 Offenses Against Public Order and Decency Voyeurism offenses; or

(xviii) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described above; or

(A) any felony within the past 3 years under Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) The department has the discretion to approve or deny a background screening for any employee who has a pending charge for any of the offenses in this section, or for any employee who meets any of the conditions that would grant the department discretion to approve or deny an employee's background screening under any other part of this rule.

**R380-300-7. Employees with Direct Access.**

(1) The office will utilize the following standards to process the background screening for each employee who will have direct access to patients, children, or vulnerable adults. The office has discretion to approve or deny the background screening for an employee who has been convicted, has a pending charge, has pleaded guilty or no contest, is subject to a plea in abeyance or diversion agreement under (a), (b) or (c) of this section, or has a supported or substantiated finding under (d) of this section for any of the following:

(a) any felony or misdemeanor within the past 20 years under the following codes:

(i) Section 76-4-4 Enticement of a Minor;

(ii) Section 76-5-100 Assault and Related Offenses;

(iii) Section 76-5-200 Criminal Homicide;

(iv) Section 76-5-300 Offenses Against the Person - Kidnapping, Trafficking and Smuggling;

(v) Section 76-5-400 Offenses Against the Person - Sexual Offenses; or

(vi) Section 76-5b Sexual Exploitation Act;

(b) any felony class A or B misdemeanor within the past 10 years under the following codes:

(i) Section 76-6-103 Aggravated Burglary;

(ii) Section 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;

(iii) Sections 76-6-2 through 7 Offenses Against Property - Robbery, Theft, Fraud, Retail Theft, Utah Computer Crimes;

(iv) Section 76-6-10-1003 Mail Theft;

(v) Sections 76-6-11 through 12 Identity Fraud Act, Utah Mortgage Fraud Act;

(vi) Section 76-7-1 Marital Violations;

(vii) Sections 76-7-201 through 203 Offenses Against the Family - Nonsupport and Sale of Children;

(viii) Sections 76-7-311 through 312 Offenses Against the Family - Abortion, Selling or Buying unborn child, Intimidation to obtain abortion;

(ix) Section 76-8 Offenses Against the Administration of Government;

(x) Section 76-9-2 Electronic Communication and Telephone Abuse;

(xi) Section 76-9-3 Cruelty to Animals;  
(xii) Section 76-9-4 Offenses Against Privacy;  
(xiii) Section 76-9-702 Offenses Against Public Order and Decency - Lewdness;  
(xiv) Section 76-9-702.1 Offenses Against Public Order and Decency - Sexual Battery;  
(xv) Section 76-9-702.5 Offenses Against Public Order and Decency - Lewdness Involving a child;  
(xvi) Section 76-9-702.7 Offenses Against Public Order and Decency Voyeurism offenses;  
(xvii) Section 76-9-704 Abuse or Desecration of a Dead Human Body;  
(xviii) Section 76-10-4 Weapons of Mass Destruction;  
(xix) Section 76-10-509.5 through 509.9 Offenses Against Public Health-Providing weapons to a minor- Sales of firearms to juveniles;  
(xx) Section 76-10-12 Offenses Against Public Health-Safety, Welfare and Morals, Pornographic and Harmful Materials and Performances;  
(xxi) Section 76-10-1304 through 1306 Offenses Against Public Health, Safety, Welfare, and Morals, Aiding Prostitution, Exploiting Prostitution, Aggravated Exploitation of Prostitution;  
(xxii) Section 76-10-19 Offenses Against Public Health, Safety, Welfare and Moral - Money Laundering;  
(xxiii) Section 77-36 Cohabitant Abuse Procedures Act ;  
or  
(xxiv) Section 62A-3-305 Failure to Report Suspected Abuse, Neglect or Exploitation of a Vulnerable Adult;  
(c) any class C misdemeanor within the past 5 years under the following codes:  
(i) section 76-7-1 Marital Violations;  
(ii) Sections 76-7-201 through 203 Offenses Against the Family - Nonsupport and Sale or Children;  
(iii) Sections 76-7-311 through 312 Offenses Against the Family - Abortion, Selling or Buying unborn child, Intimidation to obtain abortion;  
(iv) Section 76-9-4 Offenses Against Privacy;  
(v) Section 76-9-702 Offenses Against Public Order and Decency - Lewdness;  
(vi) Section 76-9-702.1 Offenses Against Public Order and Decency - Sexual Battery;  
(vii) Section 76-9-702.5 Offenses Against Public Order and Decency - Lewdness Involving a child;  
(viii) Section 76-9-702.7 Offenses Against Public Order and Decency Voyeurism offenses;  
(ix) Section 76-9-704 Abuse or Desecration of a Dead Human Body;  
(x) Section 76-10-509.5 through 509.9 Offenses Against Public Health-Providing weapons to a minor- Sales of Firearms to Juveniles;  
(xi) Section 76-10-12 Offenses Against Public Health-Safety, Welfare and Morals, Pornographic and Harmful Materials and Performances;  
(xii) Section 76-10-1304 through 1306 Offenses Against Public Health-Prostitution; or  
(xiii) Section 76-10-19 Offenses Against Public health, Safety, Welfare and Moral - Money Laundering;  
(d) a supported or substantiated finding within the past 10 years under the following:  
(i) the department's Management Information System created in Section 80-2-1001;

(ii) the department's Licensing Information System created in Section 80-2-1002; and  
(iii) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1.

**R380-300-8. Employees that Handle Financial Information on Behalf of the Department.**

(1) The office will utilize the following standards to process the background screening for each employee who will handle financial information on behalf of the department. The office has discretion to approve or deny the background screening for an employee who has been convicted, has a pending charge, has pleaded guilty or no contest, is subject to a plea in abeyance or diversion agreement under (a) or (b) of this section or has a supported or substantiated finding under (c) of this section for any of the following:  
(a) any felony class A or B misdemeanor within the past 10 years under the following:  
(i) Section 76-6-103 Aggravated burglary;  
(ii) Section 76-6-106(2)(b)(i)(A) Criminal mischief - Human life;  
(iii) Section 76-6-2 through 7 Offenses Against Property - Robbery, Theft, Fraud, Retail Theft, Utah Computer Crimes;  
(iv) Section 76-6-10 through 12 Offenses Against Property - Mail Box Damage and Mail Theft, Identity Fraud Act, Utah Mortgage Fraud Act;  
(v) Section 76-6a Pyramid Scheme Act;  
(vi) Section 76-7-1 Marital Violations;  
(vii) Section 76-7-201 through 203 Offenses Against the Family - Nonsupport and Sale or Children;  
(viii) Section 76-7-311 through 312 Offenses Against the Family - Abortion, Selling and Buying unborn child, Intimidation to obtain abortion;  
(ix) Section 76-8 Offenses Against the Administration of Government;  
(x) Section 76-9-2 Electronic Communication and Telephone Abuse;  
(xi) Section 76-9-4 Offenses Against Privacy;  
(xii) Sections 76-10-509.5 through 509.9 Offenses Against Public Health-Providing weapons to a minor-sales of firearms to juveniles;  
(xiii) Section 76-10-7 Offenses Against Public Health, Safety, Welfare and Morals-Corporation Fraud;  
(xiv) Section 76-10-12 Offenses Against Public Health-Safety, Welfare and Morals, Pornographic and Harmful Materials and Performances; or  
(xv) Section 76-10-19 Offenses Against Public health, Safety, Welfare and Moral - Money Laundering;  
(b) any class C misdemeanor within the past 5 years under the following codes:  
(i) Section 76-6-103 Aggravated Burglary;  
(ii) Section 76-6-106(2)(b)(i)(A) Criminal Mischief - Human Life;  
(iii) Sections 76-6-2 through 7 Offenses Against Property - Robbery, Theft, Fraud, Retail Theft, Utah Computer Crimes;  
(iv) Sections 76-6-10 through 12 Offenses Against Property - Mail Box Damage and Mail Theft, Identity Fraud Act, Utah Mortgage Fraud Act;  
(v) Section 76-6a Pyramid Scheme Act; or  
(vi) Section 76-8 Offenses Against the Administration of Government; or

(c) supported or substantiated finding within the past 10 years under the following codes:

(i) the department's Management Information System created in Section 62A-4a-1003

(ii) the department's Licensing Information System created in Section 62A-4a-1006; and

(iii) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1.

