

# UTAH STATE BULLETIN

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Nancy L. Lancaster, Managing Editor

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

Office of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

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

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## EXECUTIVE ORDER

### Updating Requirements Regarding Face Coverings in State Facilities

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

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

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

**WHEREAS**, COVID-19 can spread between individuals in close proximity through respiratory droplets produced when an infected individual speaks, coughs, or sneezes;

**WHEREAS**, an infected individual can transmit COVID-19 even if the individual does not present symptoms;

**WHEREAS**, the United States Centers for Disease Control and Prevention and the Utah Department of Health have recommended the use of face masks or other face coverings to mitigate the transmission of COVID-19;

**WHEREAS**, the Utah Department of Health and I have determined that it is appropriate to require individuals, including employees and members of the public, to wear face coverings while in a state facility to protect public health;

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

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

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

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

1. As used in this Order:
  - a. "Face covering" means a cloth mask or similar covering that covers the nose and mouth.
  - b.i. "State facility" means any portion of a building or structure, including any part thereof, that is owned or leased by the state or a state governmental entity.
  - ii. "State facility" does not mean:

EXECUTIVE DOCUMENTS

- A. a state prison or state community correctional center; or
- B. a building or structure, or part thereof, that is exclusively owned, leased, occupied, or controlled by:
  - I. the legislative branch of the state;
  - II. the judicial branch of the state;
  - III. the Attorney General's Office;
  - IV. the State Auditor's Office;
  - V. the State Treasurer's Office; or
  - VI. an independent entity as defined in Utah Code § 53B-3-102.
- c. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education of the state.
- 2. Each individual in a state facility shall wear a face covering, except as provided in Section (3).
- 3. Section (2) does not apply to:
  - a. a child who:
    - i. is in a childcare setting;
    - ii. is younger than two years old; or
    - iii. is two years old or older if the parent, guardian, or individual responsible for caring for the child cannot place the face covering safely on the child's face;
  - b. an individual with a medical condition, mental health condition, or disability that prevents wearing a face covering, including an individual with a medical condition for whom wearing a face covering could cause harm or obstruct breathing, or who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
  - c. an individual who is hearing impaired, or communicating with an individual who is hearing impaired, where the ability to see the mouth is essential for communication;
  - d. an individual who is obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
  - e. an individual who is outdoors;
  - f. an individual in a vehicle;
  - g. an individual who is eating or drinking and maintains a physical distance of at least six feet from any other individual who is not from the same household or residence;
  - h. a state employee who is not speaking in person with any other individual and who:
    - i. is the sole occupant of a fully enclosed room or office;
    - ii. is the sole occupant of a partially enclosed room, office, or similar space, including a cubicle, that is enclosed on at least three sides by walls or other physical barriers or dividers of a height that reaches no lower than the top of the employee's head when the employee is seated; or
    - iii. is seated or stationary, and maintains a physical distance of at least six feet from any other individual.
- 4. An individual who pursuant to Subsection (3)(b) does not comply with Section (2) shall not be required to produce medical documentation verifying the medical condition, mental health condition, or disability.
- 5. The Utah Department of Corrections shall implement requirements regarding the wearing of face coverings in a state prison or state community correctional center to protect the health and safety of employees, visitors, and incarcerated individuals.
- 6. This Order repeals and replaces Executive Order 2020-34.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 10, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

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

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/035/EO

## EXECUTIVE ORDER

## Updating Requirements Regarding Face Coverings in State Facilities

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

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

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

**WHEREAS**, COVID-19 can spread between individuals in close proximity through respiratory droplets produced when an infected individual speaks, coughs, or sneezes;

**WHEREAS**, an infected individual can transmit COVID-19 even if the individual does not present symptoms;

**WHEREAS**, the United States Centers for Disease Control and Prevention and the Utah Department of Health have recommended the use of face masks or other face coverings to mitigate the transmission of COVID-19;

**WHEREAS**, on June 27, 2020, the Utah Transit Authority issued a directive requiring its employees and public transit riders to wear masks or face coverings to protect public health;

**WHEREAS**, the Utah Department of Health and I have determined that it is appropriate to require individuals, including employees and members of the public, to wear face coverings while in a state facility to protect public health;

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

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

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

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

1. As used in this Order:
  - a. "Face covering" means a cloth mask or similar covering that covers the nose and mouth.
  - b.i. "State facility" means any portion of a building or structure, including any part thereof, that is owned or leased by the state or a state governmental entity.
  - ii. "State facility" does not mean:
    - A. a state prison or state community correctional center;
    - B. a detention facility or secure facility operated by the Division of Juvenile Justice Services; or
    - C. a building or structure, or part thereof, that is exclusively owned, leased, occupied, or controlled by:
      - I. the legislative branch of the state;
      - II. the judicial branch of the state;
      - III. the Attorney General's Office;
      - IV. the State Auditor's Office;
      - V. the State Treasurer's Office; or
      - VI. an independent entity as defined in Utah Code § 63E-1-102.
  - c. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education of the state.
2. Each individual in a state facility shall wear a face covering, except as provided in Section (3).
3. Section (2) does not apply to:
  - a. a child who:
    - i. is in a childcare setting;
    - ii. is younger than two years old; or
    - iii. is two years old or older if the parent, guardian, or individual responsible for caring for the child cannot place the face covering safely on the child's face;

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- b. an individual with a medical condition, mental health condition, or disability that prevents wearing a face covering, including an individual with a medical condition for whom wearing a face covering could cause harm or obstruct breathing, or who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
- c. an individual who is deaf or hard of hearing, or communicating with an individual who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;
- d. an individual who is obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
- e. an individual who is outdoors;
- f. an individual in a vehicle;
- g. an individual who is using an indoor recreational facility and maintains a physical distance of at least six feet from any other individual;
- h. an individual who is eating or drinking and maintains a physical distance of at least six feet from any other individual who is not from the same household or residence; or
  - i. a state employee who is not speaking in person with any other individual and who:
    - i. is the sole occupant of a fully enclosed room or office;
    - ii. is the sole occupant of a partially enclosed room, office, or similar space, including a cubicle, that is enclosed on at least three sides by walls or other physical barriers or dividers of a height that reaches no lower than the top of the employee's head when the employee is seated; or
    - iii. is seated or stationary, and maintains a physical distance of at least six feet from any other individual.
- 4. An individual who pursuant to Subsection (3)(b) does not comply with Section (2) shall not be required to produce medical documentation verifying the medical condition, mental health condition, or disability.
- 5. The Utah Department of Corrections shall implement requirements regarding the wearing of face coverings in a state prison or state community correctional center.
- 6. The Division of Juvenile Justice Services shall implement requirements regarding the wearing of face coverings in a detention facility or secure facility operated by the Division of Juvenile Justice Services.
- 7. This Order rescinds and replaces Executive Order 2020-35.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 10, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 30th day of June, 2020.

(State Seal)

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

ATTEST:

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

2020/036/EO

**EXECUTIVE ORDER**

Wildland Fire Management

**WHEREAS**, the danger from wildland fires is high throughout the State of Utah;

**WHEREAS**, Spring and early summer in Utah was one of the driest on record;

**WHEREAS**, wildfires are currently burning in some areas of the State;

**WHEREAS**, wildfire warnings are in place for all of Southern Utah; and portions of Utah's west desert;

**WHEREAS**, some of the areas are extremely remote and inaccessible and the situation has the potential to greatly worsen if left unattended;

**WHEREAS**, immediate action will be required to suppress fires and mitigate post burn flash floods to protect public safety, property, natural resources and the environment should these dangerous conditions escalate to active wildfires;

**WHEREAS**; COVID-19 has exhausted State and Local resources and will increase the complexity of wildfire response; and

**WHEREAS**, these conditions do create the potential for a disaster emergency within the scope of the Disaster Response and Recovery Act of 1981;

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists Statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment, effective for the month of July 2020, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 1st day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/037/EO

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**EXECUTIVE ORDER**

Rescinding Executive Order 2020-5 Regarding the Open and Public Meetings Act

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

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

**WHEREAS**, on March 18, 2020, I issued Executive Order 2020-5, suspending certain portions of the Open and Public Meetings Act, to address a state of emergency and mitigate the spread of COVID-19;

**WHEREAS**, I called the Utah Legislature into the Fifth Special Session of the 63rd Legislature on June 18, 2020;

**WHEREAS**, during the June 18, 2020, special session, the Legislature passed House Bill 5002, Open and Public Meetings Act Amendments, addressing the concerns that led to Executive Order 2020-5; and

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**WHEREAS**, on June 25, 2020, I signed House Bill 5002, and that bill is now law:

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, hereby order that Executive Order 2020-5 is rescinded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 1st day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/038/EO

**EXECUTIVE ORDER**

Declaring a State of Emergency Due to Civil Unrest

**WHEREAS**, today, July 9, 2020, the Salt Lake County District Attorney's Office announced its decision that the police-involved shooting of Bernardo Palacios-Carbajal on May 23, 2020, was justified under Utah law;

**WHEREAS**, in response to the Salt Lake County District Attorney Office's decision, protests are taking place in Salt Lake City;

**WHEREAS**, recent protests have become violent and the civil unrest has resulted in bodily injury and destruction of private and public property, including extensive defacement of the Utah State Capitol building;

**WHEREAS**, protests in response to the decision of the Salt Lake County District Attorney's Office have resulted in civil unrest and threaten to cause bodily injury and destruction of private and public property;

**WHEREAS**, local law enforcement agencies have responded to assist in controlling the violence;

**WHEREAS**, these conditions create a "State of Emergency" within the intent of Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

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

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

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order:

1. The closure of the Utah State Capitol building and grounds to all individuals other than officers and employees of the Utah Executive Branch, the Utah Legislature, and the Utah Judiciary; and

2. Assistance from state government to political subdivisions as needed and coordinated by the Utah Department of Public Safety, and other state agencies as necessary.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 13, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 9th day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/039/EO

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**EXECUTIVE ORDER**

Extending the Utah COVID-19 Public Health Risk Status

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

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

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

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

**WHEREAS**, on June 26, 2020, I issued Executive Order 2020-33, extending the Utah COVID-19 Health Risk Status throughout Utah;

**WHEREAS**, Executive Order 2020-33, will terminate today, July 10, 2020, at 11:59 p.m.;

**WHEREAS**, the Utah Department of Health has determined that the Utah COVID-19 Health Risk Status set forth in Executive Order 2020-33 should be maintained to protect public health throughout the state;

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

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

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

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

1. As used in this Order, "Phased Guidelines" means the Phased Guidelines for the General Public and Businesses to Maximize Public Health and Economic Reactivation version 4.7.
2. The Utah COVID-19 Public Health Risk Status is:
  - a. Orange (Moderate Risk) in Salt Lake City;
  - b. Green (Normal Risk) in Beaver County, Daggett County, Duchesne County, Emery County, Garfield County, Kane County, Millard County, Piute County, Uintah County, and Wayne County; and
  - c. Yellow (Low Risk) in each area of the State not identified in Subsection (2)(a) or (2)(b).
3. The provisions of the Phased Guidelines apply as follows:
  - a. An individual or business in an area identified in Subsection (2)(a) shall comply with the Orange (Moderate Risk) provisions of the Phased Guidelines;
  - b. An individual or business in an area identified in Subsection (2)(b) shall comply with the Green (Normal Risk) provisions of the Phased Guidelines;
  - c. An individual or business in an area identified in Subsection (2)(c) shall comply with the Yellow (Low Risk) provisions of the Phased Guidelines; and
  - d. Notwithstanding any other provision of Section (3), any reference in the Phased Guidelines to the use of a mask or face covering is adopted:
    - i. as an order for:
      - A. each individual who is acting in the capacity as an employee of a business when the individual is unable to maintain a distance of six feet from another individual; and
      - B. each individual in a healthcare setting; and
    - ii. as a strong recommendation for any individual not identified in Subsection (3)(d)(i).
4. A political subdivision desiring an exception to this Order or the Phased Guidelines or desiring to move to Green (Normal Risk) shall submit the request and justification for the request through the applicable Local Health Department to the Utah Department of Health. The Utah Department of Health shall consult with the Office of the Governor as necessary.
5. This Order rescinds and replaces Executive Order 2020-32.

This Order is declared effective at 5:00 p.m. on July 10, 2020 and shall remain in effect until 11:59 p.m. on July 24, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 10th day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/040/EO

**EXECUTIVE ORDER**

Updating Requirements Regarding Face Coverings in State Facilities

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

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

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

**WHEREAS**, COVID-19 can spread between individuals in close proximity through respiratory droplets produced when an infected individual speaks, coughs, or sneezes;

**WHEREAS**, an infected individual can transmit COVID-19 even if the individual does not present symptoms;

**WHEREAS**, the United States Centers for Disease Control and Prevention and the Utah Department of Health have recommended the use of face masks or other face coverings to mitigate the transmission of COVID-19;

**WHEREAS**, on June 27, 2020, the Utah Transit Authority issued a directive requiring its employees and public transit riders to wear masks or face coverings to protect public health;

**WHEREAS**, the Utah Department of Health and I have determined that it is appropriate to require individuals, including employees and members of the public, to wear face coverings while in a state facility to protect public health;

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

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

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

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

1. As used in this Order:
  - a. "Face covering" means a cloth mask or similar covering that covers the nose and mouth.
  - b.i. "State facility" means any portion of a building or structure, including any part thereof, that is owned, leased, occupied, or controlled by the state or a state governmental entity.
  - ii. "State facility" does not mean:
    - A. a state prison or state community correctional center;
    - B. a detention facility or secure facility operated by the Division of Juvenile Justice Services; or
    - C. a building or structure, or part thereof, that is exclusively owned, leased, occupied, or controlled by:
      - I. the legislative branch of the state;
      - II. the judicial branch of the state;
      - III. the Attorney General's Office;
      - IV. the State Auditor's Office;
      - V. the State Treasurer's Office; or
      - VI. an independent entity as defined in Utah Code § 63E-1-102.
  - c. "State governmental entity" means any department, board, commission, institution, agency, or institution of higher education of the state.
2. Each individual in a state facility shall wear a face covering, except as provided in Section (3).
3. Section (2) does not apply to:
  - a. a child who:
    - i. is in a childcare setting;
    - ii. is younger than two years old; or
    - iii. is two years old or older if the parent, guardian, or individual responsible for caring for the child cannot place the face covering safely on the child's face;
  - b. an individual with a medical condition, mental health condition, or disability that prevents wearing a face covering, including an individual with a medical condition for whom wearing a face covering could cause harm or obstruct breathing, or who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
  - c. an individual who is deaf or hard of hearing, or communicating with an individual who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;
  - d. an individual who is obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;

EXECUTIVE DOCUMENTS

- e. an individual who is outdoors;
  - f. an individual in a vehicle;
  - g. an individual who is using an indoor recreational facility and maintains a physical distance of at least six feet from any other individual;
  - h. an individual who is eating or drinking and maintains a physical distance of at least six feet from any other individual who is not from the same household or residence; or
  - i. a state employee who is not speaking in person with any other individual and who:
    - i. is the sole occupant of a fully enclosed room or office;
    - ii. is the sole occupant of a partially enclosed room, office, or similar space, including a cubicle, that is enclosed on at least three sides by walls or other physical barriers or dividers of a height that reaches no lower than the top of the employee's head when the employee is seated; or
    - iii. is seated or stationary, and maintains a physical distance of at least six feet from any other individual.
- 4.a. Except as provided in Subsections (4)(b) and (4)(c), a state governmental entity may not require an individual to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).
- b. A state governmental entity may require an individual employed by the state governmental entity to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).
- c. A state institution of higher education may require an individual who is enrolled as a student of the state institution of higher education to provide medical documentation verifying the basis for an exemption under Subsection (3)(b).
5. A state governmental entity may refuse to provide in-person service to any individual who does not wear a mask in a state facility of the state governmental entity if:
- a. an alternative means of service is available;
  - b. the state governmental entity specifies to the individual how to access the alternative means of service; and
  - c. the state governmental entity determines that the individual has reasonable access to the alternative means of service.
6. The Utah Department of Corrections shall implement requirements regarding the wearing of face coverings in a state prison or state community correctional center.
7. The Division of Juvenile Justice Services shall implement requirements regarding the wearing of face coverings in a detention facility or secure facility operated by the Division of Juvenile Justice Services.
8. This Order rescinds and replaces Executive Order 2020-36.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 24, 2020, or until otherwise lawfully modified, amended, rescinded, or superseded.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 10th day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/041/EO

**EXECUTIVE ORDER**

Updating the Declaration of a State of Emergency Due to Civil Unrest of July 9, 2020

**WHEREAS**, on July 9, 2020, the Salt Lake County District Attorney's Office announced its decision that the police-involved shooting of Bernardo Palacios-Carbajal on May 23, 2020, was justified under Utah law;

**WHEREAS**, in response to the Salt Lake County District Attorney Office's decision, protests took place in Salt Lake City;

**WHEREAS**, some protesters became violent and the civil unrest resulted in bodily injury and destruction of public property;

**WHEREAS**, much of the violence occurred at or near the Salt Lake County District Attorney's Office building;

**WHEREAS**, local law enforcement agencies have responded to assist in controlling the violence;

**WHEREAS**, there exists a threat of future bodily injury and destruction of private and public property due to civil unrest;

**WHEREAS**, these conditions create a "State of Emergency" within the intent of Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

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

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

**WHEREAS**, Utah Code § 53-2a-204(1)(f) authorizes the governor to control ingress and egress to and from a disaster area, the movement of persons within the area, and recommend the occupancy or evacuation of premises in a disaster area;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order the following:

1. As used in this Order, "emergency responder" means the same as that term is defined in Utah Code § 53-2a-302(1).
2. The Utah State Capitol building and grounds shall be closed to any individual other than an emergency responder or an officer or employee of the Utah Executive Branch, the Utah Legislature, or the Utah Judiciary.
3. The Salt Lake County District Attorney's Office building and grounds, located at 35 East 500 South, Salt Lake City, Utah 84111, to any individual other than an emergency responder or an officer or employee of the Salt Lake County District Attorney's Office, or an individual who schedules an appointment or otherwise receives permission from the Salt Lake County District Attorney's Office.
4. The Utah Department of Public Safety shall coordinate assistance from state government to political subdivisions.
5. This Order rescinds and replaces Executive Order 2020-39.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 13, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 10th day of July, 2020.

(State Seal)

**Gary R. Herbert**  
Governor

ATTEST:

**Spencer J. Cox**  
Lieutenant Governor

2020/042/EO

**EXECUTIVE ORDER**

Updating the Declaration of a State of Emergency Due to Civil Unrest of July 9, 2020

**WHEREAS**, on July 9, 2020, the Salt Lake County District Attorney's Office announced its decision that the police-involved shooting of Bernardo Palacios-Carbajal on May 23, 2020, was justified under Utah law;

**WHEREAS**, in response to the Salt Lake County District Attorney Office's decision, protests took place in Salt Lake City;

**WHEREAS**, some protesters became violent and the civil unrest resulted in bodily injury and destruction of public property;

**WHEREAS**, much of the violence occurred at or near the Salt Lake County District Attorney's Office building;

**WHEREAS**, local law enforcement agencies have responded to assist in controlling the violence;

**WHEREAS**, there exists a threat of future bodily injury and destruction of private and public property due to civil unrest;

**WHEREAS**, these conditions create a "State of Emergency" within the intent of Utah Code Title 53, Chapter 2a, Disaster Response and Recovery Act;

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

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

**WHEREAS**, Utah Code § 53-2a-204(1)(f) authorizes the governor to control ingress and egress to and from a disaster area, the movement of persons within the area, and recommend the occupancy or evacuation of premises in a disaster area;

**NOW, THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from State resources and hereby order the following:

1. As used in this Order, "emergency responder" means an individual identified in Utah Code § 53-2a-302(1)(b).
2. The Utah State Capitol building and grounds shall be closed to any individual other than an emergency responder or an officer or employee of the Utah Executive Branch, the Utah Legislature, or the Utah Judiciary.
3. The Salt Lake County District Attorney's Office building and grounds, located at 35 East 500 South, Salt Lake City, Utah 84111, shall be closed to any individual other than an emergency responder or an officer or employee of the Salt Lake County District Attorney's Office, or an individual who schedules an appointment or otherwise receives permission from the Salt Lake County District Attorney's Office.
4. The Utah Department of Public Safety shall coordinate assistance from state government to political subdivisions.
5. This Order rescinds and replaces Executive Order 2020-42.

This Order is declared effective immediately and shall remain in effect until 11:59 p.m. on July 13, 2020, unless otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 10th day of July, 2020.

(State Seal)

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

ATTEST:

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

2020/043/EO

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 16, 2020, 12:00 a.m., and July 01, 2020, 11:59 p.m. are included in this, the July 15, 2020, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least August 14, 2020. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through November 12, 2020, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-24	Filing No. 52919

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	Codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R68-24. Industrial Hemp Research Pilot Program for Growers
<b>3. Purpose of the new rule or reason for the change:</b>
These changes are necessary so that industrial hemp growers can extend their license beyond the original term to store or sell industrial hemp product.
<b>4. Summary of the new rule or change:</b>
In addition to allowing industrial hemp growers to extend their licenses to sell unused product, the changes also make updates to the industrial hemp program to be consistent with United States Department of Agriculture (USDA) proposed rules, remove burdensome and unnecessary requirements, and make conforming changes based on recently passed legislation during the 2020 General Session, H.B. 18, Industrial Hemp Program Amendments.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>
No additional costs are anticipated to the state budget because industrial hemp growers that operate under an extended license will not require additional inspections by the Department of Agriculture and Food (Department). Additionally, this rule change should not change the number of growers that apply and pay for a full year license.
<b>B) Local governments:</b>
No anticipated cost or savings for local governments because they do not operate as industrial hemp growers or regulate industrial hemp growers.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is an anticipated cost savings to a small number of industrial hemp growers (small businesses) who choose to apply for an extended license that includes the difference between the current license fee (\$500) and the license fee extension (proposed at \$50). The Department estimates that 63 hemp growers might temporarily extend their license. This is a total savings of \$28,350, of which 75% is allocated to small businesses, or \$21,262.50.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There could be an anticipated cost savings to a small number of industrial hemp growers that do not qualify as small businesses that choose to apply for an extended license. The savings per grower is equal to the difference between the current license fee of \$500 and the proposed license extension fee of \$50. The Department estimates that 63 hemp growers might temporarily extend their license. This is a total savings of \$28,350, of which 25% is allocated to non-small businesses, or \$7,087.50.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There are no anticipated costs or savings to other persons that do not operate as industrial hemp growers.
<b>F) Compliance costs for affected persons:</b>
The cost of an industrial hemp grower license extension is planned to be \$50.
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$21,262.50	\$21,262.50	\$21,262.50
Non-Small Businesses	\$7,087.50	\$7,087.50	\$7,087.50
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$28,350</b>	<b>\$28,350</b>	<b>\$28,350</b>
<b>Net Fiscal Benefits</b>	<b>\$28,350</b>	<b>\$28,350</b>	<b>\$28,350</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
Commissioner R. Logan Wilde, Utah Department of Agriculture and Food, has reviewed and approves this regulatory impact analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
This rule change will have a positive fiscal impact on businesses by allowing them to continue to sell or store industrial hemp product for 90 days without paying for a full year license extension.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
R. Logan Wilde, Commissioner			

**Citation Information**

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

Subsection 4-41-103(4)		
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**Public Notice Information**

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

**A) Comments will be accepted until:** 08/14/2020

**10. This rule change MAY become effective on:** 08/21/2020

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	07/01/2020
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**R68. Agriculture and Food, Plant Industry.**

**R68-24. Industrial Hemp [~~Research Pilot Program~~License for Growers.**

**R68-24-1. Authority and Purpose.**

Pursuant to Section 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp [~~Research Pilot~~]Program for the growing and cultivation of industrial hemp.

**R68-24-2. Definitions.**

1) "Acceptable hemp THC level" means a total composite tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the total composite tetrahydrocannabinol concentration of 0.3 %.

2) "Community Location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.

[+3] "Department" means the Utah Department of Agriculture and Food.