### **R380-300-9. Office Discretion.**

(1) When the office conducts an employee's background screening and finds circumstances described in this rule which grant the office discretion to approve or deny a background screening, the office shall consider the following factors:

(a) the type and number of offenses;

(b) the severity of the offenses;

(c) passage of time;

(d) surrounding circumstances;

(e) intervening circumstances;

(f) steps taken to correct or improve; and

(g) potential risk to the department and the citizens of Utah.

### **R380-300-10. Background Screening Review.**

(1) The operational unit director may review the screening denial of an employee according to the guidelines for the employee's current position and job duties.

(2) When an operational unit director reviews the findings and applicable guidelines they shall consider the following factors:

(a) the date of the offense or incident;

(b) the nature and seriousness of the offense or incident;

(c) whether the offense or incident was an isolated or repeated incident;

(d) the age of the perpetrator when the offense or incident occurred;

(e) the circumstances under which the offense or incident occurred; and

(f) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:

(i) actual or threatened, non-accidental physical, mental, or financial harm;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) negligent treatment; or

(v) any evidence provided by the applicant of rehabilitation.

(3) Upon completion of the above steps, the operational unit director may select any of the following options:

(a) allow the employee to remain in the current position and document the reason for that decision;

(b) allow the employee to remain in the current position with some level of oversight or monitoring for a set amount of time and may discuss possible terms;

(i) if the employee accepts terms, no further action is required; or

(ii) if the employee does not accept the terms, subsection 5 applies;

(c) modify the current position so that the employee would not be excluded based upon the background check and document the reason for that decision;

(d) reassign the employee at their same salary level into a different position for which the employee is qualified and for which

the employee would not be excluded based upon the background check; or

(e) in consultation with the Department of Human Resources Management, terminate the employee.

(4) To request an operational unit director's review, an employee must submit a written request to the office, including the employee's reason for making the request. During the period of reconsideration, the department may choose to grant the employee administrative leave based upon R477-7(7)(1)(b)(v) or may allow the employee to continue to work in the current position under supervision.

(5) If an employee does not accept operational unit director terms, the employee may:

(a) request a reconsideration through the Department Background Screening Review Committee;

(b) request a reconsideration with the operational unit director; or

(c) file a grievance with the Department of Human Resources Management.

(6) The Department Background Screening Review Committee shall include three operational unit directors as voting members and three non-voting members to include:

(a) the appropriate operational unit director;

(b) the Office director; and

(c) a representative designated by the Division of Human Resource Management.

(7) The Department Background Clearance Review Committee voting members' shall determine the decision by a majority vote. In case of a tie, the case will have to be heard again when all three voting members are present.

(8) The Department Background Clearance Review Committee can decide to:

(a) support the decision of the operational unit director; or

(b) recommend that this case be reviewed by the executive director.

(9) Reconsideration with the executive director may, in their sole discretion:

(a) approve the employee for continued employment, including defining permissible and impermissible department-wide work-related activities; or

(b) deny the employee for continued employment and consult the Division of Human Resources Management regarding changes in position or employment including termination of employment.

(c) The determination of the executive director is final.

### **R380-300-11. Responsibilities.**

The department shall notify the office upon the termination of employment for each employee for whom fingerprints have been retained so the retention of fingerprints can be removed.

**KEY: employees, background screenings**

**Date of Last Change: July 13, 2022**

**Authorizing, and Implemented or Interpreted Law: 26-1-17.1**

#### **NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Rule or Section Number:</b>	<b>R380-411</b>	<b>Filing ID: 54747</b>
<b>Effective Date:</b>	<b>07/12/2022</b>	

**Agency Information**

<b>1. Department:</b>	Health and Human Services	
<b>Agency:</b>	Administration (Health)	
<b>Building:</b>	Martha Hughes Cannon Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 14100	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Richard Oborn	385-232-4259	roborn@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule or section catchline:</b>
R380-411. Administrative Hearing Procedures
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The Department of Health and Human Services (Department) is filing emergency rules for Rules R380-411 and R380-412, the Compassionate Use Board rule, to ensure the administrative hearing procedures are in place for the consolidated Department.
<b>4. Summary of the new rule or change</b> (What does this filing do?):
This filing updates the administrative hearing procedures for the Center for Medical Cannabis with the consolidated Department's standards and procedures. (EDITOR'S NOTES: The 120-day (emergency) filing for Rule R380-412 is under ID 54748; and a corresponding proposed repeal and reenactment of Rule R380-411 is under ID 54745 in this issue, August 1, 2022, of the Bulletin.)
<b>5A) The agency finds that regular rulemaking would:</b>
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.
<b>B) Specific reasons and justifications for this finding:</b>

This filing is to ensure that adjudicative proceedings are in place for the consolidated Department. The Department is filing an emergency rule.

**Fiscal Information**

<b>6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Department does not anticipate that this rule will result in a fiscal impact to the state budget. This filing updates the administrative hearing procedures with the consolidated Department's standards and is not fiscal in nature.
<b>B) Local governments:</b>
This repeal and reenactment will not result in a fiscal impact to local governments because this rule does not establish requirements for local agencies.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This repeal and reenactment will not result in a fiscal impact to small businesses because this rule does not establish requirements for small businesses.
<b>D) Persons other than small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This repeal and reenactment will not result in a fiscal impact to persons other than small businesses, non-small businesses, state, or local government entities because this amendment does not fiscally impact the requirements for persons other than small businesses, non-small businesses, state, or local government entities.
<b>E) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no compliance costs associated with this emergency rule filing.
<b>F) Comments by the department head on the fiscal impact this rule may have on businesses</b> (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

**Citation Information**

<b>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:</b>
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Section 26-1-24	Section 63G-4-102	
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**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/11/2022
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**R380. Health, Administration.****R380-411. Administrative Hearing Procedures.****~~R380-411-1. Introduction and Authority.~~**

~~(1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis.~~

~~(2) This rule is authorized by Section 26-1-24 and Section 63G-4-102.~~

**~~R380-411-2. Definitions.~~**

~~(1) The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.~~

~~(2) The following definitions also apply:~~

~~(a) "Action" means a denial, termination, suspension, or reduction of a license, or card, or 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. An action does not include an issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code.~~

~~(b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health.~~

~~(c) "Aggrieved person" means any person affected by the agency's action.~~

~~(d) "Applicant" means any person who has applied for a medical cannabis card or a registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.~~

~~(e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.~~

~~(f) "Presiding Officer" means the agency head, or designee, as approved by the Executive Director; to conduct administrative a hearing pursuant to this rule.~~

~~(g) "Medical record" means a record that contains medical data submitted by an applicant.~~

~~(h) "Order" means a ruling by a hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.~~

**~~R380-411-3. Administrative Adjudicative Procedures.~~**

~~(1) Except as provided in this rule, or as otherwise designated by rule, or statute, or converted, pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.~~

~~(2) The agency head shall serve as the presiding officer for an informal hearing, except that the agency head may designate a presiding officer, as approved by the executive director.~~

~~(3) Closure of an application submitted to the agency, due to the applicant's failure to complete the application, or to provide required information, is not an action under this rule.~~

~~(4) Any provision of this rule does not apply to an action that is governed by another statute that conflicts with the procedures in this rule.~~

**~~R380-411-4. Commencement of Proceedings, Response.~~**

~~(1) If a person is aggrieved by an action of the agency, the person may file a request for agency action and hearing within the shortest of 30 calendar days, of either receiving the initial agency determination, or the agency's mailing, or electronic notification via email, of the initial agency determination. The person shall request an agency action, and hearing, by submitting the request on a form created by the Center.~~

~~(2) If the informal adjudicative proceeding is commenced by a notice of agency action, each party in the action, except the Center, shall file a response to the allegations contained in the notice of agency action, and state whether a hearing is requested.~~

~~(3) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for agency action, the Agency must consider the request, and grant or deny it, or set the request for further proceedings.~~

~~(4) If a medical issue is in dispute, each request shall include supporting medical documentation. The Agency shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for agency action, or strike the party's response, to a notice of agency action if it does not receive supporting medical documentation in a timely manner.~~

~~(5) Notice of Agency Action:~~

~~(a) An agency shall provide a written notice of action to each aggrieved person. Such action includes, but is not limited to:~~

~~(i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;~~

~~(ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;~~

~~(iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and~~

~~(iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.~~

~~(b) The notice must include:~~

~~(i) a statement of the action the agency intends to take;~~

~~(ii) the date the intended action becomes effective;~~

~~(iii) the reason for the intended action;~~

~~(iv) the specific regulation that support the action, or the change in federal law, state law, or Department rule which requires the action;~~

~~(v) the right to submit a response, and request an administrative hearing;~~

~~(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and~~

~~(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.~~

~~(c) The agency shall mail the notice, or electronically notify the person at the email address on file with the EVS; at least 10 calendar days before the date of the intended action.~~

~~(6) The agency may issue an order on an emergency basis pursuant to Section 63G-4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.~~

**~~R380-411-5. Hearing and a Request for a Hearing.~~**

~~(1) The Center shall conduct an informal hearing for all issues, except those specifically designated as a formal hearing pursuant to this rule. The presiding officer may convert the proceeding to a formal hearing, if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G-4-202. If a hearing under this rule is converted to a formal hearing, pursuant to~~



## NOTICES OF 120-DAY (EMERGENCY) RULES

Section 63G-4-202, the formal hearing shall be conducted pursuant to these rules; except as otherwise provided in Sections 63G-4-204 through 63G-4-208, or other applicable statutes.

(2) An aggrieved person shall request a hearing by submitting the request on a Center "Request for Hearing/Agency Action" form and mailing it to the Center. The request must explain why the aggrieved person is seeking agency relief.

(3) A Request for Hearing/Agency Action, or a Response, and Request for Hearing that response, which an aggrieved person sends via mail is deemed filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the request is deemed filed on the date that the agency receives it; unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.

(5) The Agency shall conduct a hearing in connection with an agency action, if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact, if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.

(6) The Agency may dismiss a request for a hearing, if the aggrieved person:

- (a) withdraws the request in writing;
- (b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;
- (c) fails to appear, or participate, in a scheduled proceeding without good cause;
- (d) prolongs the hearing process without good cause;
- (e) cannot be located, or agency mail is returned without a forwarding address; or
- (f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the agency requests.

(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.

### **R380-411-6. Notice of Hearing.**

(1) The Agency shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least 10 calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person must inform the Agency of a current address, email address, and telephone number.

### **R380-411-7. Prehearing Procedures.**

(1) The Agency shall conduct a Settlement Conference between the Agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing, or agency action. If a settlement cannot be reached, including a withdrawal, dismissal or granting of the request for action, the Agency shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a preliminary conference to:

- (a) formulate or simplify the issues;
- (b) obtain admissions of fact, and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the preliminary conference, or at any time during the process.

(5) Ex parte communication with the presiding officer are prohibited. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters.

(6) The Agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding; at least three days before the hearing.

(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least 10 calendar days before the scheduled hearing that identifies:

- (a) any fact witness;
  - (b) any expert witness;
  - (c) any exhibit and report that each party intends to offer into evidence at the hearing.
- (8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

### **R380-411-8. Conduct of Hearing.**

(1) The Agency shall conduct a hearing pursuant to Section 63G-4-203 for an informal adjudicative proceeding.

(2) The agency head shall appoint an impartial presiding officer to conduct a hearing. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) A telephonic hearing will be held at the discretion of the presiding officer.

(4) The presiding officer shall take testimony under oath or affirmation.

(5) Each party has the right to:

- (a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;
- (b) introduce exhibits;
- (c) impeach any witness, regardless of which party first called the witness to testify; and
- (d) rebut the evidence against the party.

(6) Each party may admit any relevant evidence and use hearsay evidence to supplement, or explain other evidence, as may be required for full disclosure of each fact relevant to the disposition of the hearing. Hearsay, however, is not sufficient by itself to support a finding, unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law, and may exclude irrelevant, immaterial, and unduly repetitious evidence.

(7) The presiding officer shall control the evidence, to obtain full disclosure of the relevant facts, and to safeguard the rights of each party. The presiding officer may determine the order in which he receives the evidence.

(8) 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 participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:

- \_\_\_\_\_ (a) restrict the person's participation in the hearing;
- \_\_\_\_\_ (b) strike pleadings or evidence; or
- \_\_\_\_\_ (c) issue an order of default.
- \_\_\_\_\_ (9) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the hearing officer, at no cost to the agency.
- \_\_\_\_\_ (10) The party who initiates the hearing process through a request for agency action, has the burden of proof as the moving party.
- \_\_\_\_\_ (11) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.
- \_\_\_\_\_ (12) The presiding officer may issue an order of default against any party that fails to obey an order entered by the hearing officer.

#### **R380-411-9. Record.**

- \_\_\_\_\_ (1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the Center.
- \_\_\_\_\_ (2) Any proceedings other than a hearing may be recorded at the discretion of the hearing officer.
- \_\_\_\_\_ (3) If a party requests a copy of the recording of a hearing, that party may transcribe the recording at the party's sole cost.

#### **R380-411-10. Proposed Decision and Final Agency Review.**

- \_\_\_\_\_ (1) At the conclusion of the hearing, the presiding officer shall take the matter under advisement, and submit a recommended decision to the Agency Head. The recommended decision is based on the testimony and evidence entered at the hearing, Agency policy and procedure, and legal precedent.
- \_\_\_\_\_ (2) The recommended decision must contain findings of fact and conclusions of law.
- \_\_\_\_\_ (3) The Agency or the director's designee may:
  - \_\_\_\_\_ (a) adopt the recommended decision, or any portion of the decision;
  - \_\_\_\_\_ (b) reject the recommended decision, or any portion of the decision, and make an independent determination based upon the record; or
  - \_\_\_\_\_ (c) remand the matter to the presiding officer to take additional evidence; and the presiding officer thereafter shall submit to the Agency director or the director's designee, a new recommended decision.
- \_\_\_\_\_ (4) The agency head or their designee's decision constitutes final administrative action, and is subject to judicial review.
- \_\_\_\_\_ (5) The Agency shall send a copy of the final administrative action to each party, or representative, and notify them of their right to judicial review.
- \_\_\_\_\_ (6) Each party shall comply with a final decision from the director reversing the agency's decision, within 10 calendar days.

#### **R380-411-11 Amending Administrative Orders.**

- \_\_\_\_\_ (1) The Agency may amend an order if the presiding officer determines that the order contains a clerical error.
- \_\_\_\_\_ (2) The Agency shall notify each party its intent to amend the order by serving a notice of agency action signed by the hearing officer.
- \_\_\_\_\_ (3) The Agency Director shall review the amended order and the Agency Director or the Agency Director's designee shall issue a final agency amended order.

- \_\_\_\_\_ (4) The Agency shall provide a copy of the final amended order to each party.

#### **R380-411-12. Reconsideration.**

\_\_\_\_\_ A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-301.

#### **R380-411-13. Judicial Review.**

\_\_\_\_\_ A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-400.

#### **R380-411-14. Declaratory Orders.**

- \_\_\_\_\_ (1) The Agency may issue a declaratory order pursuant to Rule R380-1.
- \_\_\_\_\_ (2) If the Agency does not issue a declaratory order within 60 days after receipt of the request, the petition is denied.
- \_\_\_\_\_ (3) The Agency may not issue a declaratory order if an adjudicative proceeding that involves the each party and the same issue is pending before the agency, or a federal, or state court.]

#### **R380-411-1. Purpose and Authority.**

- \_\_\_\_\_ (1) This rule establishes administrative hearing procedures for the Center for Medical Cannabis that are in addition to the procedures contained in R497-100.
- \_\_\_\_\_ (2) Sections 26-1-24 and 63G-4-102 authorize this rule.
- \_\_\_\_\_ (3) If another statute governs an action that conflicts with the procedures in this rule, this rule does not apply.