[2]4) "Growing Area" means a contiguous area on which hemp is grown whether inside or outside.

[3]5) "Handle" or "handling" [~~means possessing, transporting or storing industrial hemp for any period of time.~~]means the action of cultivating or storing hemp plants or hemp plant parts prior to the delivery of the plants or plant parts for processing.

6) "Harvesting" means removing industrial hemp plants from final growing condition and physically or mechanically preparing plant material for storage or wholesale.

[4]7) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

[5]8) "Licensee" means a person authorized by the department to grow industrial hemp.

9) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

[6]10) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

**R68-24-3. Grower License Application Requirements.**

1) The applicant shall be a minimum of [eighteen-]18[9] years old.

2) The applicant is not eligible to receive a license if they have[-]

- ~~a) been convicted of a felony or its equivalent; or~~
- ~~b) been convicted of a drug related misdemeanor within the last ten (10) years] been convicted of a felony or its equivalent within the last ten years.~~

3) An applicant seeking an industrial hemp cultivation license shall submit the following to the department:

- a) a completed application form provided by the department;
- b) the legal description of the growing area;
- c) the global positioning coordinates for the center of the outdoor growing area;
- d) maps of the growing area in acres or square feet, and the location of different varieties within the growing area;
- e) a statement of the intended end use or disposal for [all] parts of the hemp plant grown; and
- f) a plan for the storage of seed or clone and harvested industrial hemp material as specified in Section R68-24-7.

4) An applicant shall submit a nationwide criminal history from the FBI completed within three [3-] months of their application.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit [all] the required information.

**R68-24-4. Growing Area.**

1) A licensee shall not plant or grow industrial hemp on any site not listed on the grower license application and shall take immediate steps to prevent the inadvertent growth of industrial hemp outside of the authorized grow area.

2) A licensee shall not grow hemp in any structure used for residential purposes.

3) A licensee shall not handle or store leaf, viable seed, or floral material from hemp in a structure used for residential purposes.

4) A licensee shall not grow industrial hemp outdoors within 1,000 feet of a community location[~~school or a public recreational area~~].

5) The licensee shall post signage at the plot location's entrance and where the plot is visible to a public roadway in a manner that would reasonably be expected to be seen by a person in the area.

6) The signage shall include the following information:

- a) the statement, "Utah Department of Agriculture Industrial Hemp [Research Pilot-]Program";
- b) the name of the licensee;

- c) the Utah Department of Agriculture and Food licensee number; and
- d) the department's telephone number.

**R68-24-5. Reporting Requirements.**

[~~1) Prior to planting the growing area, the licensee shall submit a Pre-Planting Report, on a form provided by the department, which includes:~~

- ~~a) a description of the industrial hemp varieties to be planted;~~
- ~~b) a description of all other plant material being grown in the growing area;~~
- ~~c) the number of acres to be planted or the amount of seed or clone to be planted in the growing area; and~~
- ~~d) the source of the seed or clone being planted.]~~

[2]1) Within ten [(40)-] days of planting the licensee shall submit a Planting Report, on a form provided by the department, [which] that includes:

- a) a list of [all-] industrial hemp varieties and other plants in the growing area which were planted;
- b) the actual acres planted or the seeding rate or number of clones planted in the growing area;
- c) adjusted maps and global position coordinates for the area planted; and
- d) the amount of seed that was not used.

[3]2) [Thirty-]30[3] days prior to harvest the licensee shall submit a Harvest Report, on a form provided by the department, [which] that includes:

- a) any contracts entered into between the grower and an industrial hemp processor or a statement of the intended use of [all] industrial hemp cultivated in the growing area;
- b) any intended storage areas for industrial hemp or industrial hemp material; and
- c) the harvest dates and location of each variety cultivated in the growing areas;
- i) the licensee shall immediately inform the department of any changes in the reported harvest date which exceeds five [(5)-] days.

[4]3) [Thirty-]30[3] days after completion of harvest the licensee shall submit a Production Report, on a form provided by the department, which includes:

- a) yield from the growing area;
- b) THC testing reports, if any, conducted at the licensee's request;
- c) water application rates;
- d) report of any pest infestations or problems; and
- e) a statement on the final disposition of the [all-] industrial hemp product in the growing area.

[5]4) Failure to submit the required reports may result in the revocation of the grower license.

**R68-24-6. Inspection and Sampling.**

1) The growing area shall be subject to random sampling to verify the THC concentration does not exceed [0.3% on a dry weight basis] the acceptable hemp THC levels by department officials.

2) The department shall have complete and unrestricted access to [all-] industrial hemp plants and seeds whether growing or harvested, [all] and to land, buildings, and other structures used for the cultivation of [f] storage of industrial hemp.

3) Samples of each variety of industrial hemp shall be randomly sampled from the growing area by department officials.

4) The department shall conduct the laboratory testing on the sample to determine the THC concentration on a dry weight basis[~~by gas chromatography~~].

5) The sample taken by the department shall be the official sample.

6) The department shall test the growing area within ~~thirty~~ ~~[(30)]~~ days prior to harvest.

7) The department shall notify the licensee of the test results from the official sample within a reasonable amount of time.

8) The test results from the department shall contain a measurement of uncertainty.

~~(8)]~~9) Any laboratory test [result greater than 0.3% THC]that exceeds the acceptable hemp THC level may be considered a violation of the terms of the license and may result in[~~a~~] license revocation and issuance of a citation.

~~(9)]~~10) Upon a test result with greater than [0.3% THC]the acceptable hemp THC level, the department shall notify the grower.

~~(10)]~~11) The department will coordinate with the appropriate law enforcement agency regarding [A]any laboratory test result with 1% THC or greater, [will be turned over to the appropriate law enforcement agency]and revocation of the license for the remaining calendar year will be immediate.

#### **R68-24-7. Storage of Industrial Hemp and Hemp Material.**

1) A licensee may store hemp and hemp material provided:

a) the licensee notifies the department, in writing, of the location of the storage facility;

b) the licensee informs the department of the type and amount of product being stored in the storage facility;

~~[~~c~~]c) the storage facility is owned by the licensee; and~~

~~(d)]~~c) the storage facility is outside of the public view[-];

~~(e)]~~d) the storage facility is secured with physical containment and reasonable security measures[-]; and

~~(f)]~~e) the storage facility is not within 1,000 feet of a community location.

2) The storage area is subject to random inspection by department officials.

#### **R68-24-8. Transportation of Industrial Hemp Materials.**

1) A licensee shall not transport any industrial hemp materials, except to a storage facility~~[owned by the licensee]~~, until the department has notified the licensee of the test results from the growing area.

~~[~~2~~]2) A licensee may move nonviable hemp products without an industrial hemp transportation permit.]~~

~~(3)]~~2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.

~~(4)]~~3) The licensee shall submit an industrial hemp transportation permit request form provided by the department.

~~(5)]~~4) Requests for an industrial hemp transportation permit shall be submitted to the department at least five [~~(5)]~~business days prior to movement.

~~(6)]~~5) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.

~~(7)]~~6) The department may deny any application for a movement permit that is not completed in accordance with this rule.

#### **R68-24-9. Restrictions on the Sale and Transfer of Industrial Hemp and Hemp Materials.**

1) A licensee shall not sell or transfer living plants, viable plants, viable seeds, leaf material, or floral material to any person not licensed by the department or to any person outside the state who is not

authorized by the laws of that state or United States Department of Agriculture.

2) The licensee may sell or transfer stripped stalks, fiber, and nonviable seed to the general public provided the ~~[product's THC level is less than 0.3%]~~hemp material has an acceptable hemp level.

#### **R68-24-10. Renewal.**

1) A licensee shall resubmit ~~[all]~~documents required in Section R68-24-3, with updated information, before December 31st of the current year.

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

#### **R68-24-11 Extension.**

1) The department may extend the term of a license for up to 90 days, provided that:

a) the licensee requests an extension prior to the end of the original license term; and

b) the licensee reports to the department:

i) the amount of industrial hemp they possess at the end of the original license term; and

ii) the planned disposition of the remaining industrial hemp.

2) Under an extended license, the licensee shall not grow or process industrial hemp, but may store and sell industrial hemp harvested during the previous growing season.

3) The licensee shall submit a license extension fee as approved by the legislature in the fee schedule.

4) The licensee continues to be subject to inspection by the department.

#### **R68-24-1[4]2. Destruction of Industrial Hemp Material.**

~~[~~1~~]1) The licensee shall be responsible for the destruction any plant material which tests greater than 0.3% THC by dry weight.]~~

1) The department shall be responsible for the destruction of any plant material which tests above the acceptable hemp THC level.

2) The licensee shall work with the department on an approved plan for the destruction of the plant material.

3) The department may destroy the plant material at cost to the licensee.

4) The department may inspect the growing area to verify the destruction of ~~[all]~~plant material.

#### **R68-24-1[2]3. Violations.**

1) A licensee shall not grow industrial hemp that tests ~~[greater than 0.3% THC]~~greater than the acceptable hemp THC level on a dry weight basis.

2) A licensee shall not possess, sell, [or]transfer, or transport industrial hemp material that tests greater than ~~[0.3%]~~the acceptable hemp THC level on a dry weight basis.

3) It is a violation of the grower license to grow or store industrial hemp or industrial hemp material on a site not approved by the department as part of the license.

4) A licensee shall not allow unsupervised public access to hemp plots.

5) A licensee shall not deny an official of the department access for sampling or inspection purposes.

6) A licensee shall not violate any portion of this rule or state law.

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7) It is a violation of this rule to grow, cultivate, handle, or possess industrial hemp or viable industrial hemp materials without a license from the department.

9) It is a violation to grow industrial hemp material on a site not approved by the department as listed on the license.

10) It is a violation to grow industrial hemp outdoors within 1,000 feet of a community location [~~school or public recreational area~~].

**KEY: industrial hemp cultivation**

**Date of Enactment or Last Substantive Amendment:** ~~October 31, 2018~~ **2020**

**Authorizing, and Implemented or Interpreted Law:** 4-41-103(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R68-27	Filing No. 52917

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Plant Industry	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state:</b>	Salt Lake City, UT 84115	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R68-27. Cannabis Cultivation
<b>3. Purpose of the new rule or reason for the change:</b>
This change allows cannabis cultivators to grow cannabis through a combination of indoor and outdoor cultivation.
<b>4. Summary of the new rule or change:</b>
As required by statute, this rule provides guidelines under which cannabis cultivators may grow cannabis through a combination of indoor and outdoor cultivation.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change could increase the costs to the Department of Agriculture and Food (Department) because adding combination indoor and outdoor growing creates additional workload for cannabis inspectors. The Department anticipates inspection costs will increase by 15 to 20%, or an estimated additional 16-man hours per month at \$45 per hour. This would be a yearly increased cost of \$8,640.
<b>B) Local governments:</b>
This rule change does not affect local governments because they do not regulate cannabis cultivators or operate as cannabis cultivators.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change should reduce the operating costs for indoor cannabis cultivators (both small businesses and non-small businesses) by allowing them to also grow cannabis outdoors because outdoor growing is typically cheaper than indoor growing. It is difficult to quantify the savings given that this is a new program and the Department cannot estimate how many growers will grow both indoors and outdoors.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
This rule change should reduce the operating costs for indoor cannabis cultivators (both small businesses and non-small businesses) by allowing them to also grow cannabis outdoors because outdoor growing is typically cheaper than indoor growing. It is difficult to quantify the savings given that this is a new program and the Department cannot estimate how many growers will grow both indoors and outdoors.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
Persons other than cannabis cultivators or the Department are not directly impacted by this change because they do not operate as or regulate cannabis cultivation facilities.
<b>F) Compliance costs for affected persons:</b>
There are no additional compliance costs for affected persons as a result of this change because cannabis cultivators will be able to grow both indoors and outdoors using their existing cannabis cultivation license.
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there</b>

are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$8,640	\$8,640	\$8,640
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>\$8,640</b>	<b>\$8,640</b>	<b>\$8,640</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$(8,640)</b>	<b>\$(8,640)</b>	<b>\$(8,640)</b>

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

Commissioner R. Logan Wilde, has reviewed and approves this regulatory impact analysis.

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

This rule change will allow for cannabis cultivators to expand their business by growing both indoors and outdoors. It should have a positive fiscal impact on small businesses in this state.

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

R. Logan Wilde, Commissioner

**Citation Information**

**7. This rule change is authorized or mandated by state law, and implements or interprets the following state**

**and federal laws. State code or constitution citations (required):**

Subsection 4-41a-204(2)(e)		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	08/14/2020
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<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	R. Logan Wilde, Commissioner	<b>Date:</b>	07/01/2020
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**R68. Agriculture and Food, Plant Industry.**

**R68-27. Cannabis Cultivation.**

**R68-27-1. Authority and Purpose.**

1) Pursuant to Subsections 4-41a-103(5), 4-41a-204(2)(e), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications, and requirements to obtain and maintain a cannabis cultivation license.

**R68-27-2. Definitions.**

As used in this rule:

- 1) "Applicant" means any person or business entity who applies for a cannabis cultivation facility license.
- 2a) "Cannabis" means any part of a marijuana plant:
- b) "Cannabis" does not mean, for purposes of this rule, industrial hemp.
- 3) "Cannabis cultivation facility" means a person that:
  - a) possesses cannabis;
  - b) grows or intends to grow cannabis; and
  - c) sells or intends to sell cannabis to a cannabis cultivation facility or a cannabis processing facility.
- 4) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

NOTICES OF PROPOSED RULES

- a) authorizes an individual to act as a cannabis production establishment agent; and
- b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.
- 5) "Department" means the Utah Department of Agriculture and Food
- 6) "Indoor cannabis cultivation" means cultivation of cannabis within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors.
- 7) "Lot" means the quantity of:
  - a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or
  - b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.
- 8) "Outdoor cannabis cultivation" means an open or cleared ground fully enclosed at the perimeter by a securable, sight obscure wall or fence at least eight feet high.

**R68-27-3. Cannabis Cultivation Facility License.**

- 1) A cannabis cultivation license allows the licensee to propagate, cultivate, harvest, trim, dry, cure, and package cannabis into lots for sale or transfer to a cannabis production facility.
- 2) A cannabis cultivation facility may produce and sell cannabis plants, seed, and plant tissue culture to other licensed cannabis cultivation facilities.
- 3) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.
- 4) Prior to approving an application, the department may contact any applicant and request additional supporting documentation or information.
- 5) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.
- 6) The department may conduct face-to-face interviews with an applicant if needed to determine the best qualified applicant for the number of licenses that will be issued.
- 7) The license shall expire on December 31st.
- 8) A license may not be sold or transferred.

**R68-27-4. Cannabis Cultivation Facility Requirements.**

- 1) A cannabis cultivation facility operating plan shall contain a blue[-]print or diagram[s] of the facility containing the following information:
  - a) for indoor cannabis cultivation, the square footage of the area[s] where cannabis is to be propagated;
  - b) for indoor cannabis cultivation, the square footage of the area[s] where cannabis is to be grown;
  - c) the square footage of the area[s] where cannabis is to be harvested;
  - d) the area[s] where cannabis is to be dried, trimmed, and cured;
  - e) the square footage of the area[s] where cannabis is to be packaged for wholesale;
  - f) the total square footage of the cultivation facility;
  - g) the square footage and location of areas to be used as a storeroom[s];
  - h) the location of the toilet facilities and hand washing facilities;

- i) the location of a break room and location of personal belonging lockers; and
- j) the location of the area[s] to be used for loading and unloading of cannabis product[s] for transportation.
- 2) For outdoor cannabis cultivation, the operating plan shall contain a detailed aerial photograph of the area on which the following information is shown:
  - a) the area where cannabis to be propagated; and
  - b) the area where cannabis is to be grown.
- 3) A cannabis cultivation facility operating plan shall detail the drying and curing methods to be used by the cannabis cultivation facility.
- 4) An outdoor cannabis cultivation facility shall outline the measures to be taken to ensure that product is kept from deterioration and contamination.
- 5) A cannabis cultivation facility shall have written emergency procedures to be followed in case of:
  - a) fire;
  - b) chemical spill; or
  - c) other emergency[ies]y at the facility.
- 6) A cannabis cultivation facility operating plan shall include:
  - a) a pest management plan;
  - b) a description of when and how fertilizers are to be applied during the production process;
  - c) procedures for water usage and waste water disposal; and
  - d) a waste disposal plan.
- 7) A cannabis cultivation facility shall have a written plan to handle potential recall and destruction of cannabis because of contamination.
- 8) A cannabis cultivation facility shall use a standardized scale [which]that is registered with the department when cannabis is:
  - a) packaged for sale by weight;
  - b) bought and sold by weight; or
  - c) weighed for entry into the inventory control system.
- 9) A cannabis cultivation facility shall ensure that sanitary conditions are maintained on the premises, including ensuring proper and timely removal of [all]litter and waste.
- 10) [The]A cannabis cultivation facility shall compartmentalize [all]each area[s] in the facility based on function.
- 11) A cannabis cultivation facility shall limit access to the compartments to appropriate cannabis cultivation facility agents.

**R68-27-5 Indoor and Outdoor Cannabis Cultivation Limitations.**

- 1) A cannabis cultivation facility that cultivates cannabis only indoors may use no more than 100,000 square feet for cultivation.
- 2) A cannabis cultivation facility that cultivates cannabis only outdoors may use no more than four acres for cultivation.
- 3) Pursuant to Subsection 4-41a-204(2)(e), a cannabis cultivation facility that uses a combination of indoor and outdoor cultivation shall be subject to the following formula:
  - a) the cannabis cultivation facility may use no more than a total of two acres outdoors and 50,000 square feet indoors for cultivation;
  - b) the cannabis cultivation facility may use less than two acres outdoors or 50,000 square feet indoors for cultivation, but may not exceed the indoor or outdoor limit.

**R68-27-[5]6. Security Requirements.**

1) At a minimum, each cannabis cultivation facility shall have a security alarm system on ~~all~~each perimeter entry point[s] and perimeter window[s].

2) At a minimum, a licensed cannabis cultivation facility shall have a complete video surveillance system:

a) with a minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog; and

b) that retains footage for at least 45 days.

3) ~~All~~each camera[s] at a cannabis cultivation facility shall:

a) be fixed, and placement shall allow for the clear and certain identification of any person ~~and~~or activity[ies] in a controlled area[s]; and

b) record continuously.

4) Controlled areas include:

a) ~~all~~each entrance[s] and exit[s], or ingress and egress vantage point[s];

b) ~~all~~each area[s] within an indoor or outdoor room or area where cannabis is propagated, grown, harvested, dried, or trimmed;

c) ~~all~~each area[s] where cannabis is stored; ~~or~~and

d) ~~all~~each area[s] where cannabis waste is being moved, processed, stored, or destroyed.

5) If a cannabis cultivation facility stores footage locally, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

6) If a cannabis cultivation facility stores footage on a remote server, access shall be restricted to protect from employee tampering.

7) Any gate or entry point must be lighted in low-light conditions.

8) ~~All~~visitors to a cannabis cultivation facility shall be required to have a properly displayed identification badge issued by the facility ~~at all times~~while on the premises of the facility.

9) ~~All~~each cannabis cultivation facility visitors shall be escorted by a cannabis cultivation facility agent ~~at all times~~while in the facility.

10) A cannabis cultivation facility shall keep and maintain a log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

11) The visitor log shall be maintained by the cannabis cultivation facility for a minimum of one year.

12) The cannabis cultivation facility shall make visitor log available to the department upon request.

**R68-27-[6]7. Inventory Control.**

1) ~~Every~~Each cannabis plant that reaches eight inches in height with a root ball shall be issued a unique identification number in the inventory control system, which follows the plant through ~~all~~the phases of production.

2) ~~Every~~Each cannabis plant, lot of usable cannabis trim, leaves, and other plant matter, test lot, and harvest lot shall be issued a unique identification number in the inventory control system.

3) Unique identification numbers cannot be reused.

4) Each cannabis plant, lot[s] of usable cannabis trim, leaves, and other plant matter, cannabis product[s], test lot[s], harvest lot[s], and process lot that has been issued a unique identification

number shall have a physical tag with the unique identification number.

5) The tag shall be legible and placed in a position that can be clearly read and kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) movement of seedling or clone to the vegetation production area;

b) when plants are partially or fully harvested or destroyed;

c) when cannabis is being transported to other facilities;

d) ~~all~~samples used for testing and the testing results;

e) a complete inventory of ~~all~~cannabis, cannabis seeds, plant tissue, seedlings, clones, plants, trim or other plant material;

f) the weight of ~~all~~harvested cannabis plants immediately after harvest;

g) the weight and disposal of post-harvest waste materials;

h) the identity of the individual who disposed of the waste and the location of waste receptacle; and

i) theft or loss, or suspected theft or loss, of cannabis.

7) A receiving cannabis cultivation facility shall document in the inventory tracking system any cannabis received, and any differences between the quantity specified in the transport manifest and the quantities received.

8) For plants under eight inches, the cultivation facility shall keep record of:

a) the number of cannabis seeds or cuttings planted;

b) the date ~~on which~~they were planted;

c) the date the plants were moved into the vegetation area and tagged;

d) the strain of the seeds or cuttings;

e) the number of plants grown to maturity;

f) the number of plants disposed of; and

g) the date of disposal.

**R68-27-[7]8. Cannabis Cultivation Facility Agents.**

1) A cannabis cultivation facility shall apply to the department for a cannabis cultivation facility agent registration card on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the fee.

3) The cannabis ~~production establishment~~cultivation facility agent registration card shall contain:

a) the agent's full name;

b) the name of the cannabis cultivation establishment;

c) the type of cannabis production establishment;

d) the job title or position of the agent; and

e) a photograph of the agent.

4) A cannabis cultivation facility is responsible to ensure that ~~all~~each cannabis cultivation facility agent[s] ~~has~~received ~~the~~department approved training ~~as specified in~~pursuant to Utah CodeSection 4-41a-301.

5) A cannabis cultivation facility agent shall have a properly displayed identification badge which has been issued by the department ~~at all times~~while on the facility premises or while engaged in the transportation of cannabis.

6) ~~All~~Each cannabis cultivation facility agent[s] shall have their state issued identification in their possession to certify the information on their badge is correct.

7) A ~~an~~cannabis cultivation facility agent's identification badge shall be returned to the department immediately upon

termination of their employment with the cannabis cultivation facility.

**R68-27-[8]9. Pesticide and Fertilizer Use.**

- 1) A cannabis cultivation facility shall maintain:
  - a) the material safety data sheet for ~~all~~any pesticide[s], fertilizer[s], or other agricultural chemical[s] used in the production of cannabis which shall be accessible to ~~all~~any cannabis cultivation facility agent[s];
  - b) the original label or a copy thereof for ~~all~~each pesticide[s], fertilizer[s], or other agricultural chemical[s] used in the production of cannabis; and
  - c) a log of ~~all~~each pesticide[s], fertilizer[s], or other agricultural chemical[s] used in the production of cannabis.
- 2) Pesticides approved by the department may be used in the production, processing, and handling of cannabis.
- 3) ~~Each~~~~P~~pesticide[s], fertilizer[s], and other agricultural chemical[s] ~~are~~is to be stored in a separate location apart from cannabis.
- 4) Pesticides shall be used consistent with the label requirements.
- 5) ~~Commercial~~~~]~~Fertilizer[s] registered with the department under Title 4, Chapter 13, the Utah Fertilizer Act, may be used in the production and handling of cannabis.
- 6) Cannabis exposed to unauthorized pesticide[s], soil amendment[s], or fertilizer[s] is subject to destruction at the cost of the cannabis cultivation facility.