#### **R380-411-2. Definitions.**

- \_\_\_\_\_ (1) The definitions in Sections R380-400-2, R497-100-2, and 63G-4-103 apply to this rule.
- \_\_\_\_\_ (2) The following definitions also apply:
  - \_\_\_\_\_ (a) "Action" means a denial, termination, suspension, or reduction of a license or card, under 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. An action does not include an issuance of a license to operate a medical cannabis pharmacy, pursuant to Title 63G, Chapter 6a, Utah Procurement Code. Closure of an application submitted to the agency, due to the applicant's failure to complete the application, or to provide required information, is not an action under this rule.
  - \_\_\_\_\_ (b) "Agency" means the Center for Medical Cannabis within the Utah Department of Health and Human Services.
  - \_\_\_\_\_ (c) "Aggrieved person" means any person affected by the agency's action.
  - \_\_\_\_\_ (d) "Applicant" means any person who has applied for a medical cannabis card or a registration, or license, other than a medical cannabis pharmacy license, pursuant to Title 26, Chapter 61a, Utah Medical Cannabis Act.
  - \_\_\_\_\_ (e) "Medical record" means a record that contains medical data submitted by an applicant.

#### **R380-411-3. Commencement of Proceedings, Response.**

- \_\_\_\_\_ (1) If an agency action aggrieves the person, the person may file a request for an administrative hearing within 30 calendar days of receiving notice of the agency action, by submitting the request on a form created by the agency.
- \_\_\_\_\_ (2) When an aggrieved person submits a request for administrative hearing, they shall file a response to the allegations contained in the notice of agency action.
- \_\_\_\_\_ (3) If a medical issue is in dispute, each request for hearing shall include supporting medical documentation.

## NOTICES OF 120-DAY (EMERGENCY) RULES

(4)(a) An agency shall provide a written notice of action to each aggrieved person. Such actions include, but are not limited to:

(i) denial of an application for a medical cannabis card, or a QMP, PMP, pharmacy agent, or courier agent registration card;

(ii) suspension, or revocation, of a medical cannabis card or a QMP, PMP, pharmacy agent, or courier agent registration card;

(iii) suspension, or revocation, of a medical cannabis pharmacy license, or a home delivery medical cannabis pharmacy license; and

(iv) imposition of a penalty, or fine, authorized under Title 26, Chapter 61a, Utah Medical Cannabis Act.

(b) The notice must include:

(i) a statement of the action the agency intends to take;

(ii) the date the intended action becomes effective;

(iii) the reason for the intended action;

(iv) the specific regulation that support the action, or the change in federal law, state law, or department rule which requires the action;

(v) the right to submit a response, and request an administrative hearing;

(vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and

(vii) if applicable, an explanation of the circumstance under which the license, or card, will continue, or may be reinstated, pursuant to this rule.

(c) The agency shall mail the notice, or electronically notify the person at the email address on file with the EVS, at least ten calendar days before the date of the intended action.

(5) The agency may issue an order on an emergency basis pursuant to Section 63G-4-502. The aggrieved party may request an administrative hearing, pursuant to this rule.

### **R380-411-4. Request for a Hearing.**

(1) An aggrieved person shall request a hearing by submitting the request on a center "Request for Hearing" form and mailing or emailing it to the Center. The request shall explain why the aggrieved person is seeking agency relief.

(2) The agency deems a request for hearing which an aggrieved person sends via mail filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the agency deems the request filed on the date that the agency receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(3) Failure to submit a timely response, and request for a hearing, constitutes a waiver of an individual's due process rights.

(4) The presiding officer may dismiss a request for a hearing, if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;

(c) fails to appear, or participate, in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located, or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the agency requests.

(5) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration.

### **R380-411-5. Prehearing Procedures.**

(1) The agency shall conduct a settlement conference between the agency, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing. If the agency cannot reach a settlement, including a withdrawal, dismissal, or granting of the request for action, the agency shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a prehearing conference to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact, and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The party may enter into a written stipulation resolving all, or part, of the adjudicative action during the prehearing conference, or at any time during the process.

(5) The agency shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding pursuant to the timeframes established by the presiding officer.

(6) The presiding officer may require each party to file a signed prehearing disclosure form before the scheduled hearing that identifies:

(a) any fact witness;

(b) any expert witness; and

(c) any exhibit and report that each party intends to offer into evidence at the hearing.

(7) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

**KEY: medical cannabis, medical cannabis hearing, marijuana**

**Date of Last Change: July 12, 2022**

**Authorizing, and Implemented or Interpreted Law: 63G-3; 63G-4-102; 26-1-24; 26-61a**

### **NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Rule or Section Number:</b>	<b>R380-412</b>	<b>Filing ID: 54748</b>
<b>Effective Date:</b>	<b>07/12/2022</b>	

### **Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration (Health)
<b>Building:</b>	Martha Hughes Cannon Building
<b>Street address:</b>	288 N 1460 W
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 14100
<b>City, state and zip:</b>	Salt Lake City, UT 84116

Contact persons:		
Name:	Phone:	Email:
Richard Oborn	385-232-4259	roborn@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R380-412. Compassionate Use Board
<b>3. Purpose of the new rule or reason for the change</b> (Why is the agency submitting this filing?):
The Department of Health and Human Services (Department) is filing emergency rules for Rules R380-411 and R380-412, the Compassionate Use Board rule, to ensure the administrative hearing procedures are in place for the consolidated Department.
<b>4. Summary of the new rule or change</b> (What does this filing do?):
This filing updates the administrative hearing procedures for the Center for Medical Cannabis with the consolidated Department's standards and procedures. (EDITOR'S NOTES: The 120-day (emergency) filing for Rule R380-411 is under ID 54747; and a corresponding proposed repeal and reenactment of Rule R380-412 is under ID 54746 in this issue, August 1, 2022, of the Bulletin.)
<b>5A) The agency finds that regular rulemaking would:</b>
<input checked="" type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or
<input type="checkbox"/> place the agency in violation of federal or state law.
<b>B) Specific reasons and justifications for this finding:</b>
This filing is to ensure that adjudicative proceedings are in place for the consolidated Department. The Department is filing an emergency rule.

**Fiscal Information**

<b>6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>

The Department does not anticipate that this rule will result in a fiscal impact to the state budget. This filing updates the administrative hearing procedures with the consolidated Department's standards and is not fiscal in nature.

**B) Local governments:**

This repeal and reenactment 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 repeal and reenactment will not result in a fiscal impact to small businesses because this rule does not establish requirements for small businesses.

**D) Persons other than 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 and reenactment will not result in a fiscal impact to persons other than small businesses, non-small businesses, state, or local government entities because this amendment does not fiscally impact the requirements for persons other than small businesses, non-small businesses, state, or local government entities.

**E) 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 emergency rule filing.

**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):

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

**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 26-1-24	Section 63G-4-102	
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**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/11/2022
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**R380. Health, Administration.**

**R380-412. Compassionate Use Board.**

**~~R380-412-1. Authority and Purpose.~~**

~~Pursuant to Subsections 26-1-5(1) and 26-61a-105(6), this rule establishes a process and criteria for a petition to the Board to qualify for expedited final review and approval or denial by the Department.~~

**~~R380-412-2. Compassionate Use Board Expedited Review Criteria.~~**

~~To qualify for expedited review by the Department, an individual submitting the petition shall meet the following criteria:~~

- ~~(1) diagnosis with a terminal illness and a life expectancy of six months or less;~~
- ~~(2) present symptoms not adequately managed with standard therapies that may reasonably be expected to be alleviated by medical cannabis; and~~
- ~~(3) have a QMP recommending medical cannabis who is directly and regularly involved in the individual's medical care.~~

**~~R380-412-3. Compassionate Use Board Expedited Review Process.~~**

- ~~(1) Each individual submitting a petition for expedited review by the Department shall complete a form available from the Department.~~
- ~~(2) Within five business days of receiving a complete petition for expedited review, the Department shall review the petition and either approve the petition and issue a medical cannabis card to the applicant or prepare the petition for Board review.]~~

**~~R380-412-1. Purpose and Authority.~~**

- ~~(1) This rule establishes the administrative hearing procedures for the Center for Medical Cannabis Compassionate Use Board.~~
- ~~(2) Sections 26-1-5, 26-61a-105, 26-1-24, and 63G-4-102, authorize this rule.~~

**~~R380-412-2. Definitions.~~**

- ~~(1) The definitions in Section R380-400-2 and Section 63G-4-103 apply to this rule.~~
- ~~(2) The following definitions also apply:~~
  - ~~(a) "Action" means a denial of a medical cannabis card for compassionate use or denial of a petition for expedited review under Section 26-61a-105.~~
  - ~~(b) "Aggrieved person" means any person affected by the department's action.~~
  - ~~(c) "Board" means the Compassionate Use Board in the Utah Department of Health and Human Services as created under Section 26-61a-105.~~
  - ~~(d) "Department" means the Utah Department of Health and Human Services.~~
  - ~~(e) "Ex Parte" communication means direct or indirect communication in connection with an issue of fact, or law, between the hearing officer and one party only.~~
  - ~~(f) "Final administrative order" means a ruling by the presiding officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.~~
  - ~~(g) "Medical record" means a record that contains medical data submitted by an aggrieved person.~~
  - ~~(h) "Presiding officer" means the department head, or a designee who is a licensed physician, as approved by the Executive Director; to conduct an administrative hearing pursuant to this rule.~~

**R380-412-3. Administrative Adjudicative Procedures.**

- (1) Except as provided in this rule, or as otherwise designated by rule, or statute, or converted, pursuant to Subsection 63G-4-202(3), all adjudicative proceedings conducted pursuant to this rule are informal proceedings.
- (2) A presiding officer shall preside over the informal hearing.
- (3) Closure of a petition submitted to the presiding officer due to the aggrieved person's failure to complete the petition, or to provide required information, is not an action under this rule.
- (4) If another statute governs an action that conflicts with the procedures in this rule, this rule does not apply.

**R380-412-4. Criteria for Expedited Review.**

To qualify for expedited review by the board, an individual submitting the petition shall meet the criteria set forth in Subsection 26-61a-105(6) as determined by the board.

**R380-412-5. Timeframe for Expedited Review.**

- (1) Each individual submitting a petition for expedited review by the board shall complete a petition on a form available from the board.
- (2) Within five business days of receiving a complete petition for expedited review, the board shall review the petition and either approve the petition and issue a medical cannabis card for compassionate use to the aggrieved person or deny the petition for expedited review and prepare the petition for board review on its regular schedule.

**R380-412-6. Administrative Appeal from Denials for Expedited Review.**

- (1) If the board denies a petition for expedited review, the aggrieved person may file a request for administrative hearing to challenge only the decision to deny expedited review.
- (2) The aggrieved person shall file a request for administrative hearing to the presiding officer within ten business days of receiving the notice of agency action Denying Expedited Review.
- (3) Upon receipt of a request for administrative hearing to challenge the denial of a petition for expedited review, the presiding officer shall review the petition, the decision of the board and any other documents submitted by the parties and issue a written decision upholding or overturning the board's decision to deny expedited review.
- (4) If the presiding officer upholds the board's decision to deny expedited review, the presiding officer shall submit the petition to the board for review on its regular schedule.
- (5) If the presiding officer overturns the board's decision to deny expedited review, the board shall review the petition to obtain a medical cannabis card for compassionate use within five business days after receiving the presiding officer's decision. The board shall either approve the petition and issue a medical cannabis card for compassionate use to the aggrieved person or deny the petition.
- (6) If the board denies the petition to issue a medical cannabis card for compassionate use, the board shall issue a notice of agency action that meets the requirements of Subsection R380-412-7(4) to notify the aggrieved person of the denial. The aggrieved person may request an administrative hearing to challenge the denial by following the procedure set forth in Section R380-412-7 to R380-412-11.

**R380-412-7. Commencement of Proceedings.**

(1) If the board denies recommendation of a medical cannabis card for compassionate use the aggrieved person may file a request for an administrative hearing within 30 calendar days of receiving the notice of the denial by submitting the request on a form created by the board.

(2) Pursuant to this rule and Section 63G-4-201, if the informal adjudicative proceeding is commenced by a request for agency action, the board shall consider the request, and grant or deny it, or set the request for further proceedings.

(3) If a medical issue is in dispute, each request shall include supporting medical documentation. The board shall schedule a hearing only when it receives sufficient medical records, and may dismiss a request for agency action, or strike the party's response, to a notice of agency action if it does not receive supporting medical documentation in a timely manner.

(4)(a) The board shall provide a written notice of action to each aggrieved person. The notice shall include:

- (i) a statement of the action the board intends to take;
- (ii) the date the intended action becomes effective;
- (iii) the reason for the intended action;
- (iv) the specific regulation that supports the action, or the change in federal law, state law, or department rule which requires the action;
- (v) the right to submit a response, and request an administrative hearing, including the time limitations to do so;
- (vi) the right to represent oneself, the right to legal counsel, or the right to use another representative at the hearing; and
- (vii) if applicable, an explanation of the circumstance under which the medical cannabis card, will be approved by the board, pursuant to this rule.

**R380-412-8. Hearing and a Request for a Hearing.**

(1) The presiding officer may convert the proceeding to a formal hearing, if an aggrieved person requests a hearing that meets the criteria pursuant to Section 63G-4-202. If a hearing under this rule is converted to a formal hearing, pursuant to Section 63G-4-202, the formal hearing shall be conducted pursuant to these rules; except as otherwise provided in Sections 63G-4-204 through 63G-4-208, or other applicable statutes.

(2) An aggrieved person shall request a hearing by submitting the request on a board "Request for Hearing" form and mailing it to the board. The request shall explain why the aggrieved person is seeking department relief.

(3) The board deems a request for hearing which an aggrieved person sends via mail filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the board deems the request filed on the date that the board receives it, unless the sender can demonstrate through competent evidence of the mailing date.

(4) Failure to submit a timely request for a hearing constitutes a waiver of an individual's due process rights.

(5) The presiding officer shall conduct a hearing in connection with a board action, if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing, and issue a recommended decision without a hearing, based on the record. There is no disputed issue of fact, if the aggrieved person submits facts that do not conflict with the facts that the board relies upon in taking action or seeking relief. In the recommended decision, the presiding officer shall specifically set out all material, and relevant facts, that are not in dispute.

(6) The presiding officer may dismiss a request for a hearing, if the aggrieved person:

- (a) withdraws the request in writing;
- (b) verbally withdraws the hearing request at a settlement conference, or prehearing conference;
- (c) fails to appear, or participate, in a scheduled proceeding without good cause;
- (d) prolongs the hearing process without good cause;
- (e) cannot be located, or mail is returned without a forwarding address; or
- (f) does not respond to any correspondence from the presiding officer, or fails to provide medical records that the board requests.

(7) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief, in a request for reconsideration pursuant to Section 63G-4-302.

**R380-412-9. Prehearing Procedures.**

(1) The board shall conduct a settlement conference between the board, and the aggrieved party, within 30 calendar days from the date it receives a request for a hearing, or agency action. If the parties cannot reach a settlement, including a withdrawal of the request for hearing or the dismissal or granting of the request for action, the board shall notify the presiding officer to set a date for the administrative hearing.

(2) The presiding officer may elect to conduct a prehearing conference to:

- (a) formulate or simplify the issues;
- (b) obtain admissions of fact, and documents that will avoid unnecessary proof;
- (c) arrange for the exchange of proposed exhibits or prepared expert testimony;
- (d) outline procedures for the hearing; or
- (e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(3) The presiding officer may require each party to submit a prehearing position statement setting forth the position of the party.

(4) The parties may enter into a written stipulation resolving all, or part, of the adjudicative action during the prehearing conference, or at any time during the process.