**R68-27-[9]10. Transportation.**

- 1) A printed transport manifest shall accompany ~~every~~each transport of cannabis.
- 2) The manifest shall contain the following information:
  - a) the cannabis production establishment address and license number of the departure location;
  - b) ~~the~~physical address and license number of the receiving location;
  - c) ~~the~~strain name, quantity~~s~~ by weight, and unique identification number[s] of each cannabis material to be transported;
  - d) ~~the~~date and time of departure;
  - e) ~~the~~estimated date and time of arrival; and
  - f) ~~the~~name and signature of each cannabis production establishment agent accompanying the cannabis.
- 3) The transport manifest may not be voided or changed after departing from the original cannabis cultivation facility.
- 4) A copy of the transport manifest shall be given to the receiving cannabis production establishment.
- 5) The receiving cannabis establishment shall ensure that the cannabis material received is as described in the transport manifest and shall record the amount[s] received for each strain into the inventory control system.
- 6) The receiving cannabis establishment shall document at the time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.
- 7) During transport a cannabis cultivation facility shall ensure the cannabis is:
  - a) shielded from the public view;
  - b) secured; and
  - c) temperature controlled if perishable.
- 8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the cannabis cultivation facility may occupy a transporting vehicle.

**R68-27-[10]11. Recall Protocol.**

- 1) The department may initiate a recall of cannabis or cannabis products if[-]:
  - a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis product[s];
  - b) evidence exists that residual solvents are present on or in cannabis or cannabis product[s];
  - c) evidence exists that harmful contaminants are present on or in cannabis or cannabis product[s]; or
  - d) the department believes or has reason to believe the cannabis or cannabis product~~s are~~is unfit for human consumption.
- 2) A cannabis cultivation facility's recall plan shall include, at a minimum:
  - a) designation of at least one member of the staff who serves as the recall coordinator;
  - b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
  - c) procedures to retrieve and destroy product; and
  - d) a communications plan to notify those affected by the recall.
- 3) The facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.
- 4) ~~The~~A cannabis cultivation facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.
- 5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.
- 6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

**R68-27-[11]12. Minimum Requirements for the Storage and Handling of Cannabis.**

- 1) ~~All~~~~]~~Storage areas shall provide adequate lighting, sanitation, temperature, humidity, space, equipment, and security conditions for the storage of cannabis.
- 2) ~~All~~~~]~~Stored cannabis shall be at least six inches off the ground.
- 3) ~~All~~~~]~~~~e~~Cannabis shall be stored away from ~~all~~other chemicals, lubricants, pesticides, fertilizers, or other potential contaminants.
- 4) Cannabis that is outdated, damaged, deteriorated, misbranded, adulterated shall be stored separately until it is destroyed.

**R68-27-[12]13. Cannabis Waste Disposal.**

- 1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.
- 2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.
- 3) Cannabis waste generated from the cannabis plant, trim, and leaves ~~are~~is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.
- 4) ~~All~~~~]~~~~e~~Cannabis waste shall be rendered unusable prior to leaving the cannabis cultivation facility.

5) Cannabis waste [~~which is~~] not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume, or by other methods approved by the department before implementation.

6) Materials used to grind with cannabis fall into two categories:

- a) compostable; or
- b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

- a) food waste;
- b) yard waste; or
- c) vegetable-based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

- a) paper waste;
- b) cardboard waste;
- c) plastic waste; or
- d) soil.

9) Cannabis waste includes:

- a) cannabis plant waste including roots, stalks, leaves, and stems;
- b) excess cannabis or cannabis products from any quality assurance testing;
- c) cannabis or cannabis products that fail to meet testing requirements; and
- d) cannabis or cannabis products subject to a recall.

#### **R68-27-~~13~~14. Change in Operation Plans.**

1) A cannabis cultivation facility shall submit a notice, on a form provided by the department, prior to making any changes to:

- a) ownership or financial backing of the facility;
- b) the facility's name;
- c) a change in location;
- d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or
- e) change in square footage or acreage of cannabis intended to be cultivated.

2) A cultivation facility may not implement changes to the approved operation plan without department approval.

3) The department shall respond to the request for changes within 15 business days.

4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify the reason for the denial of approval for a change to the operation plan.

#### **R68-27-~~14~~15. Renewals.**

1) A cannabis cultivation facility shall submit a notice of intent to renew and the licensing fee to the department by December 1st.

2) If the licensing fee and intent to renew are not submitted by December 31st the licensee may not continue to operate.

3) The department may renew a license unless renewal would lead to a violation of the applicable laws and rules of the state.

#### **R68-27-~~15~~16. Violations Categories.**

1) Public Safety Violations: \$3,000- \$5,000 per violation. This category is for violations [~~which~~that present a direct threat to public health or safety including [~~but not limited to~~]:

- a) use of unapproved pesticide[s] or unapproved agricultural soil amendment[s];
- b) cannabis sold to an unlicensed source;
- c) cannabis purchased from an unlicensed source;
- d) refusal to allow inspection;
- e) failure to comply with testing requirements;
- f) a test result for high pesticide residue in the cannabis produced or cannabis product[-];
- g) unauthorized personnel on the premises;
- h) permitting criminal conduct on the premises; or
- i) engaging in or permitting a violation of the [~~Utah Code~~ Title 4, Chapter 41a, Cannabis Production Establishments~~[-4-41a]~~].

2) Regulatory Violations: \$1,000 - \$5,000 per violation. This category is for violations involving this rule and other applicable state rules [~~including, but not limited to~~]:

- a) failure to maintain alarm and security systems;
- b) failure to keep and maintain records;
- c) failure to maintain traceability;
- d) failure to follow transportation requirements;
- e) failure to follow the waste and disposal requirements;
- f) engaging in or permitting a violation of [~~Utah Code 4-41a~~ Title 4, Chapter 41a, Cannabis Production Establishments or this rule; or

- g) failure to maintain standardized scales.

3) Licensing Violations: \$500- \$5,000 per violation. This category is for violations involving licensing requirements including [~~but not limited to~~]:

- a) an unauthorized change to the operating plan;
- b) failure to notify the department of changes to the operating plan;
- c) failure to notify the department of changes to financial or voting interests of greater than 2%;
- d) failure to follow the operating plan as approved by the department;
- e) engaging in or permitting a violation of this rule or [~~Utah Code 4-41a~~ Title 4, Chapter 41a, Cannabis Production Establishments]; or
- f) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may consider enhancing or reducing the penalty based on the seriousness of the violation.

#### **KEY: marijuana, cannabis cultivation facility**

**Date of Enactment or Last Substantive Amendment:** [~~August 29, 2019~~2020]

**Authorizing, and Implemented or Interpreted Law:** 4-41a-404(3); 4-41a-103(5); ~~4-41a-204(2)(e)~~; 4-41a-302(3)(b)(ii); 4-41a-701(2); 4-41a-405(2)(b)(iv); 4-2-103(1)(i); 4-41a-801(1)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-404	Filing No. 52870

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT 8411	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-404. Requirements for Assessments of Student Achievement
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being updated to add the early mathematics benchmark assessment due to the passage of H.B. 114 in the 2020 General Session which created the additional benchmark assessment for mathematics.
<b>4. Summary of the new rule or change:</b>
This rule is being updated to add the early mathematics benchmark assessment and to incorporate by reference an updated version of the Testing Ethics Policy document. Additional changes to this rule include moving sections of this rule to the Testing Ethics Policy document and adding language to require the same ethics and training for a third-party proctor that administers an assessment.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. This rule is being updated to add the early mathematics benchmark assessment (as included in H.B. 114 (2020)) and to incorporate by reference an updated version of the Testing Ethics Policy document.

<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. This rule is being updated to add the early mathematics benchmark assessment (as included in H.B. 114 (2020)) and to incorporate by reference an updated version of the Testing Ethics Policy document.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. This rule is being updated to add the early mathematics benchmark assessment (as included in H.B. 114 (2020)) and to incorporate by reference an updated version of the Testing Ethics Policy document.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industrial Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The rule is being updated to add the early mathematics benchmark assessment (as included in H.B. 114 (2020)) and to incorporate by reference an updated version of the Testing Ethics Policy document.
<b>F) Compliance costs for affected persons:</b>
There are no independent compliance costs for affected persons. The rule is being updated to add the early mathematics benchmark assessment (as included in H.B. 114 (2020)) and to incorporate by reference an updated version of the Testing Ethics Policy document.
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

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

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

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

The State Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Subsection 53G-6-803(9)(b)	Section 53E-4-302
Subsection 53E-3-401(4)		

**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Standard Test Administration and Testing Ethics Policy
<b>Publisher</b>	Utah State Board of Education
<b>Date Issued</b>	June 4, 2020
<b>Issue, or version</b>	Version 1

**Public Notice Information**

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

**A) Comments will be accepted until:** 08/14/2020

**10. This rule change MAY become effective on:** 08/21/2020

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	06/19/2020
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**R277. Education, Administration.**

**R277-404. Requirements for Assessments of Student Achievement.**

**R277-404-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Section 53E-4-302, which directs the Board to adopt rules for the administration of statewide assessments; and
  - (d) Subsection 53G-6-803(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments.
- (2) The purpose of this rule is to:
  - (a) provide consistent definitions; and
  - (b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

**R277-404-2. Definitions.**

- (1) "Benchmark ~~[reading]~~ assessment" means the Board approved literacy or mathematics assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.
- (2) "College readiness assessment" means the:
  - (a) same as that term is described in Section 53E-4-305; and
  - (b) ~~[American College Testing exam, or]~~ the ACT.
- (3) "English Learner" or "EL student" means a student who is learning in English as a second language.
- (4) "English language proficiency assessment" means the ~~[World class Instructional Design and Assessment (WIDA)]~~ Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.
- (5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.
- (6) "High school assessment":
  - (a) means the same as that term is described in Section 53E-4-304;
  - (b) means the "Utah Aspire Plus"; and
  - (c) includes the Utah Aspire Plus assessment of proficiency in:
    - (i) English;
    - (ii) math;
    - (iii) science; and
    - (iv) reading.
  - (7) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
  - (8) "Statewide ~~[required]~~ assessment" means an assessment described in Subsection 53G-6-803(9)(a).
  - (9) "Standards Assessment":
    - (a) means the same as that term is described in Subsection 53E-4-303(2)(a); and

(b) means the "Readiness Improvement Success Empowerment" or "RISE";

(c) for each school year, includes one writing prompt from the writing portion of the RISE English language arts assessment for grades 5 and 8.

- (10) "Statewide assessment" means the:
  - (a) the same as that term is defined in Subsection 53E-4-301(2);
  - (b) Utah ~~[alternative]~~ alternate assessment; and
  - (c) English language proficiency assessment.
- (11) "Section 504 accommodation plan" means a plan:
  - (a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means, ~~[:~~  
~~(i) for science, the Utah Alternate Assessment (UAA); and~~  
~~(ii)]~~ for English language arts, science and mathematics, the Dynamic Learning Maps (DLM).

(13) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

**R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.**

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, ~~[June 6, 2019]~~ June 4, 2020, which establishes:

- (a) the purpose of testing;
- (b) the statewide assessments to which the policy applies;
- (c) teaching practices before assessment occurs;
- (d) required procedures for after an assessment is complete and for providing assessment results;
- (e) unethical practices;
- (f) accountability for ethical test administration;
- (g) procedures related to testing ethics violations; and
- (h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) ~~[https://www.schools.utah.gov/assessment?mid=1104&tid=5;]~~ <https://schools.utah.gov/assessment?mid=1104&tid=4> and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

**R277-404-4. Superintendent Responsibilities.**

- (1) The Superintendent shall facilitate:
  - (a) administration of statewide assessments; and
  - (b) participation in NAEP, in accordance with Subsection 53E-4-302(1)(b).

(2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.

(3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

**R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.**

(1)(a) Except as provided in Section (1)(b) and R277-404-7 an LEA shall administer statewide assessments to all students enrolled in the grade level or course to which the assessment applies.

(b) A student's IEP team, English Learner team, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

(2) An LEA shall develop a plan to administer statewide assessments.

(3) The plan shall include:

(a) the dates that the LEA will administer each statewide assessment;

(b) professional development for an educator to fully implement the assessment system;

(c) training for an educator, ~~and an~~ appropriate paraprofessional, or third party proctor in the requirements of assessment administration ethics; and

(d) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.

(4) An LEA shall submit the plan to the Superintendent by September 15 annually.

(5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators, including third party proctors, concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.

(6) LEA assessment staff or third party proctor staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(7) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(8) An LEA educator, third party proctor, or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.

(9) An LEA educator, third party proctor, or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(10)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

**R277-404-6. School Responsibilities.**

(1) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

(a) based on a student's score on a statewide ~~required~~ assessment; or

(b) because the student was exempted from taking a statewide ~~required~~ assessment.

(2) An LEA and school shall require an educator, assessment administrator, and proctor, including a third party proctor, to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

**R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.**

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) A parent is primarily responsible for a child's education and has the constitutional right to determine which aspects of public education the child participates in, including assessment systems.

(b) Parents may further exercise their inherent rights to exempt their children from a statewide ~~required~~ assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a statewide ~~required~~ assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a statewide ~~required~~ assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53E-4-205 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53E-4-205(2), and may not graduate without successfully completing the requirements of Sections 53E-4-205 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a statewide ~~required~~ assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b);

and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person;

and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a statewide ~~required~~ assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

NOTICES OF PROPOSED RULES

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a statewide ~~required~~ assessment.

(6) The administration of any assessment that is not a statewide ~~required~~ assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not provide a nonacademic reward to a student for a student's participation in or performance on a statewide ~~required~~ assessment.

(9) An LEA shall allow an educator to provide an academic incentive for a student's performance on a statewide ~~required~~ assessment in accordance with Subsections 53E-4-303(4)(b), 304(3), and 305(4).

(10) An LEA shall ensure that a student who has been exempted from participating in a statewide ~~required~~ assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(11) An LEA may allow a student who has been exempted from participating in a statewide ~~required~~ assessment under this section to be physically present in the room during test administration.

**R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.**

(1) An educator, test administrator or proctor, administrator, or school employee may not:

~~(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a statewide assessment prior to assessment administration;~~

~~(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;~~

~~(c) change, alter, or amend any student online or paper response answer or any other statewide material at any time in a way that alters the student's intended response;~~

~~(d) use any prior form of any statewide assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;~~

(e) a violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) b fail to administer a statewide assessment;

(g) c fail to administer a statewide assessment within the designated assessment window;

(h) d submit falsified data;

(i) e allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) f knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.

(2) A school employee or third party proctor shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-215.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Subsection 63G-2-305(5), until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator, third party proctor, or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

**R277-404-9. Data Exchanges.**

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Beginning with the 2021-2022 school year and ~~c~~Consistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

**KEY: assessments, student achievements**

**Date of Enactment or Last Substantive Amendment: [November 8, 2019]2020**

**Notice of Continuation: November 29, 2016**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-4-302; 53E-3-401(4); 53G-6-803(9)(b)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-473	Filing No. 52912

**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state:</b>	Salt Lake City, UT 84111

<b>Mailing address:</b> PO Box 144200		
<b>City, state, zip:</b> Salt Lake City, UT 84114-4200		
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-473. Utah Computer Science Grant
<b>3. Purpose of the new rule or reason for the change:</b>
The changes are being made in response to the potential for additional appropriations to be granted in future sessions. The potential increased funding allocation would allow for an expansion of the Computer Science Grant program including updates to the grant awarding process. These changes were originally proposed due to increased funding appropriated in the 2020 General Session. These appropriations were cut in response to budget cuts related to COVID-19. However, any funding in the future would merit these changes.
<b>4. Summary of the new rule or change:</b>
The changes create a longer period allowed for creating a plan before applying for a full grant. The changes also allow for a larger cap of up to \$250,000 for a 4-year grant. The increased amount allows for more local education agencies (LEAs) to apply and therefore, this rule also updates the criteria used to score each application and adds additional reporting requirements for a grant recipient.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have fiscal impact on state government revenues or expenditures. The increased funding to the Computer Science Grant program was repealed by S.B. 5001 from the 2020 Fifth Special Session.
<b>B) Local governments:</b>
This rule change is not expected to have fiscal impact on local governments' revenues or expenditures. The increased funding to the Computer Science Grant program was repealed by S.B. 5001 (2020 Fifth Special Session).
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

This rule change is not expected to have fiscal impact on small businesses' revenues or expenditures. The increased funding to the Computer Science Grant program was repealed by S.B. 5001 (2020 Fifth Special Session).

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The increased funding to the Computer Science Grant program was repealed by S.B. 5001 (2020 Fifth Special Session).

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

There are no compliance costs for affected persons. The increased funding to the Computer Science Grant program was repealed by S.B. 5001 (2020 Fifth Special Session).

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

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

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

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

The State Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Subsection 63N-12-506(7)	Subsection 63N-12-506(5)
Subsection 53E-3-401(4)		

**Incorporations by Reference Information**

**8. A) This rule adds, updates, or removes the following title of materials incorporated by references:**

	<b>First Incorporation</b>
<b>Official Title of Materials Incorporated (from title page)</b>	Utah Master Plan
<b>Publisher</b>	Utah State Board of Education
<b>Date Issued</b>	2019

**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	08/14/2020
--	------------

<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	06/30/2020
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**R277. Education, Administration.**

**R277-473. Utah Computer Science Grant.**

**R277-473-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Subsection 63N-12-506(5) which allows the Board, in consultation with the Talent Ready Utah Board, to make rules outlining a grant recipient's reporting requirements; and

(d) Subsection 63N-12-506(7) which allows the Board to make rules outlining additional requirements for a grant recipient to include in the grant recipient's computer science grant plan.

(2) The purpose of this rule is to outline:

- (a) the reporting requirements for a grant recipient; and
- (b) the additional criteria required for a grant recipient to include in the grant recipient's computer science grant plan.

**R277-473-2. Definitions.**

(1) "Computer science advisory committee" or "advisory committee" means the computer science advisory committee established in Section R277-473-5.

(2) "Talent Ready Board" means the same as the term is defined in Subsection 63N-12-503.

**R277-473-3. Incorporation of Utah's Master Plan.**

(1) This rule incorporates by reference the Utah Master Plan, August 2019, which

(2) A copy of the Utah Master Plan is located at:

- (a) [https://www.schools.utah.gov/cte?mid=3363\[and\]&tid=5; and](https://www.schools.utah.gov/cte?mid=3363[and]&tid=5; and)
- (b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 30 84111.

**R277-473-4. LEA Planning Grants.**

(1) An LEA may apply for a planning grant in preparation for a full LEA plan and receiving a Computer Science Initiative Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount determined by student enrollment within the USBE state tier system up to \$30,000.

(3) In order to qualify for a planning grant, an LEA shall:

- (a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and
- (b) complete a readiness assessment created by the Superintendent that provides an analysis for existing K-12 computer infrastructure in preparation for a grant.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-473-7 and 8 ~~[for the subsequent school]~~ within two years of grant approval.

(b) An LEA that fails to submit an LEA plan ~~[in the subsequent]~~ within two years of grant approval shall reimburse funds awarded under Subsection (2).

**R277-473-5. Computer Science Advisory Committee Duties.**

(1) The Superintendent shall create a computer science advisory committee.

(2) The advisory committee shall include the following members as non-voting chairs:

- (a) the Superintendent; and
- (b) the Executive Director of the Governor's Office of Economic Development or designee.

(3) In addition to the chairs described in Subsection (1), the Board, in consultation with the Talent Ready Utah Board, shall appoint five members to the advisory committee as follows:

- (a) an industry representative;
- (b) one member who represents a school district with expertise in digital teaching and learning;
- (c) one member who represents a charter school with expertise in digital teaching and learning;
- (d) a member of higher education; and

(e) a non-profit national computer science organization representative.

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Subsection 63N-12-506(7);

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

- (i) the Board; or
- (ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

**R277-473-6. Board Approval or Denial of an LEA's Plan.**

(1) The Board shall approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

(3) The Board shall submit an approved LEA plan to the Talent Ready Utah Board for final approval as described in Subsection 63N-12-506(4).

**R277-473-7. LEA Plan Requirements.**

(1) An LEA shall develop a four-year plan in cooperation with educators, paraeducators, and parents.

(2) A plan shall be consistent with Subsection 63N-12-506(7) and include a comprehensive model outlined for each grade level.

**R277-473-8. Grant Distribution.**

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2)(a) An LEA with an approved plan may receive up to the LEA's requested amount up to \$250,000 for four years.

(3) The Superintendent and advisory committee shall make computer science grant amount recommendations to the Board.

(4) The computer science grant amount recommendations shall be based on:

(a) an LEA's ability to satisfy the requirements of Subsection 63N-12-506(7);

(b) an LEA's completion of all the requirements listed in Subsection R277-473-4;

(c) ~~[the quality of an LEA's plan]~~ an LEA's computer science leadership and team;

(d) ~~[the feasibility of an LEA's plan implementation]~~ an LEA's vision as outlined in an abstract of the LEA's computer science plan; ~~and]~~

(e) ~~[the ability of an LEA to maximize the grant amount to reach the greatest amount of students possible]~~ the quality of the LEA's computer science curriculum and standards; ~~and]~~

(f) the professional learning an LEA has created for effective computer science teachers;

(g) an LEA's outreach and communication plan for the LEA's computer science program;

(h) an LEA's demonstration of compliance with:

(i) data and reporting requirements; and

(ii) the grant application's Statement of Assurances; and

(i) an LEA's proposed budget.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Superintendent shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the competitive awards, to other qualifying LEAs if the LEA's plan is not approved after additional support described in Subsection (6)(a) is given.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

**R277-473-9. Prohibited Uses of Grant Money.**

A participating LEA may not use the grant money:

- (1) to fund non-computer science programs;
- (2) to purchase mobile telephones;
- (3) to fund voice or data plans for mobile telephones;
- (4) to supplant local funds; or
- (5) for any expenditure outside of an LEA's budget for the LEA's approved plan.

**R277-473-10. Participating LEA Reporting Requirements.**

(1) An LEA shall provide a report as described in Subsections 63N-12-506(8)(a),(b), and (c).

(2)(a) An LEA shall annually, on or before June 1, post to the LEA's website and submit to the state board, a report that includes:

(i) the number of sections of computer science courses by course code or programs offered in each school;

(ii) the number and percentage of students enrolled in a computer science course or program by:

- (A) gender;
- (B) race and ethnicity;
- (C) special education status;
- (D) English language learner status;
- (E) eligibility for free and reduced lunch program; and
- (F) grade level;

(iii) the number of computer science instructors at each school by:

- (A) endorsement, if any; and
- (B) gender;

(b) The LEA shall replace the number with a symbol if a category described in

Subsection (1)(a)(ii) contains:

- (i) fewer than six students; or
- (ii) a number that would allow the number of another category that is fewer than six to be deduced.

**KEY: computer science, grant[s], talent ready, Utah State Board of Education**

**Date of Enactment or Last Substantive Amendment: [~~November 8, 2019~~2020**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 63N-12-506(5); 63N-12-506(7)(h); 63N-12-506(8)(d)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R277-624	Filing No. 52871

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>	R277-624. Electronic Cigarette Products in Schools
<b>3. Purpose of the new rule or reason for the change:</b>	Utah State Board of Education recommends that Rule R277-624 be repealed due to the passage of H.B. 58 in the 2020 General Session, which codified the language in Rule R277-624 into Section 53G-8-203.
<b>4. Summary of the new rule or change:</b>	The new language in Section 53G-8-203 is identical to the language in Rule R277-624. Therefore, Rule R277-624 is no longer necessary. This rule is repealed in its entirety.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. H.B. 58 (2020) defines and regulates the use of electronic cigarette products in schools. The repeal of this rule is due to legislative changes in the bill.
<b>B) Local governments:</b>
This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. H.B. 58 (2020) defines and regulates the use of electronic cigarette products in schools. The repeal of this rule is due to legislative changes in the bill.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. H.B. 58 (2020) defines and regulates the use of electronic cigarette products in schools. The repeal of this rule is due to legislative changes in the bill.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industrial Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. H.B. 58 (2020) defines and regulates the use of electronic cigarette products in schools. The repeal of this rule is due to legislative changes in the bill.