(5) This rule prohibits ex parte communication with the presiding officer. If a party attempts ex parte communication, the presiding officer shall inform the offender that any communication that the hearing officer receives off the record, will become part of the record, and furnished to each party. Ex parte communication does not apply to communication on the status of the hearing, and uncontested procedural matters.

(6) The presiding officer shall allow the aggrieved person, or a representative, to examine each document and record relevant to the adjudicative proceeding, at least three days before the hearing.

(7) The presiding officer may require each party to file a signed prehearing disclosure form, at least 10 calendar days before the scheduled hearing that identifies:

- (a) any fact witness;
- (b) any expert witness; and
- (c) any exhibit and report that each party intends to offer into evidence at the hearing.

(8) Each party shall supplement the disclosure form with information that shall become available after filing the original form.

**R380-412-10. Notice of Hearing.**

The presiding officer shall notify the aggrieved person, or representative, in writing of the date, time, and place of the hearing, at least ten calendar days before the date of the hearing; unless each party agrees to an alternative time frame. Any aggrieved person shall inform the presiding officer of a current address, email address, and telephone number.

**R380-412-11. Procedures for Informal Proceedings.**

(1) The presiding officer shall hold informal adjudicative proceedings in compliance with Section 63G-4-203.

(a) Unless specified otherwise in another applicable rule, the 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 ten business days following receipt of the notice of agency action or request for agency action.

(b) An attorney or a non-attorney may represent a party. The department shall not appoint attorneys.

(c) The parties may not engage in discovery, but the presiding officer may issue subpoenas or other orders to compel the production of necessary evidence. The presiding officer may require that parties exchange documents prior to the hearing in order to expedite the process. Each party to the proceedings shall be responsible for the appearance of witnesses.

(d) Each party shall have access to information contained in the board's files and to materials and information gathered in any investigation, to the extent permitted by law.

(e) This rule prohibits intervention, except where a federal statute or rule requires that the state permit intervention.

(f) The presiding officer shall provide a hearing to any party entitled to request a hearing in accordance with Section 63G-4-203.

(g) In the hearing, the presiding officer shall take testimony under oath or affirmation.

(h) In the hearing, the presiding officer shall permit parties to testify, present evidence, and comment on the issues.

(i) Each party may offer any relevant evidence, including hearsay evidence. A party cannot base their case exclusively on inadmissible hearsay. A party must present a residuum of evidence that would be admissible under the rules of procedure with the applicable court of competent jurisdiction.

(j) The presiding officer may exclude irrelevant, immaterial and unduly repetitious evidence.

(k) The presiding officer may question any party or witness.

(l) 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.

(m) When a party claims to possess but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

(n) The presiding officer may issue an order of default against any party that fails to obey an order entered by the presiding officer.

(o) The presiding officer shall hold hearings only after the presiding officer mails a timely notice to each party.

(p) 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 department's rules, the presiding officer shall issue a signed order in writing that conforms to Subsection 63G-4-203(1)(i). This order shall be the final administrative order of the department.

(q) Hearings shall be open to the parties. Hearings are not open to the public.

(r) The presiding officer shall base the order on the facts appearing in the board's files that were available to the other party and on the facts presented in evidence at the hearings.

(s) The presiding officer shall promptly mail a copy of the presiding officer's order to each of the parties.

(3) When the board commences an informal adjudicative proceeding by a notice of agency action issued by the board, the board shall have the burden of providing, by a preponderance of the evidence, that the board's decision was reasonable, unless statute or department rule specify otherwise. The board may demonstrate this by showing that the board's decision was not arbitrary and capricious.

(4) The parties shall mail motions and pleadings filed with the presiding officer by a party to each of the other parties named in the action.

(5) The presiding officer deems motions or pleadings received by the presiding officer after regular business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays, received the following business day.

(6) This rule prohibits ex parte communication with the presiding officer 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 or made a part of the record.

(7) Any aggrieved person shall inform the presiding officer of their current address, email address, and telephone number.

**R380-412-12. Record.**

(1) The presiding officer shall make a complete record of each hearing. A hearing record is the sole property of the department.

(2) The presiding officer may record any proceedings other than a hearing at their own discretion.

(3) If a party requests a transcribed copy of the recording of a hearing, that party may request the audio recording of the hearing and have it transcribed at the party's sole cost.

**R380-412-13. Agency Review.**

The department shall not allow agency review under Section 63G-4-301.

**R380-412-14. 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 notify each party its intent to amend the order by serving a notice of agency action signed by the hearing officer.

(3) The presiding officer shall review the amended order and the presiding officer shall issue a final agency amended order.

(4) The presiding officer shall provide a copy of the final amended order to each party.

**R380-412-14. Reconsideration.**

A party to the proceeding may move for reconsideration of the final administrative order pursuant to Section 63G-4-302.

**R380-412-15. Judicial Review.**

A party to the proceeding may obtain judicial review pursuant to Section 63G-4-102, and Sections 63G-4-400 through 63G-4-405.

**KEY:** medical cannabis, [~~compassionate use board~~]medical cannabis hearing, [~~medical~~]-marijuana

**Date of Last Change:** July 12, 2022

**Authorizing, and Implemented or Interpreted Law:** 63G-3; [~~26-61a~~]63G-4-102; 26-1-~~[5(4)]~~24; 26-61a-~~405(6)~~

**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](http://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

<b>Rule Number:</b>	<b>R307-230</b>	<b>Filing ID: 50606</b>
<b>Effective Date:</b>	<b>07/12/2022</b>	

### Agency Information

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Air Quality	
<b>Building:</b>	Multi-Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144820	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4820	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bo Wood	385-499-3416	rwood@utah.gov

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

### General Information

<b>2. Rule catchline:</b>
R307-230. NO <sub>x</sub> Emission Limits for Natural Gas-Fired Water Heaters
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

This rule is authorized by the Section 15A-6-102 of the Utah Code, which prohibits the sale or installation of natural gas water heaters that do not meet the criteria in the statute for controlling NO<sub>x</sub> emissions.

### 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 regarding this rule 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:

The Clean Air Act requires the state of Utah to establish, maintain, and enforce rules to meet air quality health standards through the State Implementation Plan (SIP). This rule is required as part of the PM<sub>2.5</sub> SIP to reduce NO<sub>x</sub>, which is a precursor pollutant to PM<sub>2.5</sub>. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Bryce C. Bird, Director	<b>Date:</b>	07/06/2022
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## FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

<b>Rule Number:</b>	<b>R331-5</b>	<b>Filing ID: 50797</b>
<b>Effective Date:</b>	<b>07/13/2022</b>	

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-5. Rule Governing Sale of Securities by Persons Issuing Securities, Who Are Under the Jurisdiction of the Department of Financial Institutions
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 7-1-503 authorizes the Commissioner of Financial Institutions (Department) to regulate the sale by financial institutions of securities including the solicitation of deposit accounts which is restricted. Subsection 7-1-301(13) allows the Commissioner to regulate the issuance, advertising, offer for sale, and sale of a security to the extent authorized by Section 7-1-503.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No supporting or opposing written comments have been received by the agency concerning this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary because it covers registration with the Department, offering circular requirements, securities sale report, limitations on resale of "restricted securities", remuneration paid for solicitation or for sales, manipulative and deceptive devices, waivers, and penalties for violation. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-7</b>	<b>Filing ID:</b>	<b>50796</b>
<b>Effective Date:</b>	<b>07/13/2022</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 7-1-501 lists the persons and institutions subject to the jurisdiction of the Department of Financial Institutions (Department), and those under the jurisdiction of the Department who must comply with supervision and examination including, as the rule states, "acceptable employment of deposits and other funds involved in leasing or leasing transactions."
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No supporting or opposing written comments have been received by the agency concerning 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 clearly defines acceptable leases and leasing transactions, residual dependence restrictions, salvage powers, sales-type capital lease restrictions, saleleaseback restrictions, leveraged lease restrictions, and account requirements. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-9</b>	<b>Filing ID:</b>	<b>50798</b>
<b>Effective Date:</b>	<b>07/13/2022</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-9. Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 7-1-309 expressly authorizes the Commissioner of Financial Institutions (Department) to conduct hearings relating to matters within his supervisory jurisdiction.