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

There are no independent compliance costs for affected persons. H.B. 58 (2020) defines and regulates the use of electronic cigarette products in schools. The repeal of this rule is due to legislative changes in the bill.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

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

The State Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule repeal is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

NOTICES OF PROPOSED RULES

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(b)
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	08/14/2020
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<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	06/19/2020
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**R277. Education, Administration.**

~~**R277-624. Electronic Cigarette Products in Schools.**~~

~~**R277-624-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
  - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
  - ~~(b) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and~~
  - ~~(c) Subsection 53E-3-501(1)(b), which requires the Board to establish minimum standards for the public schools, including rules and minimum standards governing discipline and control.~~
- ~~(2) The purpose of this rule is to require LEAs to establish policies regarding possession or use of electronic cigarette products by students on school property, including policies regarding confiscation and disposal of electronic cigarette products.~~

~~**R277-624-2. Definitions.**~~

- ~~(1)(a) "Electronic cigarette" means:~~
  - ~~(i) an electronic device used to deliver or capable of delivering vapor containing nicotine or another substance to an individual's respiratory system;~~
  - ~~(ii) a component of the device described in Subsection (1)(a)(i); or~~
  - ~~(iii) an accessory sold in the same package as the device described in Subsection (1)(a)(i).~~

~~(b) "Electronic cigarette" includes an e cigarette as that term is defined in Section 26-38-2.~~

~~(2) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.~~

~~(3) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.~~

~~**R277-624-3. LEA Policies Governing Electronic Cigarette Products in Schools.**~~

~~(1) An LEA shall adopt a policy for responding to possession or use of electronic cigarette products by a student on school property.~~

~~(2) A policy described in Subsection (1) shall:~~

~~(a) include policies or procedures for the confiscation of electronic cigarette products; and~~

~~(b) require school personnel to dispose or destroy confiscated electronic cigarette products.~~

~~(3) If a school official has reasonable belief that a confiscated electronic cigarette product has an illegal substance within the electronic cigarette product, the school official may provide the confiscated electronic cigarette product to local law enforcement for storage, testing, and disposal in lieu of disposing or destroying the confiscated electronic cigarette product as described in Subsection (2)(b).~~

~~**KEY: electronic cigarette, policy**~~

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

~~**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-3-501]**~~

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-752	Filing No. 52872

**Agency Information**

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-752. Special Education Intensive Services Fund
<b>3. Purpose of the new rule or reason for the change:</b>
The rule was amended to correct inequities in distribution of funds from the Special Education Intensive Services Fund.
<b>4. Summary of the new rule or change:</b>
The rule was amended to update rules for distribution of funds in the Special Education Intensive Services Fund.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change redistributes state government revenues and expenditures. It requires the Board to recoup special education intensive service carry forward funds in excess of 20% of a local education agency's (LEA) special education budget. However, these revenues are not retained by the state but go into the special education intensive services program, allowing the Utah State Board of Education (Board) to fund additional requests from other LEAs. The rule change redistributes funding provided to LEAs and does not increase revenues retained by the Board.
<b>B) Local governments:</b>
This rule change impacts local governments' revenues or expenditures. However, the net benefit/cost to local education agencies is zero as the rule only redistributes funding amongst LEAs.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is not expected to have material fiscal impact on small businesses' revenues or expenditures. The amendments in this rule change directly impact only state and local governments.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have material fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments in this rule change directly impact only state and local governments.

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

There are no compliance costs for affected persons.

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

**Regulatory Impact Table**

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

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

The State Superintendent, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (NAICS 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses. This rule change has no fiscal impact on local education agencies and will not have a fiscal impact on small businesses either.

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

Sydnee Dickson, State Superintendent

**Citation Information**

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

Article X, Section 3	Subsection 53E-3-401(4)	Section 53F-2-309
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**Public Notice Information**

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

**A) Comments will be accepted until:** 08/14/2020

**10. This rule change MAY become effective on:** 08/21/2020

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	6/30/2020
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**R277. Education, Administration.**

**R277-752. Special Education Intensive Services Fund.**

**R277-752-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Section 53F-2-309, which requires the Board to make rules establishing a distribution formula to allocate money appropriated to the board for the special education intensive services fund.
- (2) The purpose of this rule is to establish:
  - (a) an application process for the special education intensive services fund; and
  - (b) a formula to distribute the funds.

**R277-752-2. Definitions.**

- (1) "Budget" means the total expenditures reported on an LEA's Annual Program Report, "APR."
- (2) "Cost of setting" means the cost of a student's educational environment, including:
  - (a) for a preschool student, the cost of services provided in an early childhood setting;
  - (b) for a general education student, the cost of services provided in a general education classroom by special education personnel;
  - (c) for resource students, the cost of services provided in a special education classroom by pull-out from the general education classroom;
  - (d) for a student in a special class, the cost of services provided in a special education classroom for all or most of the day; and
  - (e) for a student in a special school, the cost of services provided in a separate school where all students have disabilities.
- ([+]~~3~~) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:
  - (a) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund described in R277-752-3; and
  - (b) an LEA's total state special education revenues from the prior fiscal year.
- ([2]~~4~~) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.
- ([3]~~5~~) "Special education intensive services fund" means funding available to offset the costs of students whose educational program exceeds three times the state average per pupil expenditures.

**R277-752-3. Application Process - Distribution Formula.**

- (1) To receive an annual allocation from the special education intensive services fund, an LEA shall annually submit to the Superintendent an application claiming:

(a) expenses that:

(i) are associated with providing direct special education and related services identified in a student's IEP; and

(ii) exceed three times the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(b) any reimbursements received for the expenses described in Subsection (1)(a)(i) from private insurance or Medicaid.

(2) If an LEA's carry forward funds exceed 20% of the LEA's special education budget, the LEA may not submit an application for an annual allocation or reimbursement under the intensive services fund.

(2)3 From the special education intensive services fund, the Superintendent shall allocate:

(a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities:

- (i) as described in Section 53F-2-309; and
- (ii) in accordance with Subsection (3)4; and

(b) 50% of the appropriation to the highly impacted LEA fund to be distributed to LEAs based on the highest impact to an LEA due to high cost students with disabilities:

- (i) as described in Section 53F-2-309; and
- (ii) in accordance with Subsection (4)5.

(3)4(a) The Superintendent shall distribute funds to LEAs from the high cost student fund using a step down reimbursement process as described in this Subsection (3)4.

(b) The first step is to reimburse for the highest cost student equal to the difference between the highest cost student and the second highest cost student.

(c) The second step is to reimburse for the highest cost student and second highest cost student equal to the difference between the second highest cost student and the third highest cost student.

(d) Except as provided in Subsection (3)4(c), the Superintendent shall continue the step down reimbursement process described in this subsection until funds are exhausted.

(e) If funding is insufficient to fully reimburse the cost for all students in a step, the Superintendent shall reallocate the remaining funds to the highly impacted LEA fund.

(f) In determining student cost under this Subsection (3)4, the Superintendent shall sum expenses described in Subsection (1)(a)(i) less:

(i) the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(ii) reimbursements from private insurance or Medicaid.

(4)5(a) The Superintendent shall distribute funds to LEAs from the highly impacted LEA fund by providing a reimbursement equal to the difference between:

(i) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund; and

(ii) the product of:

(A) an LEA's total federal and state special education funding from the prior fiscal year; and

(B) the median of the highest impacted LEA cost ratios.

(b) The Superintendent shall provide a reimbursement described in Subsection (4)5(a) starting with the LEA with the highest impacted LEA cost ratio until funds are exhausted.

(6)(a) The Superintendent shall maintain and publish a list of costs eligible for reimbursement under this rule along with the rate of reimbursement.

(b) The Superintendent shall exclude cost of setting from reimbursement calculations.

(7) If an LEA's carry forward exceeds the LEA's special education budget by an amount greater than 20% of the special education budget, the Superintendent shall recoup funds in excess of the 20% carry forward and add the funds to the next year's intensive services fund budget.

**KEY: special education, intensive services fund**

**Date of Enactment or Last Substantive Amendment:** ~~February 7, 2017~~ **2020**

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53F-2-309

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R317-1-3</b>	<b>Filing No. 52911</b>
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**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Water Quality	
<b>Room no.:</b>	DEQ 3rd Floor	
<b>Building:</b>	Multi-Agency State Office Building (MASOB)	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	PO BOX 144870	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4870	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jennifer Robinson	801-536-4383	jenrobinson@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R317-1-3. Requirements for Waste Discharges
<b>3. Purpose of the new rule or reason for the change:</b>
The amendment to this rule is to be consistent with the Code of Federal Regulations (CFR) found in 40 CFR 125.3.
<b>4. Summary of the new rule or change:</b>
The amendment to this rule will no longer require other dischargers than Publicly Owned Treatment Works (POTWs) to meet secondary standards.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
The change will not reduce the time spent in developing the permits, therefore, it is not going to increase or decrease the budget.			
<b>B) Local governments:</b>			
This rule will not impact local governments' revenues or expenditures. This rule change is for a state program; therefore, local governments will not be impacted.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
This rule will not impact small businesses' revenues or expenditures. This rule change is for a state program; therefore, small businesses will not be impacted.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
This rule will not impact non-small businesses' revenues or expenditures. This rule change is for a state program; therefore, non-small businesses will not be impacted.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
This rule will not impact persons other than small businesses, non-small businesses, state, or local or government entities revenues or expenditures. This rule change is for a state program; therefore, persons other than small businesses, non-small businesses, state, or local or government entities will not be impacted.			
<b>F) Compliance costs for affected persons:</b>			
This rule change will potentially have a reduction in compliance costs of persons which were previously required to meet secondary and categorical standards.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
The amendment is being implemented to be consistent with 40 CFR 125.3. The Department of Environmental Quality does not anticipate any fiscal impact due to this amendment.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
L. Scott Baird, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Title 19, Chapter 5	40 CFR 125.3	

**Public Notice Information**

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

**A) Comments will be accepted until:** 08/14/2020

**10. This rule change MAY become effective on:** 08/22/2020

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Erica Brown Gaddis, PhD, Division Director	<b>Date:</b>	06/30/2020
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**R317. Environmental Quality, Water Quality.  
R317-1. Definitions and General Requirements.  
R317-1-3. Requirements for Waste Discharges.**

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of Rule R317-2 Water Quality Standards, except that the Director may waive compliance with these requirements for specific criteria listed in Rule R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Director.

3.2 Compliance With Secondary Treatment Requirements.

~~[All persons]~~ Publicly owned treatment works discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/L nor shall the arithmetic mean exceed 30 mg/L during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/L, nor shall the arithmetic mean exceed 35 mg/L during any 7-day period.

In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 mL or 200 per 100 mL respectively, nor shall the geometric mean exceed 2500 per 100 mL or 250 per 100 mL respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 mL nor shall the geometric mean exceed 158 per 100 mL respectively during any 7-day period. Exceptions to this requirement may be allowed by the Director where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Director may allow exceptions to the requirements of Subsections R317-1-3.2.A, R317-1-3.2.B, and R317-1-3.2.D where the discharge will be of short duration and where there will be no significant detrimental effect on receiving water quality or downstream beneficial uses.

G. The Director may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/L for a monthly average nor 65 mg/L for a weekly average provided the following criteria are met:

1. the lagoon system is operating within the organic and hydraulic design capacity established by Rule R317-3;
2. the lagoon system is being properly operated and maintained;
3. the treatment system is meeting all other permit limits;
4. there are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Director that the IU is not contributing constituents in concentrations or quantities likely to significantly affect the treatment works; and

5. a Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Technology-based Limits for Controlling Phosphorus Pollution.

A. Technology-based Phosphorus Effluent Limits (TBPEL)

1. All non-lagoon treatment works discharging wastewater to surface waters of the state shall provide treatment processes which will produce effluent less than or equal to an annual mean of 1.0 mg/L for total phosphorus.

2. The TBPEL shall be achieved by January 1, 2020, or no later than January 1, 2025, after a variance has been granted under Subsection R317-1-3.3.C.1.e.

B. Discharging Lagoons -Phosphorus Loading Cap

1. No TBPEL will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load measured in pounds per year based on monthly average flow rates and concentrations. Absent field data to determine these loads, and in case of intermittent discharging lagoons, the phosphorus load cap will be estimated by the Director.

2. A cap of 125% of the current annual total phosphorus load will be established and referred to as phosphorus loading cap. Once the

NOTICES OF PROPOSED RULES

lagoon's phosphorus loading cap has been reached, the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

3. The load cap shall become effective July 1, 2018.

C. Variances for TBPEL and Phosphorus Loading Caps

1. The Director may authorize a variance to the TBPEL or phosphorus loading cap under any of the following conditions:

a. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no TBPEL or phosphorus loading cap, as applicable, will be applied.

b. If the owner of a discharging treatment works can demonstrate that imposing the TBPEL or phosphorus loading cap would result in an economic hardship, an alternative TBPEL or phosphorus loading cap that would not cause economic hardship may be applied. "Economic hardship" for a publicly owned treatment works is defined as sewer service costs that, as a result of implementing a TBPEL or phosphorus loading cap, would be greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah State Tax Commission, after inclusion of grants, loans, or other funding made available by the Utah Water Quality Board or other sources. The Director will consider other demonstrations of economic hardship on a case-by-case basis.

c. If the owner of a discharging treatment works can demonstrate that the TBPEL or phosphorus loading cap are clearly unnecessary to protect waters downstream from the point of discharge, no TBPEL or phosphorus loading cap will be applied.

d. If the owner of the discharging treatment works can demonstrate that a commensurate phosphorus reduction can be achieved in receiving waters using innovative alternative approaches such as water quality trading, seasonal offsets, effluent reuse, or land application.

e. Where the owner of a non-lagoon discharging treatment works demonstrates due diligence toward construction of a treatment facility designed to meet the TBPEL, the compliance date shall be no later than January 1, 2025.

2. All variances to TBPEL and phosphorus loading caps shall be revisited no more frequently than every five years, or when a substantive change in facility operations or a substantive facility upgrade occurs, to determine if the rationale used to justify the conditions in Subsection R317-1-3.3.C remains applicable.

3. For treatment works required to implement TBPEL or a phosphorus loading cap, the demonstration under Subsection R317-1-3.3.C must be made by January 1, 2018. Unless this demonstration is made, the owner of the discharging treatment works must proceed to implement the TBPEL or phosphorus loading cap, as applicable, in accordance with, respectively, Subsections R317-1-3.3.A and R317-1-3.3.B.

D. Facility Optimization to Remove Total Inorganic Nitrogen

1. If the owner of a discharging treatment works agrees to optimize the owner's facility, either through operational changes, a capital construction project, or both, to reduce effluent total inorganic nitrogen concentrations to a level agreeable to the Director, a waiver of up to ten years from meeting either water quality-based effluent limits or technology-based effluent limits for total inorganic nitrogen will be granted. This includes meeting any total inorganic nitrogen limit that may result from a TMDL or other water quality study that is specific to the receiving water of the treatment works.

2. The waiver period under this section would begin upon implementation of the optimization improvements or another date agreed to by the owner of the treatment works and the Director.

3. The elements of the waiver under this section will be identified in a compliance agreement that will be incorporated into the facility's UPDES permit.

4. The waiver identified under this section must be granted before January 1, 2020. Thereafter, no such waiver will be considered or granted.

E. Monitoring

1. All discharging treatment works are required to implement, at a minimum, monthly monitoring of:

a. influent for total phosphorus (as P) and total Kjeldahl nitrogen (as N) concentrations; and

b. effluent for total phosphorus and orthophosphate (as P), and ammonia, nitrate-nitrite, and total Kjeldahl nitrogen (as N).

2. The Director may authorize a variance to the monitoring requirements identified in Subsection R317-1-3.3.D.1.

3. All monitoring under Subsection R317-1-3.3.D shall be based on 24-hour composite samples by use of an automatic sampler or by combining a minimum of four grab samples collected at least two hours apart within a 24-hour period.

4. These monitoring requirements shall be self-implementing beginning July 1, 2015.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

**KEY: TMDL, water pollution**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2019~~ **2020**

**Notice of Continuation:** August 30, 2017

**Authorizing, and Implemented or Interpreted Law:** 19-5

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R384-324	Filing No. 52869

**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Disease Control and Prevention, Health Promotion
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>City, state:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 142106
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2106
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Braden Ainsworth	801-538-6187	tobaccorulescomments@utah.gov
Christy Cushing	801-538-6260	tobaccorulescomments@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R384-324. Tobacco Retailer Permit Process
<b>3. Purpose of the new rule or reason for the change:</b>
These changes revise this rule to align with changes in Title 26, Chapter 62, that are effective 07/01/2020. The changes are because of the passage of H.B. 23 and S.B. 37 from the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
The changes add and update existing definitions, including tobacco products, electronic cigarette products, and nicotine products, throughout this rule to align with the state law changes in Title 26, Chapter 62.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The amendments to this rule are not expected to have any fiscal impact on the state budget because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.
<b>B) Local governments:</b>
The amendments to this rule are not expected to have any fiscal impact on the local governments because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The amendments to this rule are not expected to have any fiscal impact on small businesses because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The amendments to this rule are not expected to have any fiscal impact on non-small businesses because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

**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 amendments to this rule are not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities, because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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

The amendments to this rule are not expected to have any compliance costs for affected person, because the changes do not affect the implementation of this rule; they simply align better with changes in Title 26, Chapter 62.

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

**Regulatory Impact Table**

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

<b>H) Department head approval of regulatory impact analysis:</b>
The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
There is no fiscal impact on businesses because the amendment does not change any requirements of compliance under the existing law.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Subsection 26-62-202(6)

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until: 08/14/2020</b>	08/14/2020

<b>10. This rule change MAY become effective on:</b>	08/21/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/19/2020
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**R384. Health, Disease Control and Prevention, Health Promotion. R384-324. Tobacco Product, Electronic Cigarette Product, and Nicotine Product Retailer Permit Process.**

**R384-324-1. Authority and Purpose.**

(1) This rule is authorized by Section 26-1-5 and Subsections 26-1-30(4) and 26-62-202(6).

(2) This rule establishes the process by which local health departments issue, suspend and revoke a tobacco retail permit.

**R384-324-2. Definitions.**

As used in this rule:

(1) "Community location" means the same as the term is defined in Section 17-50-333 and in Section 10-8-41.6.

(2) "Department" means the Utah Department of Health, created in Section 26-1-4.

(3) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

~~(3)~~(4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

~~(4)~~(5) "Local health department" means the same as the term is defined in Section 26A-1-102.

(6) "Nicotine product" means the same as that term is defined in Section 76-10-101.

(7) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under Title 26, Chapter 62.

~~(5)~~(8) "Plan review" means the process by which the local health department will verify the accuracy of the information provided by retail tobacco specialty businesses through the permit application process.

~~(6)~~(9) "Proprietor" means the owner of a retail establishment, or any other place of business which sells, markets, or distributes tobacco products, electronic cigarette products, or nicotine products.

~~(7)~~(10) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including ~~all~~the areas behind the purchase counter, and including appurtenant areas used for storage.

~~(8)~~(11) "Retail tobacco specialty business" means a commercial establishment in which:

(a) ~~The~~sales of tobacco products, electronic cigarette products, and nicotine products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~[-or]~~

(d) the commercial establishment:

(i) holds itself out as a retail tobacco specialty business; and

(ii) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;

~~(e) any flavored electronic cigarette product is sold; or~~

~~(4)~~(11) The retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.

~~(9)~~(12) "Self-service display" means the same as that term defined in Section 76-10-105.1.

~~(10)~~(13) "Shelf space" means the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

~~(14)~~ "Tax commission license" means a license issued by the State Tax Commission under:

- ~~(a)~~ Section 59-14-201 to sell a cigarette at retail;
- ~~(b)~~ Section 59-14-301 to sell a tobacco product at retail; or
- ~~(c)~~ Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

~~(14)~~(15) "Tobacco product" means ~~the same as that term defined in Section 59-14-102.~~

- ~~(a)~~ a tobacco product as defined in Section 76-10-101; or
- ~~(b)~~ tobacco paraphernalia as defined in Section 76-10-101.

~~(a)~~ Tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

~~(12)~~(16) "Tobacco retailer" means a proprietor that is required to obtain a tax commission license and a local health department permit for the sale of tobacco.

~~(13)~~(17) "Tobacco retail permit" means the permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products, electronic cigarette products, or nicotine products.

**R384-324-3. Permit Process.**

~~\_\_\_\_\_ This permitting process is separate from and in addition to the requirement to have and maintain a valid tobacco license with the Utah State Tax Commission.~~

(1) ~~[Beginning July 1, 2018, a]~~ A tobacco retailer shall hold a valid tobacco retail permit issued by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

~~\_\_\_\_\_ (a) A tobacco retailer that holds a tax commission license that was valid on July 1, 2018:~~

- ~~\_\_\_\_\_ (i) May operate without a permit under this chapter until December 31, 2018; and~~
- ~~\_\_\_\_\_ (ii) Shall obtain a permit from a local health department under this chapter before January 1, 2019.~~
- ~~\_\_\_\_\_ (iii) Shall maintain a valid tax commission license.]~~

(2) To receive a tobacco retail permit, an applicant shall:

- (a) ~~[S]~~ submit an application provided by the local health department with jurisdiction over the physical location where the tobacco retailer operates or will operate; and
- (b) ~~[P]~~ pay ~~[all]~~ any applicable fees.

(3) To submit an application for a tobacco retail permit, an applicant shall ~~[ ]~~ complete each required sections of the application and submit the application either online or by a hard copy to the local health department. The applicant shall provide the following:

~~\_\_\_\_\_ (a) Complete all required sections of the application and submit either online or a hard copy to the local health department.]~~

~~(i)~~(a) ~~[Provide]~~ information for each individual listed as a proprietor ~~and owner, including percentage of ownership, or if the proprietor is a corporation, corporate ownership information;~~

~~\_\_\_\_\_ (1) If the proprietor is a corporation, corporate information suffices.]~~

~~(a)~~(b) ~~[A]~~ a local individual to contact concerning the application and business must be included under business information on the application; ~~[ ]~~

~~(ii)~~(c) ~~[Provide]~~ information concerning the business, including business name, street address, mailing address, and telephone number ~~[ ]~~;

~~(iii)~~(d) ~~[Provide]~~ a copy of a valid Utah State T[ ]ax C[ ]ommission license ~~[ ]~~; and

~~(iv)~~(e) ~~[The individual completing the application must certify]~~ certification that the proposed retail tobacco location meets the requirements as defined in the application for a:

- ~~(1)~~(i) ~~[G]~~ general tobacco retailer; or
- ~~(2)~~(ii) ~~[R]~~ retail tobacco specialty business.

~~(a)~~(4) Applications for a retail tobacco specialty business shall ~~[must include a map that demonstrates that the business is not located within]:~~

- ~~(a)~~ include a \$250.00 plan review fee; and
- ~~(b)~~ include a map that demonstrates the business location meets the proximity requirements for a retail tobacco specialty business, by measuring in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts, to prove that the business is not located within:

- ~~(1)~~(i) 1,000 feet of a community location; ~~and;~~
- ~~(2)~~(ii) 600 feet of another retail tobacco specialty business; and,
- ~~(3)~~(iii) 600 feet of property used or zoned for agricultural or residential use.

~~\_\_\_\_\_ (a) For purposes of subsection a.v., the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address, without regard for intervening structures or zoning districts.~~

~~\_\_\_\_\_ (vi) Application for a retail tobacco specialty business must include a \$250.00 plan review fee.~~

~~\_\_\_\_\_ (1) Proprietor is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer.~~

~~\_\_\_\_\_ (2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:~~

- ~~\_\_\_\_\_ (a) may not renew the permit; and~~
- ~~\_\_\_\_\_ (b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.]~~

~~(iii)~~(5)(a) Notwithstanding ~~S[ ]~~ subsection (4)(b) ~~a.v.~~, a retail tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, before December 31, 2015, is exempt from the proximity requirements.

~~\_\_\_\_\_ (viii) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, may continue to operate until December 31, 2018 so long as the business maintains a current and valid business license and tobacco tax license.]~~

~~(iv)~~(b) A retail tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, that desires to continue to sell tobacco products, electronic cigarette products, and nicotine products ~~[on December 31, 2018, and beyond;]~~ must complete the application described in this section and demonstrate that the location:

~~\_\_\_\_\_ (viii) A tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, may continue to operate until December 31, 2018 so long as the business maintains a current and valid business license and tobacco tax license.]~~

~~(iv)~~(b) A retail tobacco specialty business that received a business license from a municipality under Section 10-8-41.6, or from a county under Section 17-50-333, on or after December 31, 2015, that desires to continue to sell tobacco products, electronic cigarette products, and nicotine products ~~[on December 31, 2018, and beyond;]~~ must complete the application described in this section and demonstrate that the location:

NOTICES OF PROPOSED RULES

~~(1) Must complete the application described in this section and demonstrate that the location:~~

~~(a)(i) [M]meets the proximity requirements for a retail tobacco specialty business in S[s]ubsection (4)(b)[a-v]; or~~;

~~(b)(ii) [H]has a business model and business layout that meets the requirements for a general tobacco retailer.~~

~~(4)(6) The [L]local health department[s] will have 30 days to issue the permit beginning on the date the local health department receives the application and payment.~~

~~(a) The [L]local health department will provide online or hard copy receipt of payment and application submission to the proprietor at the time the local health department receives the application and payment.~~

~~(b) The receipt provided by the local health department to the proprietor will serve as a temporary operating permit, which will be valid for 30 days.~~

~~(5) General tobacco retailers and retailer tobacco specialty businesses that hold a valid tax commission license may begin applying for a local health department tobacco permit on November 1, 2018.~~

~~(7) The permits are non-transferrable.~~

~~(8) Permit length[and terms]:~~

~~(a) A general tobacco retailer permit is valid for two years.~~

~~(b) A retail tobacco specialty business permit is valid for one year.~~

~~(9) The proprietor of a tobacco retailer is responsible to notify the local health department if there is a change in their business operation requiring a change in their business license between tobacco retail specialty business and general tobacco retailer. If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:~~

~~(a) may not renew the permit; and~~

~~(b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.~~

~~(10) A tobacco retailer may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.~~

~~(a) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:~~

~~(i) [A]an application, as outlined in Subsection R384-324-3(3), for either a general tobacco retailer or a retail tobacco specialty business[as outlined above]and the additional requirements outlined in Subsection R384-324-3(4) for retail tobacco specialty businesses;~~

~~(ii) [F]the fee for the reinstatement of a permit; and~~

~~(iii) [A]a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b).~~

~~(b) Until an expired permit is reinstated, a tobacco retailer with an expired permit may not:~~

~~(i) [P]place a tobacco product, electronic cigarette product, or a nicotine product in public view;~~

~~(ii) [D]display any advertisement related to tobacco products, electronic cigarette products, or nicotine products that promotes the sale, distribution, or use of those products; or~~

~~(iii) [S]sell, offer for sale, or offer to exchange for any form of consideration, tobacco, [or]tobacco products, electronic cigarette products, or nicotine products.~~

~~(iv) The permit is non-transferrable.~~

**R384-324-4. Permit Violations.**

(1) A proprietor is in violation of the permit issued under this rule if the proprietor violates:

(a) any provision of Title 26, Chapter 62;

(b) any provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

(c) any provision of Title 76, Chapter 10, Part 1;

(d) any provision of Title 76, Chapter 10, Part 16;

(e) any regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

(f) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product[s], an electronic cigarette product, or a nicotine product.

**R384-324-5. Enforcement.**

In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-62-302[+] and Section 26-62-402, the Department and local health departments shall comply with the enforcement provisions found in Title 26, Chapter 62, Part 3 and Part 4.

**KEY: tobacco, permits, tobacco retailers**

**Date of Enactment or Last Substantive Amendment: [July 9, 2018]2020**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-1-30(4); 26-62-202(6)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R392-101	Filing No. 52875

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state, zip:</b>	Salt Lake City, UT. 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Nelson	801-538-6191	chrisnelson@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R392-101. Food Safety Manager Certification

<p><b>3. Purpose of the new rule or reason for the change:</b></p> <p>This rule is being amended to reflect amendments in Section 26-15-5, which occurred in H.B. 232 passed in the 2020 General Session. Structural, grammatical, and formatting changes have also been made to more closely conform to the requirements of the Utah Rulewriting Manual.</p>
<p><b>4. Summary of the new rule or change:</b></p> <p>The following new definitions were added: Agritourism food establishment, Certified food safety manager, Charitable organization, Department, Disadvantaged group, Food service establishment, Local health department, Local health officer, and Potentially hazardous food. Modifications were made to Section R392-101-7 to remove the fee payment requirement and to simplify document processing. Modifications were made to Section R392-101-8 to include all exemptions currently listed in Utah statute or rule.</p>

**Fiscal Information**

<p><b>5. Aggregate anticipated cost or savings to:</b></p>
<p><b>A) State budget:</b></p> <p>Amending Rule R392-101 will not result in a cost or benefit to the state budget because the proposed rule change does not require a change to state operations or programs, and it does not include requirements for the payment of fines or fees to the state.</p>
<p><b>B) Local governments:</b></p> <p>Amending Rule R392-101 will result in a direct cost to the local governments because the proposed amendment prohibits a local health department from charging a fee for food safety manager certificate processing and registration. Historically, the assessed fee has been \$15 per food safety manager certificate. It is estimated that there are 5,264 food establishments in Utah, each requiring a food safety manager. Therefore, this rule amendment will result in a net fiscal cost to local governments in the amount of \$78,960 per year.</p>
<p><b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):</p> <p>Amending Rule R392-101 will result in a direct benefit to small businesses because the proposed amendment prohibits a local health department from charging a fee for food safety manager certificate processing and registration. Historically, the assessed fee has been \$15 per food safety manager certificate. It is estimated that there are 4,514 small business food establishments in Utah, each requiring a food safety manager. Therefore, the rule amendment will result in a net fiscal benefit to small businesses in the amount of \$67,710 per year.</p>
<p><b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):</p>

Amending Rule R392-101 will result in a direct benefit to non-small businesses because the proposed amendment prohibits a local health department from charging a fee for food safety manager certificate processing and registration. Historically, the assessed fee has been \$15 per food safety manager certificate. It is estimated that there are 750 non-small business food establishments in Utah, each requiring a food safety manager. Therefore, the rule amendment will result in a net fiscal benefit to non-small businesses in the amount of \$11,250 per year.

**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**):

Amending Rule R392-101 will not result in a direct cost or benefit to any one specific person.

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

Affected persons are as follows (see explanations above): Local governments: 13 local health departments. Direct fiscal cost.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$78,960	\$78,960	\$78,960
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$78,960</b>	<b>\$78,960</b>	<b>\$78,960</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$67,710	\$67,710	\$67,710
Non-Small Businesses	\$11,250	\$11,250	\$11,250

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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$78,960</b>	<b>\$78,960</b>	<b>\$78,960</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health, Joseph K. Miner, MD, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
Amending Rule R392-101 will result in a direct benefit to small and non-small businesses because the proposed amendment prohibits a local health department from charging a fee for food safety manager certificate processing and registration. Historically, the assessed fee has been \$15 per food safety manager certificate. It is estimated that there are 4,514 small business food establishments and 750 non-small business food establishments in Utah, each requiring a food safety manager. Therefore, this rule amendment will result in a net fiscal benefit to small businesses in the amount of \$67,710 per year and non-small businesses in the amount of \$11,250 per year.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Joseph K. Miner, MD, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section		
26-15a-103		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/15/2020

<b>10. This rule change MAY become effective on:</b>	8/22/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/24/2020
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**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-101. Food Safety Manager Certification.**

**R392-101-1. Authority and Purpose of Rule.**

This rule is authorized by Section 26-15a-103 for the purposes of establishing statewide uniform standards for certified food safety managers and implementing the Food Safety Manager Certification Act.

**R392-101-2. Definitions.**

- (1) "Agritourism food establishment" has the same meaning as provided in Section 26-15b-102.
- (2) "Certified food safety manager" has the same meaning as provided in Section 26-15a-102.
- (3) "Charitable organization" means a group of any size who desire to feed disadvantaged groups under the requirements of Rule R392-104.
- (4) Commercially prepackaged means any food packaged in a regulated food processing plant that does not require temperature control and is stored and used in accordance with the manufacturer's label.
- (5) Continental breakfast means a breakfast meal restricted to:
  - (a) beverages such as coffee, tea, and fruit juices;
  - (b) pasteurized Grade A milk;
  - (c) fresh fruits;
  - (d) frozen and commercially processed and prepackaged fruits;
  - (e) commercially prepackaged baked goods, such as pastries, rolls, breads and muffins that are non-potentially hazardous foods;
  - (f) cereals;
  - (g) commercially prepackaged jams, jellies, honey, and syrup;
  - (h) pasteurized Grade A creams and butters, non-dairy creamers, or similar products;
  - (i) commercially prepackaged hard cheeses, cream cheese and yogurt in unopened packages; and
  - (j) foods served with single-use articles.
- (6) "Department" means the Utah Department of Health.
- (7) "Disadvantaged group" means a homeless or temporarily displaced group.

(8) "Food service establishment" or "food establishment" has the same meaning as provided in Section 26-15a-102.

~~[(xi) Single-use article means a utensil designed and constructed to be used once and discarded.]~~

~~[(xii)](9) "Heat and serve" means foods that are precooked by the manufacturer and do not require cooking to critical temperatures as required by Rule R392-100, but only require heating to meet the customer's satisfaction.~~

(10) "Local Health Department" has the same meaning as provided in Subsection 26A-1-102(5).

(11) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or a designated representative.

(12) "Potentially hazardous food" means the same as Time/Temperature Control for Safety Food.

(13) "Single-use article" means a utensil designed and constructed to be used once and discarded.

**R392-101-3. Certification and Recertification Exam~~ination~~ Content.**

Certification and recertification ~~[examinations]~~exams shall require the examinee to demonstrate knowledge in food protection management in the following areas:

(1) Identify foodborne illness~~[-];~~

(a) Define terms associated with foodborne illness~~[-], including:~~

- (i) foodborne illness;
- (ii) foodborne outbreak;
- (iii) foodborne infection;
- (iv) foodborne intoxication; and

~~[(v) diseases communicated by food]~~

~~(v)~~(i) foodborne pathogens.

(b) Recognize the major organisms and toxins that can contaminate food, and their associated ~~[problems that can be associated with the contamination]~~risks to human health for: [-]

- (i) bacteria;
- (ii) viruses;
- (iii) parasites; and
- (iv) fungi.

(c) Define and recognize potentially hazardous foods.

(d) Define and recognize chemical and physical contamination ~~[and] along with the associated injuries and illnesses [that can be associated with chemical and physical contamination].~~

(e) Define and recognize the major contributing factors for foodborne illness.

(f) Recognize how microorganisms cause foodborne disease.

(2) Identify time/temperature relationship with foodborne illness.

(a) Recognize the relationship between time/temperature and microorganisms survival, growth, and toxin production during the following stages:

- (i) receiving;
- (ii) storing;
- (iii) thawing;
- (iv) cooking;
- (v) hot holding~~[/displaying];~~
- (vi) serving;
- (vii) cooling;
- ~~(ix)~~(viii) cold holding~~[storing or post production];~~
- ~~(ix)~~(ix) reheating; and
- ~~(x)~~(x) transporting.

(b) Describe the use of thermometers in monitoring food temperatures to include: [-]

- (i) types of thermometers;
- (ii) monitoring techniques and frequency; and
- (iii) thermometer calibration and frequency;

(3) Describe the relationship between personal hygiene and food safety.

(a) Recognize the association between hand contact and foodborne illness.

- (i) hand washing technique and frequency
- (ii) proper use of gloves, including replacement frequency
- (iii) minimal hand contact with food

~~(b) [Recognize the association of personal habits and behaviors and foodborne illness.]~~Identify correct hygienic practices for the following:

- (i) smoking;
- (ii) eating and drinking; and
- (iii) ~~[wearing]~~proper clothing and hair restraints.~~[that may contaminate food~~

~~----- (iv) personal behaviors, including sneezing, coughing and scratching.]~~

(c) Recognize the association ~~[of health of a]~~between infected food handlers~~[to]~~ and foodborne~~[disease]~~ illness, and know:

- (i) ~~[free of]~~symptoms of~~[communicable]~~ food-transmissible disease; and
- (ii) ~~[free of infections spread through food on contact]~~reportable foodborne illness diagnoses and exposure history.

~~----- (iii) food protected from contact with open wounds]~~

(d) Recognize how policies, procedures, and ~~[management]~~managerial controls contribute to improved hygiene practices.

(4) Describe methods for preventing food contamination~~[from purchasing to serving].~~

- (a) Define terms associated with contamination, including:
  - (i) cross contamination;
  - (ii) adulteration;
  - (iii) ~~[damage]~~package and container integrity; and
  - (iv) approved source;

~~----- (v) sound and safe condition~~

~~----- (b) Identify potential hazards prior to delivery and during delivery.~~

- ~~----- (i) approved source~~
- ~~----- (ii) sound and safe condition]~~

~~----- (e)]~~(b) Identify potential hazards and methods to minimize or eliminate hazards~~[after delivery]~~ in the food establishment, including:

- (i) personal hygiene, and hand washing;
- (ii) cross contamination from food to food;
- (iii) cross contamination between equipment and utensils;
- (iv) contamination from chemicals;
- (v) contamination from unapproved additives;
- (vi) physical contamination;
- (vii) contamination during service and display;
- (viii) contamination from customers; and
- (ix) storage;

~~----- (x) re service]~~

(5) ~~[Identify]~~Explain the difference between cleaning and sanitizing, and describe the correct procedures for cleaning and sanitizing equipment and utensils:

(a) Identify the commonly used chemicals approved for sanitizing food-contact surfaces;~~[Define terms associated with cleaning and sanitizing.~~

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- ~~(i) cleaning~~
- ~~(ii) sanitizing~~
- ~~(b) Apply principles of cleaning and sanitizing~~
- ~~(c) Identify materials: equipment, detergent and sanitizer]~~
- ~~(d)b Identify appropriate [methods of] cleaning and sanitizing procedures when using the following methods:[-]~~
  - ~~(i) manual dishwashing;~~
  - ~~(ii) mechanical dishwashing; and~~
  - ~~(iii) clean-in-place; and~~
  - ~~(e)c Identify frequency of cleaning and sanitizing.~~
- ~~(6) Recognize problems and potential solutions associated with facility, equipment and layout.~~
  - ~~(a) Identify facility requirements, including design and construction suitable for food establishments to include:~~
    - ~~(i) refrigeration;~~
    - ~~(ii) heating and hot-holding;~~
    - ~~(iii) floors, walls and ceilings;~~
    - ~~(iv) pest control;~~
    - ~~(v) lighting;~~
    - ~~(vi) plumbing;~~
    - ~~(vii) ventilation;~~
    - ~~(viii) water supply;~~
    - ~~(ix) wastewater disposal; and~~
    - ~~(x) waste disposal.~~
  - ~~(b) Identify equipment and utensil design and location~~
  - ~~(7) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance by:~~
    - ~~(a) [by]self-[-]inspection program[-];~~
    - ~~(b) [by]pest control program[-];~~
    - ~~(c) [by]cleaning schedules and procedures[-]; and~~
    - ~~(d) [by]equipment and facility maintenance program.~~

**R392-101-4. Food Safety Manager Certification Courses.**

- ~~(1) For the purposes of Subsection 26-15a-104(2)(b), a course approved by the Department shall be designed for a specific approved examination in Subsection R392-101-5(4) as determined by that examination's developer.~~
- ~~(2) The course developer shall certify the instructor.~~
- ~~(3) The Department shall approve the course for 3 years.~~

**R392-101-5. [Test]Exam Approval.**

- ~~(1) A person or business seeking approval of an exam[ination] shall provide [the following background information]to the Department evidence of food safety manager training program accreditation from the American National Standards Institute (ANSI), or shall be listed on the ANSI-CFP Accreditation Program directory.[-]~~
  - ~~(a) The person's name, address, telephone number and contact person.~~
  - ~~(b) A description of the usage of the examination including the time period in use, number of examinations already administered, and any government or other agencies already approving the examination.~~
  - ~~(c) A copy of the examination's pool of questions. Each question shall be:~~
    - ~~(i) Cross-referenced to the corresponding content area in R392-101-3, and~~
    - ~~(ii) Documented with the correct answer and the source from which the correct answer was determined.~~
    - ~~(d) A sample copy of the official certificate issued to persons who pass the examination.~~

- ~~(2) An examination must meet the following requirements in order to be approved:~~
  - ~~(a) It must contain at least 50 multiple choice questions, drawn from a pool of at least three times the number of questions given in the examination.~~
  - ~~(b) All questions shall be multiple choice with 4 choices.~~
  - ~~(c) At least 85% of the questions must be in the content categories of R392-101-3 and shall be apportioned to them as follows:~~
    - ~~(i) Identify foodborne illness shall constitute 6-20% percent of the total examination questions;~~
    - ~~(ii) Identify time/temperature relationship with foodborne illness shall constitute 6-20% percent of the total examination questions;~~
    - ~~(iii) Describe the relationship between personal hygiene and food safety shall constitute 6-20% percent of the total examination questions;~~
    - ~~(iv) Describe methods for preventing food contamination from purchasing to serving shall constitute 6-20% percent of the total examination questions;~~
    - ~~(v) Identify correct procedures for cleaning and sanitizing equipment and utensils shall constitute 6-20% percent of the total examination questions;~~
    - ~~(vi) Recognize problems and potential solutions associated with facility, equipment and layout shall constitute 6-20% percent of the total examination questions;~~
    - ~~(vii) Recognize problems and potential solutions associated with temperature control, preventing cross contamination, housekeeping and maintenance shall constitute 6-20% percent of the total examination questions.~~
  - ~~(d) The person seeking approval shall demonstrate that the same version of the examination will not be used more than 6 months and that at least 10% of the questions will be randomly selected and changed between versions.~~
  - ~~(e) The person seeking approval shall demonstrate that a system for updating the pool of questions at least every three years is in place.~~
  - ~~(f) The examination questions must be grammatically correct and contain no misspellings.~~
  - ~~(g) The distractors must be relevant to the examination question and represent a plausible alternative.~~
  - ~~(3) The Department shall review the materials submitted by an applicant in R392-101-5(1) and (2). The Department shall approve examinations that meet the requirements. If an examination is approved the Department shall notify the examination developer of the approval in writing. If the Department does not approve an examination, it shall notify the examination developer in writing of the reasons why.~~
  - ~~(4) The Department shall maintain a current list of approved examinations.]~~
    - ~~(5) A person may not represent an exam[ination] as Department[-of Health] approved, or other similar language, if the exam[ination] is not [listed according to R392-101-5(4)]accredited by ANSI or listed on the ANSI-CFP Accreditation Program directory.~~

**R392-101-6. [Test]Exam Administration.**

- ~~(1) [Test]An exam administrator[s] shall:~~
  - ~~(a) [Provide monitors]provide proctors and security at the locations where the exam[ination] is administered[-];~~
  - ~~(b) [M]maintain a tracking system for [all examinations]exams to protect them against theft;[-]~~
  - ~~(c) [Provide-]provide locations and dates of [all examinations]exams administered by the testing organization upon request of the Department;[-]~~

(d) ~~[Provide]~~provide necessary staff to administer, ~~[monitor]~~proctor, and grade exams;~~[examinations.]~~

(e) ~~[M]~~maintain records of each candidate's name, home address, ~~[social security number]~~date of birth, pass~~[/]~~ or fail status, and date of examination~~[, and name of instructor]~~ for at least three years~~[,]; and~~

(f) ~~[P]~~provide accommodation for examinees who do not speak English~~[ and who wish to take the test].~~

(2) ~~[The test]~~An exam administrator shall assure there is at least one ~~[monitor]~~proctor for every 40 ~~[students]~~individuals taking the exam~~[ination]~~.

(3) The ~~[monitor]~~proctor shall confirm the identity of ~~[the]~~an individual who wishes to take the exam~~[ination]~~ by photographic identification, driver's license or student identification card.~~[—The individual shall provide a] A legal document bearing [his—]the individual's signature may be presented to the [monitor]proctor to satisfy this requirement if [he—]the individual does not have a photographic identification card.~~

(4) ~~[The test]~~An exam administrator shall provide ~~[test]~~exam security measures ~~[which]~~to protect the ~~[test]~~exam from compromise~~[ in preparation, printing and transportation to the site]~~, as follows:

(a) The exam~~[ination]~~ materials are stored and administered under secure conditions, where access to the exam~~[ination]~~ is limited to the ~~[monitor]~~proctor and ~~[test]~~exam administrator.

(b) The exam~~[ination]~~ materials are inventoried prior to and immediately following each administration of the exam~~[ination]~~.

(c) The exam~~[ination]~~ materials are available to the candidate only during~~[the]~~ exam~~[ination]~~ administration~~[only]~~.

(5) ~~[The test]~~An exam administrator ~~[may]~~shall not certify an individual determined to have cheated on the exam~~[ination]~~.

(6) ~~[The test]~~An exam administrator ~~[may]~~shall not administer an exam~~[ination which]~~ that has been compromised.

#### **R392-101-7. Certification and Recertification Requirements.**

(1) A person must answer at least 70% of the questions correctly on a Department- approved examination to pass the examination; except that the examination developer may set the passing score for an examination that it demonstrates to have been developed in accordance with the Standards For Educational And Psychological Testing published by the American Psychological Association.

(a) The examination developer must submit documentation to the Department supporting its claim.

(b) The Department shall review the documentation and determine the validity of the claim.

(2) A person who successfully passes a Department-approved examination must provide documentation of that to the local health officer within sixty days of receipt of the documentation to be certified as a food safety manager.~~[—A photocopy of the documentation is acceptable.]~~ If a certified food safety manager commences work in a different local health jurisdiction he shall notify the local health officer in that jurisdiction.

(a) A local health department:

(i) may not charge a fee to accept or process the documentation described in R392-101-7(2);

(ii) shall accept photocopies or electronic copies of the documentation described in R392-101-7(2); and

(iii) shall allow an individual to submit the documentation described in R392-101-7(2) by mail, email, or in person.

(3) A person who completes the requirement in R392-101-7(2) shall be considered to be certified as a food safety manager throughout Utah.

(4) Food safety manager certifications are effective for three years from the date the applicant receives documentation of a passing score from the testing organization.

(5) A food service establishment must maintain a copy of its certified food safety manager's documentation of a passing score on a Department-approved examination on file at the establishment. The food service establishment's person in charge must provide this documentation to the local health officer or his designated representative upon request.

(6) To recertify, a certified food safety manager must submit documentation in accordance with R392-101-7(2) to the appropriate local health department indicating a passing score on a Department-approved examination within the previous six months.

(7) A person certified as a food safety manager is exempt from state or local requirements for food handlers as defined in Section 26-15-1(1) Utah Code.