**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 supporting or opposing written comments have been received by the agency concerning 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:**

Section 7-1-301 affords the Commissioner the functions, powers, duties, and responsibilities with respect to institutions, persons, or businesses subject to the jurisdiction of the department. This rule lists the types of hearings the Commissioner may call in connection with any matter pending before the Department and how those hearings should commence. It also covers confidential proceedings, pleadings, discovery, and subpoenas. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-10</b>	<b>Filing ID:</b>	<b>50810</b>
<b>Effective Date:</b>	<b>07/13/2022</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions	
<b>Agency:</b>	Administration	
<b>Room number:</b>	201	
<b>Street address:</b>	324 S State St	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393	
<b>Mailing address:</b>	PO Box 146800	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R331-10. Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions

**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 7-1-301(7) authorizes the Commissioner to adopt rules for the retention and destruction of financial institution records under the Department of Financial Institution's (Department) jurisdiction that are consistent with federal laws and regulations.

**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 supporting or opposing written comments have been received since the last notice of continuation.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

No other state rule establishes the schedule of retention and destruction of records for financial institutions under the Department's jurisdiction. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-12</b>	<b>Filing ID:</b>	<b>50800</b>
<b>Effective Date:</b>	<b>07/13/2022</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions		
<b>Agency:</b>	Administration		
<b>Room number:</b>	201		
<b>Street address:</b>	324 S State St		
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393		
<b>Mailing address:</b>	PO Box 146800		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800		
<b>Contact persons:</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Paul Allred	801-538-8855	pallred@utah.gov	
<b>Please address questions regarding information on this notice to the agency.</b>			

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

R331-12. Guidelines Governing the Purchase and Sale of Loans and Participations in Loans by all State Chartered Financial Institutions

**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 7-1-301 authorizes the Commissioner to establish guidelines for the purchase and sale of loans and participations in loans by state-chartered financial institutions.

**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 supporting or opposing written comments have been received since the last notice of continuation.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

No other state rule establishes the guidelines for the purchase and sale of loans and participations in loans by state-chartered financial institutions. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R331-22</b>	<b>Filing ID:</b>	<b>50809</b>
<b>Effective Date:</b>	<b>07/13/2022</b>		

**Agency Information**

<b>1. Department:</b>	Financial Institutions		
<b>Agency:</b>	Administration		
<b>Room number:</b>	201		
<b>Street address:</b>	324 S State St		
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2393		
<b>Mailing address:</b>	PO Box 146800		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6800		

<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Paul Allred	801-538-8855	pallred@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R331-22. Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 7-1-301(6) and Section 7-1-1004 expressly authorize the Commissioner of Financial Institutions to promulgate rules establishing rates and conditions under which financial institutions that supply information to requesting agencies may seek reimbursement of costs.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No supporting or opposing written comments have been received since the last notice of continuation.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
No other rule establishes cost-reimbursement guidelines for financial institutions that provide information to requesting agencies. Section 7-1-1004 requires the Commissioner to have a rule establishing the cost-reimbursement guidelines. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Darryle Rude, Commissioner	<b>Date:</b>	07/13/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R380-41</b>	<b>Filing ID:</b>	<b>50876</b>
<b>Effective Date:</b>	<b>07/08/2022</b>		

**Agency Information**

<b>1. Department:</b>	Health and Human Services
<b>Agency:</b>	Administration (Health)

<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jonah Shaw	385-310-2389	jshaw@utah.gov
Heather Borski	801-538-9998	hborski@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R380-41. Governance Committee Electronic Meetings
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Section 52-4-207 and Title 63G, Chapter 3, the Utah Administrative Rulemaking Act. Section 26-1-5 and Subsection 26-1-4(2) are outdated due to the Department of Health and Human Services' (Department) consolidation and will be addressed in a subsequent nonsubstantive change.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Section 52-4-207 requires a state public body that holds electronic meeting to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by the Governance Committee. It will require at least a nonsubstantive change as a part of the Department consolidation. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	07/08/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R602-3</b>	<b>Filing ID: 51482</b>
<b>Effective Date:</b>	<b>07/06/2022</b>	

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Adjudication	
<b>Room number:</b>	3rd Floor	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Aurora Holley	801-530-6865	auroraholley@utah.gov
Chris Hill	801-530-6113	chill@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R602-3. Procedure and Standards for Approval of Assignment of Benefits
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 34A-1-104 authorizes the Labor Commission (Commission) to adopt rules and conduct adjudicative proceedings to resolve workers' compensation and occupational disease claims. Sections 34A-1-104 and 34A-2-802 also authorize the Commission to adopt rules to carry out those adjudicative functions.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received since the last five year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

As part of the Commission's continuing responsibility to administer a system for adjudication of workers' compensation and occupational disease claims, it is necessary for the Commission to establish procedures for pleadings and discovery, standards for use and compensation of medical panels, as well as standards for evaluating settlement agreements. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Jaceson R. Maughan, Director	<b>Date:</b>	07/06/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Rule Number:</b>	<b>R746-310</b>	<b>Filing ID: 51957</b>
<b>Effective Date:</b>	<b>07/15/2022</b>	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

**General Information**

<b>2. Rule catchline:</b>
R746-310. Uniform Rules Governing Electricity Service by Electric Utilities
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Sections 54-3-1, 54-3-7, and 54-4-1 vests the Public Service Commission (PSC) with jurisdiction over public utilities and tasks the PSC with ensuring public utilities provide adequate service and charge just and reasonable rates stemming from PSC-approved tariffs that are on file with the PSC. The PSC is also statutorily (Sections 54-4-8 and 54-4-14) charged with ensuring public utilities maintain

and develop infrastructure to ensure adequate service and that they do so in a manner consistent with public safety. Finally, Section 54-4-23 charges the PSC with ensuring public utilities maintain accounts and records sufficient to fulfill these statutory mandates.

Rule R746-310 is authorized under these statutory provisions and is necessary to fulfill these duties with respect to public utilities that provide electric service.

**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 PSC has received no comments from interested persons supporting or opposing this rule 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:**

Rule R746-310 is necessary to facilitate the PSC's fulfillment of its statutory responsibilities, enumerated in responses in Box 3 above, with respect to public utilities that provide electric service. This rule establishes technical and other parameters for utility infrastructure that serve to ensure safe and adequate service and adopts industry-standard accounting and record-keeping requirements necessary to establish just and reasonable rates. This rule also implements processes to ensure customers are charged only for electricity they actually consume and provides an administrative mechanism for customers to seek redress for alleged overbilling. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	07/15/2022
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**End of the Five-Year Notices of Review and Statements of Continuation Section**





## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
<b>Rule Number:</b>	<b>R277-120</b>	<b>Filing ID: 53396</b>
<b>New Date:</b>	<b>Deadline</b>	<b>12/05/2022</b>

### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

<b>2. Rule catchline:</b>
R277-120. Licensing of Material Developed with Public Education Funds
<b>3. Reason for requesting the extension:</b>
The Utah State Board of Education (USBE) will be presenting this rule for review and approval during their 08/04/2022 general meeting. An extension is needed in order to have adequate time to file possible additional amendments that may be approved by the USBE before this rule is due to expire.

### Agency Authorization Information

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	07/12/2022
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NOTICE OF FIVE-YEAR REVIEW EXTENSION		
<b>Rule Number:</b>	<b>R277-121</b>	<b>Filing ID: 52556</b>
<b>New Date:</b>	<b>Deadline</b>	<b>12/05/2022</b>

### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

### General Information

<b>2. Rule catchline:</b>
R277-121. Board Waiver of Administrative Rules

# NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

<b>3. Reason for requesting the extension:</b>
The Utah State Board of Education (USBE) will be presenting this rule for review and approval during their 08/04/2022 general meeting. An extension is needed in order to have adequate time to file possible additional amendments that may be approved by the USBE before this rule is due to expire.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	07/12/2022
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## NOTICE OF FIVE-YEAR REVIEW EXTENSION

<b>Rule Number:</b>	<b>R277-514</b>	<b>Filing ID:</b>	<b>50483</b>
<b>New Date:</b>	<b>Deadline</b>	<b>12/05/2022</b>	

## Agency Information

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200

<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact persons:</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
<b>Please address questions regarding information on this notice to the agency.</b>		

## General Information

<b>2. Rule catchline:</b>
R277-514. Deaf Education in Public Schools
<b>3. Reason for requesting the extension:</b>
The Utah State Board of Education (USBE) will be presenting this rule for review and approval during their 08/04/2022 general meeting. An extension is needed in order to have adequate time to file possible additional amendments that may be approved by the USBE before this rule is due to expire.