#### **R392-101-8. Exempt Establishments.**

(1) ~~[A local health officer shall exempt a]~~The following food ~~[service]~~establishment types are not subject to the requirements of Rule R392-101~~[ from having a Certified Food Safety Manager on staff, if after evaluation by the local health department, the food service establishment]~~:

(a) special events sponsored by municipal or nonprofit civic organizations, including food booths at school sporting events and little league athletic events and church functions;

(b) temporary event food services approved by a local health department;

(c) vendors and other food establishments that serve only commercially prepackaged foods and beverages;

(d) private homes not used as a commercial food service establishment;

(e) health care facilities licensed under Chapter 21, Health Care Facility Licensing and Inspection Act;

(f) bed and breakfast establishments at which the only meal served is a continental breakfast;

(g) residential child care providers;

(h) child care providers and programs licensed under Chapter 39, Utah Child Care Licensing Act;

(i) residential care facilities as defined in Rule R392-110;

(j) back country outfitter food establishments;

(k) a free event sponsored by a charitable organization; and

(l) a lowest risk or permitted food establishment category determined by a risk assessment evaluation established by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(1) is classified within the lowest risk category for a local health department utilizing a risk based assessment system; or~~

~~(2) serves a menu of commercially prepackaged, or heat and serve foods, or foods that require limited handling or assembly and does not conduct any of the following food preparation processes as defined in the Food Code, R392-100:~~

~~(a) cook foods that are required to reach critical temperatures as required by R392-100;~~

~~(b) use foods that are required to be cooled within a 6 hour time period as required by R392-100; or~~

~~(c) use foods that must be reheated to 165 degrees as required by R392-100.]~~

#### **R392-101-9. Penalties.**

Any person who violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY:** public health, food service, food manager, food safety  
**Date of Enactment or Last Substantive Amendment:** ~~March 15, 2010~~ 2020  
**Notice of Continuation:** December 12, 2018  
**Authorizing, and Implemented or Interpreted Law:** 26-15a-103

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R392-103	Filing No. 52876

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Nelson	801-538-6191	chrisnelson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R392-103. Food Handler Training and Certificate
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended to reflect amendments in Section 26-15-5, which occurred in H.B. 232 passed in the 2020 General Session.
<b>4. Summary of the new rule or change:</b>
A definition of "instructor" was added. The instructor registration requirement was removed. The instructor training requirement was modified to allow training providers to demonstrate evidence of instructor training to the Department of Health (Department) rather than the local health departments, and this rule now exempts food safety management training for certain qualified educators.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
---

<b>A) State budget:</b>																
Amending Rule R392-103 will not result in a cost or benefit to the state budget because this proposed rule change does not require a change to state operations or programs, and it does not include requirements for the payment of fines or fees.																
<b>B) Local governments:</b>																
Amending Rule R392-103 will not result in a direct cost or benefit to local governments because the instructor registration requirement has been removed, but in the previous version of this rule there was no cost for instructor registration.																
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>																
Amending Rule R392-103 will not result in a direct cost or benefit to small businesses because the amended parts of this rule do not require the payment of a fee, and no construction, equipment, or operational changes are required or removed by this rule amendment.																
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>																
Amending Rule R392-103 will not result in a direct cost or benefit to non-small businesses because the amended parts of the rule do not require the payment of a fee, and no construction, equipment, or operational changes are required or removed by this rule amendment.																
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>																
Amending Rule R392-103 will not result in a direct cost or benefit to any one specific person.																
<b>F) Compliance costs for affected persons:</b>																
No specific person will be affected by this rule change so there are no compliance costs.																
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>																
<b>Regulatory Impact Table</b>																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
Fiscal Cost	FY2021	FY2022	FY2023													
State Government	\$0	\$0	\$0													
Local Governments	\$0	\$0	\$0													
Small Businesses	\$0	\$0	\$0													

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

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

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

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

There is no fiscal impact on business because requirements for businesses were not changed.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

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

Section 26-1-30	Section 26-15-5	
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**Public Notice Information**

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

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

<b>A) Comments will be accepted until:</b>	08/14/2020
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<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/24/2020
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**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-103. Food Handler Training and Certificate.**

**R392-103-1. Purpose.**

(1) This rule requires adherence to uniform statewide standards for training and testing food handlers, issuing food handler certificates and permits, and paying and receiving fees.

(2) The Centers for Disease Control and Prevention has identified five risk factors associated with foodborne illness outbreaks. Four of the five risk factors result from improper handling of food by food handlers or poor personal hygiene of food handlers.

(3) Proper application of the required training principles will empower food handlers to prevent and safeguard against foodborne illnesses. Testing of food handlers confirms that the food handler gained an understanding of correct food protection principles. A food handler permit that is recognized statewide provides a tool for local health officers to verify that food handlers have received state approved training and testing.

(4) State and local monitoring of the food handler training, certificate, and permitting process is critical to promoting and protecting public health. Coordination between this process, the routine inspection of regulated facilities, and the investigation of foodborne illness outbreaks is necessary to respond quickly and effectively to identified and suspected risks to public health.

**R392-103-2. Authority.**

This rule is authorized by Section 26-15-5 and Section 26-1-30.

**R392-103-3. Definitions.**

(1) "Certificate" means the documentation of food handler training completion indicating passing of a Department approved exam.

(2) "Cross Contact" means the unintentional transfer of an allergen from a food or food-contact surface containing an allergen to a food or food-contact surface that does not contain the allergen.

(3) "Cross Contamination" means the process by which microorganisms are unintentionally transferred with harmful effect to food or food contact surfaces from other food, food contact surfaces, food handlers, or equipment.

NOTICES OF PROPOSED RULES

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

(5) "Double Handwash" means to wash hands in a handwashing sink immediately after using the toilet room or changing a diaper and then washing the hands again after entering the food preparation or food service area, but before handling food.

(6) "Food Handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment or food truck as defined in Rules R392-100 or R392-102 respectively.

(7) "Food Handler Applicant" or "applicant" means a person who is seeking or receiving training from an approved food handler training provider, or a person who holds a certificate and has made application with a Local Health Officer to obtain a food handler permit.

(8) "Food Handler Permit" or "permit" means a permit issued by a local health department to allow a person to work as a food handler.

(9) "Food Service Establishment" has the same meaning as provided in ~~[Section]~~ Subsection 26-15a-102(3).

(10) "Independent Instructional Design and Testing Expert" means a person who has received training and has a graduate degree from an accredited university with a certification in psychometrics and expertise in ~~[I]~~ instructional ~~[D]~~ design.

(11) "Instructor" means an individual who is qualified to instruct an approved food handler program on behalf of a provider.

~~(12)~~ (11) "Local Health Department" has the same meaning as provided in ~~[Section]~~ Subsection 26A-1-102(5).

~~(12)~~ (13) "Local Health Officer" means the director of the jurisdictional local health department as defined in ~~[Section]~~ Title 26A, Chapter 1, or designated representative.

~~(13)~~ (14) "Person in Charge" means the person present at a food service establishment or temporary food service event who is responsible for its operation at the time of inspection by the local health officer.

~~(14)~~ (15) "Training Provider" means an entity that provides a food handler training program and exam approved by the Utah Department of Health.

**R392-103-4. Food Handler Permit Issuing Procedure, Reciprocity, and Renewal.**

(1) Except when Subsections R392-103-4(15) and (16) apply, a person may not work as a food handler for a food service establishment or temporary event unless the person:

(a) obtains a certificate within 14 days after the day on which the person begins employment as a food handler; and

(b) obtains a food handler permit within 30 days after the day on which the person begins employment as a food handler.

(2) A food handler shall obtain a food handler permit no later than 7 days after the expiration of the food handler's existing permit.

(3) Replacement of lost permits shall only be issued by the local health department having jurisdiction.

~~(a)~~ A local health department may charge a fee for replacement of a lost or misplaced permit.

(4) A training provider shall promptly issue a certificate to any food handler applicant who receives the training provider's Department approved training and passes a Department approved exam.

(5)(a) Using a data template approved by the Department, a training provider shall transmit via email the information described in Subsection R392-103-7(10)(a) to the local health department having jurisdiction within seven days of a certificate's issuance.

(b) This data transmission shall serve as notification to the local health department that an applicant has completed an approved course and exam.

(i) A training provider shall ~~provide all information~~ complete each required field on~~by~~ the Department-approved data template.

(ii) No provider or local health department may require changes to the data template or require additional information unless approved by the Department.

(6) To prevent fraud, the training provider shall number each issued certificate using a unique numbering system.

(7) The certificate shall contain the following information:

(a) ~~[N]~~ [N] name of the person to whom the certificate is issued;

(b) ~~[D]~~ [D] date of issuance; and

(c) ~~[N]~~ [N] name of the issuing training provider.

(8) Upon issuance, the certificate shall be valid for 30 days. A local health officer shall accept the certificate as proof that the food handler applicant completed Department approved training and testing.

(9) A local health officer shall issue a food handler permit when:

(a) an applicant provides to the local health department a valid certificate of an approved food handler training program; or

(b) the local health department has received notification of an applicant receiving training and passing an approved exam by the training provider as required in Subsection R392-103-4(5); and

(c) ~~[F]~~ [F] the local health department has received a food handler permit fee, which shall be no more than \$15 and shall be uniform statewide.

~~(i) The food handler permit fee shall be no more than \$15 and shall be uniform statewide.~~

(10) The front of an issued food handler permit shall contain the following information:

(a) a ~~[F]~~ [F] title that reads, "Utah Food Handler Permit";

(b) the ~~[N]~~ [N] name of the food handler;

(c) the ~~[P]~~ [P] permit expiration date;

(d) the ~~[I]~~ [I] identification number that includes the training provider's 2-letter unique identifier followed by up to 8 alphanumeric characters;

(e) the ~~[N]~~ [N] name of local health department issuing the permit;

(f) ~~[F]~~ [F] the phrase, "This Permit is Not a Legal Form of Identification" stated at the bottom of the permit; and

(g) the ~~[S]~~ [S] state seal.

(11) The back of an issued food handler permit shall contain the following statements:

(a) "Permit must be presented upon request by the local health officer"; and

(b) "Permit may be revoked for cause".

(12) A local health officer shall accept any food handler permit issued under authority of this rule until the date of expiration, revocation, or suspension of the food handler permit.

(13) Except for temporary food service events, the person in charge of a food establishment shall provide, upon request of the local health officer, a copy of a food handler permit for each food handler working in the food establishment. For temporary events, the person in charge is not required to maintain copies of food handler permits, but at least one present person must be able to show that person's current food handler permit to the local health officer.

(14) Food handler permits shall be valid statewide for 3 years from the date of issuance. Food handler permits may be renewed every 3 years by completing an approved food handler training course, passing an exam administered by an approved food handler training provider, and receiving a food handler permit from a local health officer.

(15) The local health officer shall accept a food handler permit issued to a back country outfitter by the United States Department of the Interior, or by a public health authority in Arizona,

Colorado, Idaho, Nevada, or Wyoming. This applies only to food handling done at a back country food establishment and meeting the exemption requirements of Subsection 26-15a-105(1)(i).

(16) A person who has met the requirements of Rule R392-101 to become certified as a food safety manager shall be exempt from the requirement to obtain a food handler permit under this section.

#### **R392-103-5. Suspension or Revocation of Food Handler Permits.**

(1) A local health officer may revoke or suspend a food handler permit if:

(a) ~~[A]~~a food handler is ill with a disease that may be transmitted through the handling of food;

(b) ~~[F]~~the local health officer documents in two or more inspections within two years that the same food handler has at least twice failed to apply the same training objective listed in Subsection R392-103-6(2); or

(c) ~~[A]~~a food handler shows willful disregard for food safety or food protection in a manner that has the potential to endanger public health.

(2) The local health officer may confiscate any food handler permit that the local health officer cannot authenticate or that has been revoked or suspended.

(3) A food handler may reapply to a local health department for reinstatement of a revoked or suspended food handler permit by requesting a hearing with the local health officer and demonstrating to the local health officer's satisfaction that the food handler permit may be reinstated.

#### **R392-103-6. Food Handler Training Requirements.**

(1) A person or entity shall receive approval from the Department before offering training to food handlers in the state. An approved food handler training program shall:

(a) include at least 75 minutes of training time offered either in an internet-based course, a trainer-led course, or a combination of both;

(b) contain basic training information regarding the Centers for Disease Control top 5 risk factors associated with foodborne illness; and

(c) only contain information that is consistent with the FDA national model food code standard incorporated by reference in Rule R392-100.

(2) A training provider shall ensure that the food handler training program contains each of the following specific training objectives:

(a) Food Protection - Limiting Harmful Pathogens

(i) Define ~~[potentially hazardous foods (foods that require ]~~time or temperature control[s] for safety ~~foods[;]~~ (TCS).

(ii) Provide a comprehensive list of foodborne pathogen sources.

(iii) Discuss ideal conditions for bacterial growth in food.

(iv) List the temperature danger zone.

(v) List proper hot and cold holding temperatures of food ~~[which requires]~~requiring time or temperature control for safety.

(vi) List the appropriate temperatures for refrigerators and hot holding equipment.

(vii) Describe the approved procedures for thawing frozen foods.

(viii) Describe the approved methods for cooling food.

(ix) Describe approved and unapproved food sources.

(x) Describe the correct procedures for date marking and discarding food.

(xi) Identify the conditions in which time can be used as a public health control without temperature control.

(b) Food Protection - Destroying Harmful Pathogens and Preventing Food Contamination

(i) List the required final cook temperatures for foods.

(ii) Describe the procedure and list the final temperature for reheating leftovers for hot ho[ø]lding.

(iii) Describe the relationship between cooking time and temperature in killing microorganisms.

(iv) Define cross contamination.

(v) List the possible sources of cross contamination when handling food.

(vi) Discuss how a food handler might contaminate food.

(vii) Identify steps to prevent cross contamination.

(viii) Stress the importance of eliminating bare-hand contact with ready-to-eat food.

(ix) Describe how, when, and where to use utensils or gloves.

(x) Define and give examples of the major food allergens.

(xi) Describe the range of symptoms, including the types of mild reactions to anaphylactic shock or death, that an individual having an allergic reaction may experience after exposure to a food allergen.

(xii) Identify steps to prevent cross-contact of food allergens, and stress that cooking does not remove an allergen from food.

(c) Equipment, Utensils, and Linens

(i) Explain the difference between cleaning and sanitizing, and describe the correct procedures for each.

(ii) Identify when surfaces should be cleaned and sanitized.

(iii) Identify the commonly-used chemicals approved for sanitizing food-contact surfaces.

(iv) Describe how to test chemical concentration of sanitizing solutions used on food-contact surfaces, and stress its importance.

(v) Describe the 3-compartment sink method of cleaning, rinsing, and sanitizing utensils and how to correctly dry dishes.

(vi) Describe the correct procedure for cleaning and sanitizing utensils and equipment when using a warewashing machine.

(vii) Describe the correct procedures for storing cleaned dishes and utensils, laundered linens, and single-service and single-use articles.

(viii) Describe the procedures for safe chemical storage and use.

(ix) Describe the correct procedures for handling, storage, and removal of solid waste.

(d) Employee Health and Hygiene

(i) List the reportable foodborne illness diagnoses as well as reportable symptoms, past illnesses, and history of exposure that a food handler must report to the person in charge.

(ii) Describe the personal hygiene practices a food handler must follow to prevent food contamination.

(iii) Describe the proper hand washing procedure and when a double hand wash is required.

(iv) Describe how hands become contaminated and when and where hand washing should occur.

(v) List approved jewelry, clothing, and hair restraints.

(vi) Describe the correct procedures to prevent a foodborne illness from a cut, burn, or other wound.

(vii) Describe the conditions in which an employee may eat, drink, or use any form of tobacco as well as the precautions to take after these activities.

(viii) Define a foodborne illness.

(ix) List the population groups that are the most vulnerable to foodborne illness.

NOTICES OF PROPOSED RULES

(3) Each time a food handler permit is renewed, the food handler must take a training course from an approved food handler training provider before the food handler may take a food handler exam.

~~[(4) A person may instruct an approved food handler training program only when the person is registered with a local health department as an instructor.~~

~~\_\_\_\_\_ (5) [(4) Prior to registration, each] Each provider [instructor] of a trainer-led food handler program [course-] shall demonstrate to the [local health department] Department that [the] each instructor has received food protection management training equivalent to the requirements of Section R392-101-3, as determined by the [local health officer or the] Department.~~

~~\_\_\_\_\_ (5) Subsection R392-103-6(4) does not apply to any instructor who:~~

~~\_\_\_\_\_ (a) is an educator in a public or private school; and~~

~~\_\_\_\_\_ (b) teaches a food program that includes food safety in a public or private school in which the instructor is an educator.~~

(6) Prior to training program approval, a representative of an internet-based food handler course shall demonstrate to the Department that the representative has received food protection management training equivalent to the requirements of Section R392-101-3, as determined by the Department.

(7) A training provider shall maintain a list of past and current instructors ~~[registered with a local health department]~~ denoting the dates the instructor taught food handler courses. A training provider shall provide the instructor list to the Department upon request. Online training providers shall maintain a list or database of courses taught online according to course version and training date.

(8) A training provider shall maintain a system to verify a certificate upon request of the Department, the local health department, or the food establishment where the food handler is employed.

(9) A training provider may charge a reasonable fee. A training provider may collect both the training fee and food handler permit fee at the same time from the applicant when the applicant initially pays for the training course.

(10) If a person or entity is not approved by the department to provide an approved food handler training program, the person or entity may not represent, in connection with the person's or entity's name of business, including in advertising, that the person or entity is a provider of an approved food handler training program or otherwise represent that a program offered by the person or entity will qualify a person to work as a food handler.

**R392-103-7. Exam Requirements.**

(1) A training provider shall use the bank of food handler exam questions issued by the Department and obtained through application to the Department, or a Department approved set of questions as described in Subsection R392-103-7(2). Exams shall contain 40 multiple choice questions with 10 randomly selected questions from each content section listed in Subsection R392-103-6(2)(a) through R392-103-6(2)(d). A training provider shall routinely rotate exam questions from the exam question bank, and randomize the order of exam questions as well as the answer order of the multiple-choice questions.

(2) If a training provider elects not to use the Department issued questions, the training provider may request approval of a different bank of exam questions. For approval, the training provider shall pay to the Department a fee to review the exam questions. The fee shall reflect actual costs, but shall not exceed \$500. The training provider shall also submit to the Department the proposed bank of at least 200 exam questions organized by the required content sections and covering the learning objectives listed in this rule with at least 25

questions from each content section. In addition, the training provider shall contract, at their own expense, with a Department approved independent instructional design and testing expert to evaluate the proposed bank of exam questions. The independent instructional design and testing expert shall analyze a training provider's bank of exam questions to determine if the exam questions effectively measure the applicant's knowledge of the learning objectives outlined in this rule and meet the appropriate testing standards for question structure. To be approved, the independent instructional design and testing expert must provide the Department with a positive recommendation based on the expert's analysis. The Department must approve any change in the provider offered bank of exam questions before implementation. Exam approval is good for three years, after which a provider shall reapply for exam approval.

(3) If the Department finds that a question inadequately tests comprehension of the learning objectives, the Department may invalidate the question and may require the training provider to revise or remove the exam question. A training provider shall update any invalidated exam questions no more than 30 days after receiving written notice from the Department.

(4) In order to pass the required exam, a food handler applicant shall correctly answer at least 75% of the exam questions.

(5) A training provider may offer a written, oral, or online food handler exam. As circumstances dictate, a training provider may offer an oral exam individually to a food handler applicant having language or reading comprehension difficulties or other mental or physical limitations that may interfere with the applicant's ability to complete a written or an online exam.

(6) A training provider shall implement procedures to prevent cheating on exams. A training provider shall ensure that exam questions are protected from:

(a) ~~[U]~~ unauthorized access;

(b) ~~[C]~~ copy or alteration; and

(c) ~~[A]~~ access to food handler applicants outside of established exam time.

(7) A training provider shall ~~[inform]~~ provide the following information to a food handler applicant~~[-]~~ at the beginning of the course~~[- that]~~:

(a) food handler permits are valid for 3 years statewide; and

(b) lost or misplaced permits may be reissued by the applicant's local health department for a fee.

(8) A training provider shall inform a food handler applicant, at the beginning of the course, that the food handler applicant is strictly prohibited from engaging in any of the following practices:

(a) ~~[D]~~ downloading exams onto a flash drive or other portable electronic device;

(b) ~~[D]~~ distributing the exam in any way to another person;

(c) ~~[T]~~ taking notes during the exam;

(d) ~~[U]~~ using a cell phone or other recording device during the exam; or,

(e) ~~[C]~~ conversing with any other person or receiving aid to answer questions during the exam process.

(9) A training provider shall invalidate the certificates of any food handler applicant involved in the violation of any of the exam security requirements listed in Subsection R392-103-7(8). A food handler applicant involved in violation of the exam security requirements shall receive a certificate from a training provider only after the food handler applicant has successfully completed an additional training course and a proctored exam.

(10)(a) A training provider shall maintain records for at least three years of each food handler applicant's:

(i) ~~[N]~~ name;

- (ii) [M] mailing address;
- (iii) [E] email address;
- (iv) [P] primary phone number;
- (v) [D] date of birth;
- (vi) [D] date of exam;
- (vii) [E] exam score;
- (viii) [C] certificate expiration date; and
- (ix) [N] name of instructor.

(b) A training provider shall provide this record to the local health department receiving application from the food handler applicant within seven days as required in Subsection R392-103-4(5).

(11) A training provider shall implement procedures to prevent the duplication of certificates such as the use of a void pantograph, invisible watermarks, copy-evident or security paper, or the use of electronic copy protection features.

(12) A training provider shall proctor any exam offered in person either in written form or on a computer located at the training facility.

(13) A training provider shall require a food handler applicant to provide a signature attesting that the applicant has complied with exam requirements.

(14) A training provider shall offer a course and exam evaluation to food handler applicants.

(15) An internet-based training provider shall implement procedures to reasonably inhibit fraudulent attempts to circumvent the food handler training and exam requirements in this rule such as a person taking an exam in place of another person. A training provider shall implement procedures to reasonably ensure a food handler applicant taking an approved course and exam is focused on training materials and actively engaged throughout the training period.

(16) An internet-based training provider offering an exam over the internet shall meet the following additional protocols:

(a) The training provider shall log the start and end time of each online exam.

(b) The training provider shall monitor any repeat attempts to pass an online exam, and shall require a food handler applicant to retake a food handler training course after three failed attempts to pass the exam.

(c) The training provider shall track the Internet Protocol (IP) address or similar electronic location identifier of a food handler applicant who begins an online exam.

(d) The training provider shall require a food handler applicant to provide an electronic signature before taking an online exam to attest that the applicant will comply with exam requirements.

(e) The training provider shall require a food handler applicant to provide all applicant information required by this rule and shall electronically link the information to the exam before the exam may be offered.

(f) The training provider shall present a minimum of four pre-exam questions at the end of each learning section. The food handler applicant shall correctly answer 75% of the pre-exam questions before being allowed to proceed to the next section. The training provider shall ensure that the food handler applicant completes all pre-exam questions before proceeding to the online exam.

(g) The Department and local health officers will evaluate exam protocols during the training program approval process. The Department may audit the training program at any time to determine that the existing protocols are preventing fraudulent activities.

(17) An internet-based training provider shall maintain all documentation of fraud prevention measures required in Subsection R392-103-7(16)(a) through R392-103-7(16)(e) for 3 years, and may be

required to submit copies of this documentation to the Department in response to any of the following events:

(a) [U] upon initial application submittal to the Department for food handler training program approval;

(b) [W] when applying to the Department for training program revalidation as required in Subsection R392-103-8(5);

(c) [D] during an audit by the Department; or

(d) [A] at the written request of the Department.

(18) An internet-based training provider shall provide technical support to users by way of the internet, phone, or other method in case technical difficulties occur.

(19) An internet-based training provider shall monitor exam protocols and perform a self-review at least monthly to assess that the system is working and to ensure that each exam meets exam protocols before issuing a certificate.

#### **R392-103-8. Training Provider Approval and Auditing.**

(1) A food handler training provider that has been approved by the Department before the effective date of this rule may continue to provide food handler training and testing as previously approved until three years from the effective date of this rule, at which time full compliance with this rule is required.

(2) To be considered for approval after the effective date of this rule, a prospective training provider shall submit to the Department:

(a) a completed application;

(b) a written summary describing how the training program meets each training objective listed in Subsection R392-103-6(2);

(c) a copy of the course curriculum, including slides, handouts, talking points, script, videos, brochures, or any additional information used during the course, or full access to the online course; and

(d) a copy of the exam questions, if applicable, as described in Subsection R392-103-7(2).

(3) As part of the approval process, the Department shall provide prospective training providers with either a hard copy or electronic copy of this rule. Training providers shall sign an affidavit provided by the Department stating that the training provider will comply with the requirements of this rule and abide by confidentiality agreements when using Department provided exam questions.

(4) During the initial approval process and any subsequent audits, a training provider shall grant access to the Department to audit or authenticate any documents used in the food handler training as well as the identity of instructors and training providers.

(5) A training provider shall submit an application to the Department for training program revalidation every 3 years from the date of initial approval by the Department. The training provider shall follow the requirements of Subsection R392-103-8(2) to apply for revalidation.

(6) In order to determine and verify compliance with this rule, the Department may conduct an audit of the training provider's program. The Department may conduct audits routinely, randomly, or in response to a complaint. A training provider shall allow the Department unrestricted access to the following:

(a) [C] course training and testing materials; ~~and;~~

(b) [O] online training sites; and;

(c) [C] classroom training sessions.

(7)(a) If the Department finds that a training provider is non-compliant during an audit, the Department shall revoke the registration and remove the training provider from the list of approved food handler training providers in Utah. The training provider shall then immediately cease and desist training and issuing certificates until the Department has verified that the issues of non-compliance have been corrected.