## Agency Authorization Information

<b>Agency head or designee and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	07/12/2022
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End of the Notices of Five-Year Review Extensions Section

## NOTICES OF FIVE-YEAR EXPIRATIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

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NOTICE OF EXPIRED RULE		
Rule Number:	R356-3	Filing ID: 50852
Effective Date:	07/12/2022	

### Agency Information

1. Department:	Governor
Agency:	Criminal and Juvenile Justice (State Commission on)
Room number:	330
Building:	Senate Building
Street address:	Utah State Capitol Complex
City, state and zip:	Salt Lake City, UT 84114-2330
Contact persons:	

Name:	Phone:	Email:
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

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

### General Information

2. Rule catchline:
R356-3. Electronic Meetings
3. Summary:
The five-year review and notice of continuation was not filed for this rule by the deadline. This rule has expired and will be removed from the Utah Administrative Code.

End of the Notices of Notices of Five Year Expirations Section



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Agriculture and Food

#### Animal Industry

No. 54641 (Amendment) R58-7: Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons  
Published: 06/01/2022  
Effective: 07/19/2022

#### Regulatory Services

No. 54614 (Repeal) R70-440: Egg Products Inspection  
Published: 06/01/2022  
Effective: 07/15/2022

### Career Service Review Office

#### Administration

No. 54540 (Amendment) R137-1: Grievance Procedure Rules  
Published: 05/15/2022  
Effective: 07/01/2022

### Commerce

#### Occupational and Professional Licensing

No. 54610 (Amendment) R156-55c: Plumber Licensing Act Rule  
Published: 06/01/2022  
Effective: 07/14/2022

### Corrections

#### Administration

No. 54594 (New Rule) R251-714: Offender Sexual Assault Prevention  
Published: 06/01/2022  
Effective: 07/18/2022

### Education

#### Administration

No. 54623 (Amendment) R277-122: Board of Education Procurement  
Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54624 (Amendment) R277-302: Educator Licensing Renewal

Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54628 (Amendment) R277-404: Requirements for Assessments of Student Achievement

Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54634 (Amendment) R277-406: Early Learning Program and Benchmark Assessments

Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54622 (Amendment) R277-410: Accreditation of Schools

Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54629 (New Rule) R277-465: CPR in Schools

Published: 06/15/2022  
Effective: 07/22/2022

#### No. 54630 (Amendment) R277-476: Local Innovations Civics Education Pilot Program

Published: 06/15/2022  
Effective: 07/22/2022

No. 54625 (Amendment) R277-477: Distributions of Funds from the Trust Distribution Account and Administration of the School LAND Trust Program  
Published: 06/15/2022  
Effective: 07/22/2022

No. 54626 (Amendment) R277-491: School Community Councils  
Published: 06/15/2022  
Effective: 07/22/2022

No. 54627 (Amendment) R277-605: Coaching Standards and Athletic Clinics  
Published: 06/15/2022  
Effective: 07/22/2022

No. 54631 (Amendment) R277-606: Dropout Prevention and Recovery Program  
Published: 06/15/2022  
Effective: 07/22/2022

No. 54632 (Amendment) R277-622: School-based Mental Health Qualifying Grant Program  
Published: 06/15/2022  
Effective: 07/22/2022

No. 54633 (Amendment) R277-701: Early College Programs  
Published: 06/15/2022  
Effective: 07/22/2022

#### Environmental Quality

##### Air Quality

No. 54498 (Amendment) R307-110: General Requirements: State Implementation Plan  
Published: 05/01/2022  
Effective: 07/07/2022

No. 54502 (Amendment) R307-511: Oil and Gas Industry: Associated Gas Flaring  
Published: 05/01/2022  
Effective: 07/07/2022

##### Environmental Response and Remediation

No. 54597 (Amendment) R311-200: Underground Storage Tanks: Definitions.  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54598 (Amendment) R311-201: Underground Storage Tanks: Certification Programs and UST Operator Training.  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54599 (Amendment) R311-203: Petroleum Storage Tanks: Technical Standards  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54601 (Amendment) R311-204: Underground Storage Tanks: Closure and Remediation  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54602 (Amendment) R311-205: Petroleum Storage Tanks: Site Assessment Protocol and Release Reporting  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54603 (Amendment) R311-206: Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54604 (Amendment) R311-207: Accessing the Petroleum Storage Tank Fund for Leaking Petroleum Storage Tanks  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54605 (Amendment) R311-208: Underground Storage Tanks Penalty Guidance  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54606 (Amendment) R311-211: Corrective Action Cleanup Standards Policy - PST and CERCLA Sites  
Published: 06/01/2022  
Effective: 07/15/2022

No. 54607 (Amendment) R311-212: Administration of the Petroleum Storage Tank Fund Loan Program  
Published: 06/01/2022  
Effective: 07/15/2022

#### Governor

##### Economic Opportunity

No. 54617 (Amendment) R357-5: Motion Picture Incentive Rule  
Published: 06/01/2022  
Effective: 07/15/2022

#### Health and Human Services

##### Administration (Health)

No. 54590 (Repeal) R380-10: Informal Adjudicative Proceedings  
Published: 05/15/2022  
Effective: 07/01/2022

##### Children's Health Insurance Program

No. 54587 (Amendment) R382-1: Benefits and Administration  
Published: 05/15/2022  
Effective: 07/01/2022

No. 54588 (Amendment) R382-2: Electronic Personal Medical Records for the Children's Health Insurance Program  
Published: 05/15/2022  
Effective: 07/11/2022

No. 54589 (Amendment) R382-3: Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program  
Published: 05/15/2022  
Effective: 07/26/2022

Disease Control and Prevention, Environmental Services  
No. 54379 (Amendment) R392-600: Illegal Drug Operations Decontamination Standards  
Published: 03/15/2022  
Effective: 07/13/2022

Health Care Financing, Coverage and Reimbursement Policy  
No. 54586 (Amendment) R414-1: Utah Medicaid Program  
Published: 05/15/2022  
Effective: 07/01/2022

Family Health and Preparedness, Emergency Medical Services  
No. 54578 (Amendment) R426-8: Emergency Medical Services Ground Ambulance Rates and Charges  
Published: 05/15/2022  
Effective: 07/01/2022

Administration, Administrative Hearings  
No. 54592 (Amendment) R497-100: Adjudicative Proceedings  
Published: 05/15/2022  
Effective: 07/01/2022

#### Insurance

Administration  
No. 54613 (New Rule) R590-288: Limited Line Producer Line of Authority for Pet Insurance  
Published: 06/01/2022  
Effective: 07/08/2022

#### Natural Resources

Water Rights  
No. 54644 (Repeal and Reenact) R655-4: Water Wells  
Published: 06/15/2022  
Effective: 07/26/2022

#### Public Service Commission

Administration  
No. 54621 (Amendment) R746-409-1: General Provisions  
Published: 06/15/2022  
Effective: 07/22/2022

#### Tax Commission

Motor Vehicle Enforcement  
No. 54573 (Amendment) R877-23V-14: Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302  
Published: 06/01/2022  
Effective: 07/16/2022

No. 54574 (Amendment) R877-23V-16: Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507  
Published: 05/15/2022  
Effective: 07/16/2022

Property Tax  
No. 54575 (Amendment) R884-24P-66: County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004  
Published: 05/15/2022  
Effective: 07/16/2022

#### Workforce Services

Employment Development  
No. 54665 (Amendment) R986-700-707.1: Initial Registration Fee Assistance  
Published: 06/15/2022  
Effective: 08/01/2022

### **End of the Notices of Rule Effective Dates Section**