NOTICES OF PROPOSED RULES

(b) The Department shall notify the local health departments when a training provider has been removed from or added to the list of approved food handler training providers in Utah.

(c) The local health officer shall refuse to accept certificates issued by a training provider as described in Subsection R392-103-8(7)(a) from the date the training provider was found to be in non-compliance until the violation is corrected and the Department has again issued written approval and placed the training provider on the list of approved food handler training providers in Utah.

(8) A training provider shall comply with the Americans with Disability Act (ADA) access requirements regardless of the size of the training operation.

**KEY: food handler training, food handler certificates, food handler permits, food handler exams**

**Date of Enactment or Last Substantive Amendment:** [~~October 25, 2017~~]2020

**Notice of Continuation:** July 12, 2018

**Authorizing, and Implemented or Interpreted Law:** 26-1-30[(4)]; 26-15-5[; 26A-1-114(1)(b)]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R477-7	Filing No. 52913

**Agency Information**

<b>1. Department:</b>	Human Resource Management	
<b>Agency:</b>	Administration	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	2120 State Office Building	
<b>City, state:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	2120 State Office Building	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-7. Leave
<b>3. Purpose of the new rule or reason for the change:</b>
The legislature postponed the effective date of the underlying statute (Section 67-19-14.7) on 06/18/2020 (S.B. 5021, passed in the 2020 Fifth Special Session).
<b>4. Summary of the new rule or change:</b>

This amendment removes language relating to postpartum recovery leave as the program implementation was postponed. (EDITOR'S NOTE: An emergency rule filing to Section R477-7-20 that is effective as of 07/01/2020 is under Filing No. 52907 in this issue, July 15, 2020, of the Bulletin.)

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
In the 2020 General Session, S.B. 207 appropriated \$507,000 to fund postpartum recovery leave. This funding was pulled in the 2020 Fifth Special Session under S.B. 5021. Removing the section implementing postpartum recovery leave ensures that there can be no claim for leave which is no longer funded.
<b>B) Local governments:</b>
These amendments are not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
These amendments are not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
These amendments are not expected to have any fiscal impact on non-small businesses because this rule only applies to the executive branch of state government.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>
These amendments are not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>F) Compliance costs for affected persons:</b>
There are no direct compliance costs for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Resource Management, Paul Garver, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Paul Garver, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 67-19-14.7	Section 67-19-6	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	08/14/2020

<b>10. This rule change MAY become effective on:</b>	08/21/2020
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryan Embley, HR Strategy Consultant	<b>Date:</b>	07/01/2020
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**R477. Human Resource Management, Administration.**

**R477-7. Leave.**

**R477-7-1. Conditions of Leave.**

- (1) An employee shall be eligible for a leave benefit when:
  - (a) in a position designated by the agency as eligible for benefits; and
  - (b) in a position which normally requires working a minimum of 40 hours per pay period.
- (2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.
- (3) An employee shall use leave in no less than quarter hour increments.
- (4) An employee may not use annual or sick leave before accrued. Leave accrued during a pay period may not be used until the following pay period.
- (5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.
- (6) Management may not require employees to maintain a minimum balance of accrued leave.

NOTICES OF PROPOSED RULES

(7) An employee may not use any type of leave except military and jury leave to accrue excess hours.

(8) An employee transferring from one agency to another is entitled to transfer any accrued annual, sick, and converted sick leave to the new agency.

(9) An employee separating from state service shall be paid in a lump sum for any annual leave and excess hours. An FLSA non-exempt employee shall also be paid in a lump sum for any compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for any converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick, and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical or pregnancy related reasons that was approved prior to the commencement of the leave period.

~~(d) Unused postpartum recovery leave may not be paid out upon separation from employment.~~

(10) After four months cumulative leave in a 24 month period, an employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(11) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Subsection R477-7-5(2) and the retirement benefit in Section R477-7-6.

~~**[R477-7-20. Postpartum Recovery Leave.**~~

~~Postpartum recovery leave means leave hours a state employer provides to an eligible employee to recover from childbirth.~~

~~(1) An employee is eligible for postpartum recovery leave when:~~

~~(a) the employee is eligible for benefits under Subsections R477-6-8(1) and R477-7-1(1);~~

~~(b) the employee is not reemployed post retirement as defined in Section 49-11-1202;~~

~~(c) the employee gives birth to a child; and~~

~~(d) the employee is not an employee of:~~

~~(i) the State Board of Education; or~~

~~(ii) an independent entity as defined in Section 63E-1-102.~~

~~(2) Agency management shall grant paid leave to an eligible employee who requests postpartum recovery leave.~~

~~(a) An eligible employee may receive up to three weeks of paid leave based on the employee's normal work schedule, including normally scheduled work hours in excess of 40 hours per week.~~

~~(b) The amount of leave does not change if there are multiple births from a single pregnancy.~~

~~(c) Postpartum recovery leave shall begin on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.~~

~~(d) Postpartum recovery leave may not be used intermittently.~~

~~(e) Postpartum recovery leave runs concurrently with leave under Section R477-7-15.~~

~~(f) Postpartum recovery leave may not be charged against any accrued leave balance on the employee's record.~~

~~(3) To request postpartum recovery leave, the employee or an appropriate spokesperson shall notify management of the need for leave:~~

~~(a) thirty days in advance; or~~

~~(b) as soon as practicable in emergencies.~~

~~(4) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.]~~

**KEY: holidays, leave benefits, vacations**

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

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14[; 67-19-14.7]**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R497-100	Filing No. 52874

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Administration,	Administrative Hearings
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jonah Shaw	801-538-4219	jshaw@utah.gov
Sonia Sweeney	801-538-8241	ssweeney@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R497-100. Adjudicative Proceedings
<b>3. Purpose of the new rule or reason for the change:</b>
This amendment has resulted from the five-year review of this rule that is being filed in conjunction with this amendment. Some issues were found that need to be clarified. Notably, Section R497-100-8, Platform and Venue, has been amended to reflect current procedures.
<b>4. Summary of the new rule or change:</b>
This amendment updates and clarifies language within Sections R497-100-2, R497-100-7, and R497-100-8. Other grammatical and formatting changes are made.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
There are no anticipated costs or savings for the state budget through this amendment. This filing is clarifying in nature and does not carry a fiscal impact.			
<b>B) Local governments:</b>			
There are no anticipated costs or savings for local governments through this amendment. This filing is clarifying in nature and does not carry a fiscal impact.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There are no anticipated costs or savings for small businesses through this amendment. This filing is clarifying in nature and does not carry a fiscal impact.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There are no anticipated costs or savings for non-small businesses through this amendment. This filing is clarifying in nature and does not carry a fiscal impact.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):			
There are no anticipated costs or savings for persons other than small businesses, non-small businesses, state, or local government entities, through this amendment. This filing is clarifying in nature and does not carry a fiscal impact.			
<b>F) Compliance costs for affected persons:</b>			
There are no compliance costs associated with this amendment.			
<b>G) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>H) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Ann Williamson, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 62A-1-111		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
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<b>A) Comments will be accepted until:</b>	08/14/2020
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<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark Brasher, Deputy Director	<b>Date:</b>	06/19/2020
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**R497. Human Services, Administration, Administrative Hearings. R497-100. Adjudicative Proceedings.**

**R497-100-1. Authority.**

The Department of Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to [~~Utah Code Ann.~~] Section 62A-1-111.

**R497-100-2. Definitions.**

The terms used in this rule are defined in Section 63G-4-103. [~~In addition,~~]

(1) For the purpose of this [~~R~~]rule, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services [~~to~~]for People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), the Division of Substance Abuse and Mental Health (DSAMH), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of each Division, Office or [~~Institution~~]~~[Institution]~~. For purposes of this [~~R~~]rule, the term "agency" does not include the Office of Recovery Services (ORS).

(2) "Agency actions or proceedings" of the Department of Human Services include [~~, but are not limited to~~] the following:

- (a) challenges to findings of child abuse, neglect and dependency pursuant to Section 62A-4a-1009;
- (b) due process hearings afforded to foster parents regarding the [prior to]removal of a foster child from their home pursuant to Section 62A-4a-206;
- (c) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101 [~~-et seq.~~];
- (d) challenges to findings of abuse, neglect or exploitation of a vulnerable adult pursuant to Section 62A-3-301 [~~-et seq.~~];
- (e) actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline, or [~~]~~ resolution of grievances [~~-of~~], supervision [~~-of~~], confinement [~~-of~~] or treatment of residents of any Juvenile Justice Services facility or institution;

(f) resolution of client grievances with respect to delivery of services by private, nongovernmental[~~]~~ providers within the agency's service delivery system;

(g) actions by [~~A~~]agency owned and operated institutions and facilities relating to discipline or treatment of residents of [~~confined to~~] those facilities;

(h) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Section[~~s~~] 62A-5-313;

(i) protective payee hearings; and

(j) Agency records amendment hearings held pursuant to Section 63G-2-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Mail" means to transmit through mail services, email or facsimile.

(6) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(~~6~~) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

- (a) hearing officers;
- (b) administrative law judges;
- (c) division and office directors;
- (d) the superintendent of agency institutions; and
- (e) statutorily created boards or committees.

**R497-100-3. Exceptions.**

The provisions of this rule do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. [~~See~~]Pursuant to Subsection 63G-4-102(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the agency, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

(4) Adjudicative proceedings brought by or against ORS. The rules regarding ORS are stated in Rule R527-200.

**R497-100-4. Form of Proceeding.**

(1) A [~~H~~]adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) [~~However, a~~]Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

- (a) conversion of the proceeding is in the public interest; and
- (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63G-4-204 through 63G-4-208 shall apply. In [~~all~~]other cases, the Procedures for Informal Proceedings in Sections 63G-4-203 and R497-100-~~6~~ shall apply.

**R497-100-5. Commencement of Proceedings.**

(1) A ~~[-a]~~ adjudicative proceeding shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Subsection 63G-4-201(2) and shall also include a statement that:

(a) the adjudicative proceeding is to be conducted informally; and

(b) describes the aggrieved person's right to request a hearing and the applicable time limits within which a hearing must be requested.

(3) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Subsection 63G-4-201(3)(a) ~~and~~ through 63G-4-201(3)(b) and include the name of the adjudicative proceeding, if known.

(4) In the case of adjudicative proceedings commenced under Subsection (3), the presiding officer shall within ten business days give notice by mail to all parties. The written notice shall:

(a) give the agency's file number or other reference number;

(b) give the name of the proceeding;

(c) designate that the proceeding is to be conducted informally;

(d) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(e) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(f) give the name, title, mailing address, and telephone number of the presiding officer.

**R497-100-6. Availability of Hearing.**

(1) When an informal adjudicative proceeding is commenced by the agency, if ~~the~~ statute or agency ~~'s~~ rule[s] does not provide otherwise, a party may request a hearing within ten business days of receipt of the notice of agency action.

(2) ~~All~~ H Hearing requests received by the agency shall be forwarded to the office, unless another presiding officer is designated by statute or rule.

(3) In the case of a hearing commenced under Subsection (1), a party who fails to request a hearing within ten business days of receipt of the notice of agency action shall have no right to an adjudicative hearing or judicial review of the agency action, unless the party can demonstrate, by a preponderance of the evidence, that it was virtually impossible or unreasonably burdensome to file the request within ten business days.

(4) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine ~~the~~ all issues in the adjudicative proceeding, if such a determination complies with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(5) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding; or

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

**R497-100-7. Procedures for Informal Proceedings.**

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) 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 10 business days following receipt of the notice of agency action or request for agency action.

(b) A party may be represented by an attorney or a non-attorney. Attorneys will not be appointed by the office or the agency.

(c) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63G-4-203.

(d) In the hearing, the party named in the notice of agency action or in the request for agency action shall be permitted to testify, present evidence and comment on the issues.

(e) Hearings will be held only after a timely notice has been mailed to ~~all parties~~ each party.

(f) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. ~~All parties~~ Each party to the proceedings will be responsible for the appearance of witnesses.

(g) ~~All parties~~ Each party shall have access to information contained in the agency's files and to ~~all~~ materials and information gathered in any investigation, to the extent permitted by law.

(h) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

(i) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Subsection 63G-4-203(1)(i).

(j) ~~All~~ H Hearings shall be open to ~~all parties~~ each party.

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

(l) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) ~~All~~ H Hearings shall be recorded at the office's expense. A transcript of the record may be prepared pursuant to Subsection 63G-4-203(2)(b).

(3) Unless ~~the~~ statute or agency rule ~~agency's statute or rules~~ specify otherwise, when an informal adjudicative proceeding is commenced by the agency and is to be heard by the office, the agency shall have the burden of proving, by a preponderance of the evidence, that its decision was reasonable ~~it did not abuse its discretion~~. This can be demonstrated by showing that the agency's decision was not arbitrary and capricious.

(4) Motions and pleadings filed with the office by a party shall be mailed to each of the other parties named in the action.

(5) Motions or pleadings received by the office after regular business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding state holidays, will be deemed received the following business day.

**R497-100-8. Platform and Venue.**

(1) Hearings shall be held by telephone, video conferencing or in-person, as determined by the office.

(2) The office shall conduct hearings by telephone or video conferencing whenever possible.

(3) In-person hearings may be held if the office finds good cause to do so. Good cause includes that a party does not have the equipment necessary to participate in a video hearing.

(4) Venue for in-person hearings conducted by the office shall be in an agency office located in the county closest to where the aggrieved person resides or maintains their principal place of business, unless the office finds good cause to hold the hearing elsewhere.

~~**R497-100-8. Venue.**~~

~~(1) Venue for in-person hearings conducted by the office shall be in an agency office located in the county closest to where the aggrieved person resides or maintains their principle place of business, unless the office finds good cause to hold the hearing elsewhere.]~~

**R497-100-9. Declaratory Orders.**

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition. [

~~(a)] The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;~~

~~(i)] a the statute, rule or order to be reviewed;~~

~~(ii)] b a detailed description of the situation or circumstances at issue;~~

~~(iii)] c a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;~~

~~(iv)] d an address and telephone where the petitioner can be contacted during regular work days;~~

~~(v)] e a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and~~

~~(vi)] f the signature of the petitioner or an authorized representative.~~

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by the agency under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with Subsection[s] 63G-4-203(1)(g) and Section 63G-4-503.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to intervene if the petition meets the following requirements:

(i) the intervener's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Subsection 63G-4-503(6)(a)[i].

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Subsection 63G-4-503(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of ~~the [all]~~ declaratory order[s] shall be mailed in accordance with Subsection 63G-4-503(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

**R497-100-10. Agency Review.**

Agency review shall not be allowed.

**R497-100-11. Reconsideration.**

Nothing contained in this ~~[R]~~ rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday, the deadline will be extended until the next working day.

**R497-100-12. Scope and Applicability.**

The provisions of this section supersede the provisions of any other Department rules ~~[which]~~ that may conflict with the foregoing rules.

**KEY: administrative procedures, social services**

**Date of Enactment or Last Substantive Amendment: ~~February 7, 2017~~ 2020**

Notice of Continuation: July 20, 2015  
 Authorizing, and Implemented or Interpreted Law: 62A-1-110;  
 62A-1-111

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R895-5-4	Filing No. 52827

**Agency Information**

<b>1. Department:</b>	Technology Services	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	6th Floor	
<b>Street address:</b>	1 State Office Building	
<b>City, state:</b>	Salt Lake City, UT	
<b>Mailing address:</b>	1 State Office Building, 6th Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84115	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Stephanie Weteling	801-538-3284	stephanie@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R895-5-4. Definitions
<b>3. Purpose of the new rule or reason for the change:</b>
The reason for the amendment is to change the definition of "Small technology purchases" from less than \$50,000 to less than \$250,000.
<b>4. Summary of the new rule or change:</b>
The Department of Technology Services (DTS) is implementing a new process for evaluating technologies with the agencies. Part of that change is only requiring a business case for purchases over \$250,000.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No anticipated cost or savings to state budget. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not impact the budget, as it is a procedural change only.

<b>B) Local governments:</b>																								
No anticipated cost or savings to local governments. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.																								
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>																								
No anticipated cost or savings to small businesses. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.																								
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>																								
No anticipated cost or savings to non-small businesses. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.																								
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>																								
No anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.																								
<b>F) Compliance costs for affected persons:</b>																								
No compliance costs for affected persons. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.																								
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>																								
<b>Regulatory Impact Table</b>																								
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0
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Small Businesses	\$0	\$0	\$0																					
Non-Small Businesses	\$0	\$0	\$0																					
Other Persons	\$0	\$0	\$0																					

NOTICES OF PROPOSED RULES

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

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

The Executive Director of the Department of Technology Services, Michael Hussey, CIO, has reviewed and approved this fiscal analysis.

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

There is no anticipated fiscal impact on businesses. The change impacts the threshold for submitting a business case from \$50,000 to \$250,000. This will not have an impact, as it is a procedural change only.

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

Michael Hussey, Executive Director and CIO

**Citation Information**

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

Section 63F-1-205	Section 63G-3-201	
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	08/14/2020
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<b>10. This rule change MAY become effective on:</b>	08/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Michael Hussey, Executive Director and CIO	<b>Date:</b>	06/24/2020
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**R895. Technology Services, Administration.**

**R895-5. Acquisition of Information Technology.**

**R895-5-4. Definitions.**

(1) "Hardware" means physical technology [~~(i.e., equipment)~~] used to process, manage, store, transmit, receive, or deliver information. This term also includes telephony products.

(2) "Small technology purchases" means a purchase, lease, or rental of hardware, software, [~~and~~] or technology services that is estimated to be less than \$250,000.

(3) "Software" means non-physical technology used to process, manage, store, transmit, receive, or deliver information. The term also includes any of the[all] supporting documentation, media containing or storing the software[~~on which the software may be contained or stored~~], related materials, modifications, versions, upgrades, enhancements, updates, or replacements.

(4) "Technology services" means any of[all] the services, functions, and activities that facilitate the design, implementation, creation, or use of software, hardware, or telephony products. The term includes data acquisition, seat management, staffing augmentation, maintenance, and subscription services.

**KEY: IT standards, IT bid committee, technology best practices, technology purchases**

**Date of Enactment or Last Substantive Amendment:** ~~February 23, 2016~~ 2020

**Notice of Continuation:** December 29, 2015

**Authorizing, and Implemented or Interpreted Law:** 63F-1-205; 63G-3-201

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> New		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R990-400</b>	<b>Filing No. 52888</b>

**Agency Information**

<b>1. Department:</b>	Workforce Services
<b>Agency:</b>	Housing and Community Development
<b>Building:</b>	Olene Walker Building

<b>Street address:</b>	140 E 300 S	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R990-400. Pandemic Housing Assistance
<b>3. Purpose of the new rule or reason for the change:</b>
This proposed new rule establishes criteria to administer funds received from the Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. No. 116-136, and any funds appropriated by the Legislature to assist individuals negatively impacted by the COVID-19 pandemic with retaining or obtaining housing.
<b>4. Summary of the new rule or change:</b>
Due to the COVID-19 pandemic, there are residents who have lost employment through no fault of their own and need immediate assistance to retain or obtain housing. New programs are needed to support individuals who are at risk of losing housing due to loss of income caused by the COVID-19 pandemic. This new rule explains how the Department of Workforce Services, Housing and Community Development will administer a housing program to assist state residents financially harmed by the COVID-19 pandemic. (EDITOR'S NOTE: A corresponding emergency Rule R990-400 that is effective as of 07/06/2020 is under Filing No. 52920 in this issue, July 15, 2020, of the Bulletin.)

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Any fiscal impact on state budget revenues or expenditures were accounted for by the fiscal note to S.B. 5005, passed in the 2020 Fifth Special Session. This new rule is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee this new rule. This new rule will not increase workload and can be carried out with the existing budget.

<b>B) Local governments:</b>			
This new rule is not expected to have any fiscal impact on local governments' revenues or expenditures because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
This new rule is expected to have a positive fiscal impact on small businesses by enabling residents to continue making timely payments of rent.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
This new rule is expected to have a positive fiscal impact on non-small businesses by enabling residents to continue making timely payments of rent.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>			
It is anticipated that this new rule will have a positive fiscal impact on other persons by allowing households to receive housing support payments.			
<b>F) Compliance costs for affected persons:</b>			
This new rule is not expected to cause any compliance costs for affected persons. There are no administrative fees with this new rule.			
<b>G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

NOTICES OF PROPOSED RULES

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

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

The Executive Director of the Department of Workforce Services, Jon Pierpont, has reviewed and approved this fiscal analysis.

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

After conducting a thorough analysis, it was determined that this new rule will result in a positive fiscal impact to businesses by enabling residents to continue making timely payments of rent.

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

Jon Pierpont, Executive Director

**Citation Information**

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

Section 35A-8-2302		
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**Public Notice Information**

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

<b>A) Comments will be accepted until:</b>	08/14/2020
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**10. This rule change MAY become effective on:** 8/21/2020

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jon Pierpont, Executive Director	<b>Date:</b>	06/24/2020
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**R990. Workforce Services, Housing and Community Development.**

**R990-400. Pandemic Housing Assistance**

**R990-400-1. Purpose.**

The purpose of this rule is to establish criteria to administer funds the state receives from the Coronavirus Relief Fund described in the CARES Act for housing assistance.

**R990-400-2. Authority. Duties of Divisions within the Department.**

Section 35A-8-2302 requires HCDD to assist state residents financially harmed on or after March 1, 2020 to retain or obtain housing by using funds the state receives from the Coronavirus Relief Fund described in the CARES Act.

**R990-400-3. Definitions.**

Terms used in these rules are defined in Section 35A-8-2301. In addition:

(1) "CARES Act" means Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136.

(2) "HCDD" means Department of Workforce Services, Housing and Community Development Division.

(3) "Unemployment benefits" means regular compensation or extended benefits under State or Federal law, pandemic emergency unemployment compensation, or pandemic unemployment assistance.

**R990-400-4. Applicant Qualifications.**

(1) An individual shall submit an application to the eligible agency for the individual's county of residence to be considered for assistance. A list of eligible entities for each county is available on the Department of Workforce Services website.

(2) An individual may be eligible for assistance if that person meets one of the following:

(a) the individual does not qualify for unemployment benefits;

(b) the individual is working, has experienced a reduction in regular pay, and is not eligible for unemployment benefits;

(c) the individual has applied for unemployment benefits and has not yet received an approval or denial; or

(d) the individual meets any other eligibility requirement published by HCDD on the Department of Workforce Services website.

**R990-400-5. Eligible Agency.**

(1) HCDD shall select an eligible entity for each county to operate the housing assistance program for residents of the county.

(2) An eligible agency may be:

(a) a non-profit organization; or

(b) an association of governments.

(3) An eligible entity may choose to subcontract any program operations with advance written approval from HCDD.

**R990-400-6. Use of Funds.**

(1) Pandemic Housing Assistance funds shall be distributed to an eligible agency.

(2) An eligible agency shall pay Pandemic Housing Assistance funds directly to the landlord of an eligible applicant.

(3) Pandemic Housing Assistance may be used to pay:

(a) rent;

(b) mortgage;

(c) a utility payment;

(d) a security deposit; or

(e) arrears.

**R990-400-7. Determination of Funding Amounts.**

(1) HCDD shall allocate the available funding based on the percentage of renters by county compared to the state's total housing population.

(2) An eligible agency will receive the funding amount for each county the agency serves.

**KEY: pandemic housing assistance, antipoverty programs**

**Date of Enactment or Last Substantive Amendment: 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-8-2302**

**End of the Notices of Proposed Rules Section**



## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R25-7	Filing No. 52914

### Agency Information

<b>1. Department:</b>	Administrative Services	
<b>Agency:</b>	Finance	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W FL 3	
<b>City, state, zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141031	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1031	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
John Reidhead	801-957-7734	jreidhead@utah.gov
Cory Weeks	801-957-7713	cweeks@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R25-7. Travel-Related Reimbursements for State Employees
<b>3. Effective Date:</b>
07/01/2020
<b>4. Purpose of the new rule or reason for the change:</b>
This filing supersedes the previous emergency rule Filing No. 52868. (EDITOR'S NOTE: Filing No. 52868, that was going to be effective on 07/01/2020 and was filed on 06/18/2020 for this Bulletin, needed changes to be done to the text so this filing, No. 52914, was done on 07/01/2020 to supersede No. 52868.)
The reason for these changes is to clarify the language of the original rule and clean up some formatting issues. Also, there was an increase in some hotel rates for in-state travel.
<b>5. Summary of the new rule or change:</b>
The emergency rule clarifies state travel and reimbursement for people traveling in-state.

<b>6. Regular rulemaking would:</b>	
<input type="checkbox"/>	cause an imminent peril to the public health, safety, or welfare;
<input type="checkbox"/>	cause an imminent budget reduction because of budget restraints or federal requirements; or
<input checked="" type="checkbox"/>	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
An emergency rule is needed because the increase in rates state travelers will pay for some in-state hotels begins on 07/01/2020.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>	
<b>A) State budget:</b>	
There could potentially be an increase in costs to the state as some hotel rates have increased, making reimbursement higher for travelers who stay in these hotels. However, the Division of Finance (Division) cannot determine exactly what the increase for hotel reimbursements will be, because it is impossible to anticipate how many travelers will stay at hotels that have increased their rates.	
<b>B) Local governments:</b>	
Local governments have to comply with this rule, so there could potentially be an increase in costs to local governments for reimbursement to travelers who stay at hotels that have increased their rates. However, the Division cannot determine exactly what the increase for hotel reimbursement for local government travelers will be, because it is impossible to anticipate how many local travelers will stay in hotels that have increased their rates.	
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):	
This rule clarifies the language in the original rule, and increases rates for some in-state hotels, but only deals with government travelers, therefore small businesses will not be affected.	
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):	
Because this rule only deals with government travelers, small businesses and non-small businesses will not be affected.	
<b>8. Compliance costs for affected persons:</b>	
Because the repeal only clarifies the language in the original rule, and also changes some in-state hotel rates, it does not require any new action on the part of persons	

applying for reimbursements and there are no compliance costs
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
I have reviewed these changes to this rule with the Division of Finance Director and believe these changes are warranted. Individuals may see an increase in their travel reimbursement. However, the Division cannot determine exactly what the increase will be as that increase will depend on the traveler staying in an in-state hotel that increased its rate.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Tani Pack Downing, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>	
Section 63A-3-107	Section 63A-3-106

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	John Reidhead, Director	<b>Date:</b>	06/17/2020
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**R25. Administrative Services, Finance.**

**R25-7. Travel-Related Reimbursements for State Employees.**

**~~R25-7-1. Purpose.~~**

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

**~~R25-7-2. Authority and Exemptions.~~**

~~This rule is established pursuant to:~~

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

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

**~~R25-7-3. Definitions.~~**

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

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

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

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

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

- ~~(6) "Per diem" means an allowance paid daily.~~
- ~~(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."~~
- ~~(8) "Rate" means an amount of money.~~
- ~~(9) "Reimbursement" means money paid to compensate an employee for money spent.~~
- ~~(10) "State employee" means any person who is paid on the state payroll system.~~

**R25-7-4. Eligible Expenses.**

- ~~(1) Reimbursements are intended to cover all normal areas of expense.~~
- ~~(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.~~
- ~~(3) Alcoholic Beverages are not reimbursable.~~

**R25-7-5. Approvals.**

- ~~(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.~~
- ~~(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 "Request for Out-of-State Travel Authorization", in the State's ESS Travel system or another system with equivalent controls and calculations.~~
- ~~(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, in the State's ESS Travel system, another system with equivalent controls and calculations or on an attachment, and must be approved by the Department Director or the designee.~~
- ~~(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.~~

**R25-7-6. Reimbursement for Meals.**

- ~~(1) State employees who travel on state business may be eligible for a meal reimbursement.~~
- ~~(2) The reimbursement will include tax, tips, and other expenses associated with the meal.~~
- ~~(3) Allowances for in-state travel differ from those for out-of-state travel.~~
  - ~~(a) The daily travel meal allowance for in-state travel is \$45.00 and is computed according to the rates listed in the following table.~~

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$11.00
Lunch	\$14.00
Dinner	\$20.00
Total	\$45.00

- ~~(b) The daily travel meal allowance for out-of-state travel is \$50.00 and is computed according to the rates listed in the following table.~~

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$13.00
Lunch	\$14.00
Dinner	\$23.00
Total	\$50.00

- ~~(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$71 per day.~~
  - ~~When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to \$61 per day.~~
    - ~~(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.~~
    - ~~(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:~~
      - ~~Tier I Location~~
        - ~~(i) If breakfast is provided deduct \$18, leaving a premium allowance for lunch and dinner of actual up to \$53.~~
        - ~~(ii) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$52.~~
        - ~~(iii) If dinner is provided deduct \$34, leaving a premium allowance for breakfast and lunch of actual up to \$37.~~
      - ~~Tier II Location~~
        - ~~(i) If breakfast is provided deduct \$16, leaving a premium allowance for lunch and dinner of actual up to \$45.~~
        - ~~(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$44.~~
        - ~~(iii) If dinner is provided deduct \$28, leaving a premium allowance for breakfast and lunch of actual up to \$33.~~
    - ~~(c) The traveler must use the same method of reimbursement for an entire day.~~
    - ~~(d) Actual meal cost includes tips.~~
    - ~~(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate for the location as of the date of travel.~~
      - ~~(a) The traveler may use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.~~
      - ~~(b) Actual meal cost includes tips.~~
    - ~~(6) The meal reimbursement calculation is comprised of three parts:~~
      - ~~(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.~~

NOTICES OF 120-DAY (EMERGENCY) RULES

TABLE 3  
The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In State \$45.00	\$34.00	\$20.00	\$0
Out of State \$50.00	\$37.00	\$23.00	\$0

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

- (b) The days at the location.
  - (i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.
  - (ii) Meals provided on airlines will not reduce the meal allowance.
- (c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4  
The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
In State \$0	\$11.00	\$25.00	\$45.00
Out of State \$0	\$13.00	\$27.00	\$50.00

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

- (7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's farthest destination is at least 100 miles one way from their home base and the employee does not stay overnight.
  - (a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.
  - (b) Lunch is paid when the trip meets one of the following requirements:
    - (i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.
    - (ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.
    - (iii) The Department Director provides prior written approval based on circumstances.
  - (c) Dinner is paid when the employee leaves their home base and returns at or after 6:00 p.m.
  - (d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

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

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

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

**R25-7-8. Reimbursement for Lodging.**

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

- (1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI-51A, FI-51B, or ESS Travel.
- (2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5  
Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$95.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$80.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$90.00 plus tax and mandatory fees
Ephraim	\$80.00 plus tax and mandatory fees
Farlington	\$90.00 plus tax and mandatory fees
Fillmore	\$80.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Hanksville	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$90.00 plus tax and mandatory fees
Layton	\$90.00 plus tax and mandatory fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) For out of state travel, the approval may be on the form FI 5, in the State's ESS Travel system or another system with equivalent controls and calculations.

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

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

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

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

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

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

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

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

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

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

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

**R25-7-9. Reimbursement for Incidentals.**

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

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

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

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

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

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

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

(d) Gratuities/Tips for ground transportation (taxi/shuttle/rideshare) will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities/Tips must be shown on an original receipt.

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

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

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

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

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

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

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

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

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

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

(d) More than thirty days - start over

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

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

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

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

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

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

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

**R25-7-10. Reimbursement for Transportation.**

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 58 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 58 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

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

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

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest

official state road map and will be limited to the most economical, usually traveled routes.

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

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

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

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

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

(b) If the traveler drives a privately owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reimbursement will be made at 58 cents per mile.

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

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

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

#### **R25-7-1. Purpose.**

The purpose of this rule is to establish procedures to pay travel-related Reimbursements to Travelers of an Agency or a Political Subdivision that is subject to this rule.

#### **R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

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

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

#### **R25-7-3. Definitions.**

(1) "Agency" means any Department, division, Board, bureau, office, or other administrative subunit of state government. This definition includes the executive, legislative and judicial branches.

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

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

(4) "Executive Director" means a Department Executive Director, Department Commissioner, Chief of Staff or the equivalent of a Chief Executive Officer for a Political Subdivision.

(5) "Fleet Vehicle" means a vehicle owned or leased by an Agency or Political Subdivision. This also includes vehicles rented for use as motor pool vehicles by an Agency or Political Subdivision.

(6) "Home Base" means the location from which the Traveler leaves to begin travel and the location to which the Traveler returns to end travel. In determining the Home Base of a Traveler, an Agency should consider at least the following non-exclusive factors:

(a) If the Traveler is leaving on travel directly from home, or if there a valid business reason for the Traveler to go to a designated work location before leaving for the travel destination, the Home Base should be the last location the Traveler was in, home or designated work location, prior to leaving on travel.

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(b) If the Traveler is going directly home after the trip, or if there a valid business reason for the Traveler to first go to a designated work location prior to the Traveler returning home, the ending Home Base for travel is the first location the employee goes to when returning from travel.

(7) "Per Diem" means an allowance paid daily.

(8) "Political Subdivision" means a county, city, town, school district, local district, special service district, or any entity, other than an Agency, subject to this rule by statute.

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

(10) "Reimbursement" means money paid to compensate a Traveler for money spent.

(11) "Traveler" means any person who is traveling on business for an Agency or Political Subdivision. This definition includes, but is not limited to, employees, Board members, elected officials, vendors, volunteers and grant recipients or award beneficiaries.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all travel-related normal areas of expenses that are ordinary and reasonable in the circumstances.

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

(3) When an original itemized receipt is not available, Agency or Political Subdivision management may use discretion in determining the appropriate amount of alternative documentation prior to Reimbursement of expenses.

(4) Alcoholic Beverages are not reimbursable.

**R25-7-5. Approvals.**

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

(2) Out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel Reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization", in the State's ESS Travel system, or in another system with equivalent controls and calculations.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of form FI5 "Request for Out-of-State Travel Authorization", in the State's ESS Travel system or in another system with equivalent controls and calculations, and must be approved by the Executive Director or the designee.

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

**R25-7-6. Reimbursement for Meals.**

(1) Travelers who travel on business may be eligible for a meal Reimbursement.

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

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

(a) The daily travel meal allowance for in-state travel is \$45.00 and is computed according to the Rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

<u>Meals</u>	<u>Rate</u>
<u>Breakfast</u>	<u>\$11.00</u>
<u>Lunch</u>	<u>\$14.00</u>
<u>Dinner</u>	<u>\$20.00</u>
<u>Total</u>	<u>\$45.00</u>

(b) The daily travel meal allowance for out-of-state travel is \$50.00 and is computed according to the Rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

<u>Meals</u>	<u>Rate</u>
<u>Breakfast</u>	<u>\$13.00</u>
<u>Lunch</u>	<u>\$14.00</u>
<u>Dinner</u>	<u>\$23.00</u>
<u>Total</u>	<u>\$50.00</u>

(4) Tier I premium locations in this subsection are Anchorage, Alaska; Chicago, Illinois; all locations in Hawaii; New York City, New York; San Francisco, California; and Seattle, Washington. Tier II premium locations in this subsection are Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Dallas, Texas; Los Angeles, California; San Diego, California; and Washington, DC.

(a) When traveling to a Tier I premium location, the Traveler may choose to accept the Per Diem Rate for out-of-state travel, as shown in Table 2 above, or to be reimbursed at the actual meal cost, with original receipts, up to \$71 per day.

(b) When traveling to a Tier II premium location, the Traveler may choose to accept the Per Diem Rate for out-of-state travel, as shown in Table 2 above, or to be reimbursed at the actual meal cost, with original receipts, up to \$61 per day.

(c) Subject to subsections 6(a) and 6(b), the Traveler will qualify for premium Rates on the day the travel begins and the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(d) Complimentary meals with lodging accommodations and meals included in event registration costs are deducted from the premium location allowance as follows:

(i) Tier I Location

(a) If breakfast is provided deduct \$18, leaving a premium allowance for lunch and dinner of actual up to \$53.

(b) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$52.

(c) If dinner is provided deduct \$34, leaving a premium allowance for breakfast and lunch of actual up to \$37.

(ii) Tier II Location

(a) If breakfast is provided deduct \$16, leaving a premium allowance for lunch and dinner of actual up to \$45.

(b) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$44.

(c) If dinner is provided deduct \$28, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(d) The Traveler must use the same method of Reimbursement for an entire day.

(e) Actual meal cost includes tips.

(5) When traveling in foreign countries, the Traveler may choose to accept the Per Diem Rate for out-of-state travel, as shown in Table 2, or to be reimbursed the actual meal cost, with original

receipts, not to exceed the federal Reimbursement Rate for the location as of the date of travel.

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

(b) Actual meal cost includes tips.

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

(a) The day the travel begins. The Traveler's entitlement is determined by the time of day the Traveler leaves their Home Base, as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
12:01 AM - 6:00 AM	6:01 AM - 12:00 PM	12:03 PM - 6:00 PM	6:01 PM - 12:00 AM
*B, L, D	*L, D	*D	*no meals
In-State	\$45.00	\$34.00	\$20.00
Out-of-State	\$50.00	\$37.00	\$23.00

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

(b) The days at the location.

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

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

(c) The day the travel ends. The meal Reimbursement the Traveler is entitled to is determined by the time of day the Traveler returns to their Home Base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
12:01 AM - 6:00 AM	6:01 AM - 12:00 PM	12:01 PM - 6:00 PM	6:01 PM - 12:00 AM
*no meals	*B	*B, L	*B, L, D
In-State	\$0	\$11.00	\$25.00
Out-of-State	\$0	\$13.00	\$27.00

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

(7) A Traveler may be authorized by the Executive Director or designee to receive a taxable meal allowance on an officially approved trip when the Traveler's farthest destination is at least 100 miles one way from their Home Base and the Traveler does not stay overnight.

(a) Breakfast is paid when the Traveler leaves their Home Base before 6:00 a.m.

(b) Lunch is paid when the Traveler leaves their Home Base before 10:00 a.m. and returns after 2:00 p.m.

(c) Dinner is paid when the Traveler leaves their Home Base and returns at or after 6:00 p.m.

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

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

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

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

**R25-7-8. Reimbursement for Lodging.**

A Traveler who travels on business may be eligible for a lodging Reimbursement.

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

(2) For in-state lodging at a non-conference hotel, the Traveler will be reimbursed the actual cost up to \$75 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below.

TABLE 5

Cities with Differing Rates

Note: The Rates described below indicate the nightly single occupancy room Rate. All applicable taxes and mandatory fees are in addition to the Rates below.

City	Rate
Blanding	\$85.00
Bluff	\$100.00
Brigham City	\$80.00
Bryce Canyon City	\$90.00
Cedar City	\$80.00
Duchesne	\$90.00
Ephraim	\$80.00
Fillmore	\$80.00
Hanksville	\$85.00
Heber	\$85.00
Kanab	\$90.00
Layton	\$90.00
Logan	\$90.00
Mexican Hat	\$90.00
Moab/Green River	\$110.00
Monticello	\$80.00
Ogden	\$95.00
Park City/Midway	\$110.00
Provo/Orem/Lehi/American Fork/Springville	\$85.00
Roosevelt/Ballard	\$90.00
Salt Lake City Metropolitan Area (Draper to Farmington), Tooele	\$100.00
St. George/Washington/Springdale/Hurricane/La Verkin	\$85.00
Torrey	\$95.00
Tremonton	\$90.00
Tropic	\$95.00
Vernal	\$95.00
All Other Utah Cities	\$75.00

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(3) Travelers traveling less than 50 miles from their Home Base are not entitled to lodging Reimbursement. Miles are calculated from the Traveler's Home Base. An Executive Director may use discretion to authorize Reimbursement for lodging if the Agency or Political Subdivision determines lodging is reasonable and in the best interest of the state. For example, if the Traveler is required to work at the travel destination after normal working hours or early the next day, or when weather or other safety issues exist, lodging may be appropriate.

(4) When an Agency or Political Subdivision pays for a person from out-of-state to travel to Utah, the in-state lodging Per Diem Rates will apply.

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

(6) For Agency Travelers, the State will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays when reservations are made through the State Travel Office.

If lodging is not available at the allowable Per Diem Rate in the area the Traveler needs to stay, the State Travel Office will book a hotel with the best available Rate. In this circumstance, the Traveler will be reimbursed at the actual Rate booked.

If a Traveler chooses to stay at a hotel that costs more than the allowable Per Diem Rate, the Traveler will only be reimbursed for the allowable Per Diem Rate plus tax and any mandatory fees charged by the hotel.

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

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

(a) For out-of-state travel, the approval may be on the form FI 5, in the State's ESS Travel system, or in another system with equivalent controls and calculations.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B, FI 51D, in ESS Travel, or in another equivalent form or system.

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

A proper receipt is a copy of the registration form generally used by a motel or hotel which includes the following information: name of motel/hotel, street address, town and state, telephone number, receipt date, names of occupants dates of occupancy, amount and date paid, number in the party, and single, double, triple, or quadruple occupancy.

(10) When lodging is required, a Traveler should stay at the lodging facility nearest to the ultimate destination point of travel where state lodging Per Diem Rates are accepted in order to minimize transportation costs.

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

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

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

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

(12) A Traveler on assignment away from the Home Base for longer than 90 days will be reimbursed as follows.

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

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

### **R25-7-9. Reimbursement for Incidentals.**

Travelers who travel on business may be eligible for a Reimbursement for incidental expenses.

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

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

(2) A Traveler will be reimbursed for incidental ground transportation and parking expenses.

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

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

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

(d) Gratuities and tips for ground transportation will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities and tips must be shown on an original receipt.

(3) For an Agency, a conference registration should be paid in advance by check (warrant), or with a purchasing card.

(a) A copy of the approved FI 5 form must be included with the payment voucher or purchase card log for out-of-state registrations.

(b) For an Agency, if a Traveler must pay the registration upon arrival, and does not have a purchase card or personal credit card, the Agency is expected to process a payment document and have the Traveler take the state warrant to the event.

(4) A demonstrable expense for a business call will be reimbursed at the actual cost.

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

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

(5) An allowance for personal telephone calls made while out of town on business overnight may be based on the number of nights away from home. The Traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls. Reimbursement must be calculated as follows:

(a) Four nights or less, actual amount up to \$2.50 per night

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

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

(d) More than thirty days, start over

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

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

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

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

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

(8) An Agency or Political Subdivision may provide for a Traveler to return home over a weekend when the business portion of a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-10. Reimbursement for Transportation.**

A Traveler who travels on business may be eligible for a transportation Reimbursement.

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

(a) For Agency Travelers, all reservations should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

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

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

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

(a) The maximum Reimbursement for parking, whether a Traveler parks at the airport or away from the airport, is the long term parking Rate at the airport they are flying out of.

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

(c) A Traveler may be reimbursed, up to the maximum Reimbursement Rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) A Traveler may use a private vehicle with approval from the Executive Director or designee.

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

(b) Reimbursement for a private vehicle will be at the Rate of 38 cents per mile or 57 cents per mile if a Fleet Vehicle is not available to the Traveler.

(i) To determine which Rate to use, the Traveler must first determine if a Fleet Vehicle is available that meets the Traveler's needs. This does not apply to special purpose vehicles. If reasonably available, the Traveler should use a Fleet Vehicle. If a Fleet Vehicle is not reasonably available, the Agency or Political Subdivision may approve the Traveler to use a private vehicle. If a Fleet Vehicle is not reasonably available, the Traveler may be reimbursed at 57 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the Agency or Political Subdivision should approve the Traveler to reserve a Fleet Vehicle if one is reasonably available. Doing so will cost less than if the Traveler takes a private vehicle. If the Agency or Political Subdivision approves the Traveler to take a private vehicle, the Traveler will be reimbursed at the lower Rate of 38 cents per mile not to exceed the expense calculated in the link located in subsection (e).

(c) A Reimbursement Rate that is more restrictive than the Rate established in this Section may be established by the Agency or Political Subdivision.

(d) Any exceptions to this mileage Reimbursement Rate guidance must be approved in writing by the Traveler's Executive Director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

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

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

(h) For an Agency Traveler, an approved "Private Vehicle Usage Report", form FI 40, should be included with the documentation reporting miles driven on business during the payroll period.

(i) Mileage Reimbursement may be allowed on an approved "Travel Reimbursement Request", form FI 51A, FI 51B, or in ESS Travel, or equivalent form or system, if other costs associated with the trip are to be reimbursed at the same time.

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

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

(b) If the Traveler drives a privately-owned vehicle, Reimbursement will be at the Rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Executive Director or designee.

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

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

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

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

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

(d) If the travel time taken for driving during the Traveler's normal work week is greater than that which would have occurred had the Traveler flown, the excess time used must not count as time worked.

(5) Use of non-fleet rental vehicles must be approved in writing in advance by the Executive Director or designee.

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

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

NOTICES OF 120-DAY (EMERGENCY) RULES

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

(i) A Traveler should rent vehicles to be used for business in their own names, using a contract available to the Traveler's Agency or Political Subdivision to ensure the Agency's or Political Subdivision's insurance coverage is extended in the rental.

(ii) For Agency Travelers, a rental vehicle reservation not made through the State Travel Office must be approved in advance by the Executive Director or designee.

(iii) The Traveler will be reimbursed the actual Rate charged by the rental agency.

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

(6) Travel by private airplane for official business must be approved in advance by the Executive Director or designee.

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

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

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

(d) Reimbursement will be made at 57 cents per mile.

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

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

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

**KEY: air travel, per diem allowances, state ~~employees~~travelers, transportation**

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

**Notice of Continuation: February 8, 2018**

**Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R357-32	Filing No. 52910

**Agency Information**

<b>1. Department:</b>	Governor
<b>Agency:</b>	Economic Development
<b>Building:</b>	World Trade Center
<b>Street address:</b>	60 E South Temple
<b>City, state, zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	60 E South Temple
<b>City, state, zip:</b>	Salt Lake City, UT 84111
<b>Contact person(s):</b>	

Name:	Phone:	Email:
Dane Ishihara	801-538-8664	dishihara@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R357-32. COVID-19 Commercial Rental Assistance Program Rule

<b>3. Effective Date:</b>
06/30/2020

<b>4. Purpose of the new rule or reason for the change:</b>
During the 2020 Fifth Special Session, S.B. 5005 passed and amended the COVID-19 Commercial Rental Assistance Program that grants rental relief to certain businesses that have lost revenue as a result of measures taken to minimize the public's exposure to COVID-19 that was created during the 2020 Third Special Session (S.B. 3006). The Governor's Office of Economic Development (GOED) is responsible for the administration of this program.

<b>5. Summary of the new rule or change:</b>
This new rule will supersede rule filing ID No. 52754 that was made effective on 05/08/2020 which governs the COVID-19 Commercial Rental Assistance Program and will codify the requirements so that they will align with the statutory changes. The program will provide assistance to small businesses in the state that have been impacted by the COVID-19 pandemic. (EDITOR'S NOTE: Emergency rule filing ID No. 52754 for Rule R357-32 was published in the June 1, 2020, Bulletin.)

<b>6. 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>Specific reason and justification:</b>
GOED is responsible for economic development in the state and is tasked with, among other things, administering grant programs to enhance the economic health and vitality of the state and its business community. This rule will govern the new COVID-19 Commercial Rental Assistance Program that will provide assistance to small businesses in the state that have been impacted by the COVID-19 pandemic.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no aggregate anticipated cost or savings to the state budget. This rule establishes the requirements for participation in the COVID-19 Commercial Rental Assistance Program.
<b>B) Local governments:</b>
There is no aggregate anticipated cost or savings to local governments because local governments are not required to comply with or enforce this rule.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
\$40,000,000 in funds will be awarded to small businesses in the state. The COVID-19 Commercial Rental Assistance Program is designed to serve Utah's small businesses that have been impacted by the COVID-19 pandemic.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities because this proposed rule does not create new obligations for persons other than small businesses, businesses, or local government entities, nor does it increase the costs associated with any existing obligation.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs for affected persons because participation in the program is optional.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
I have reviewed this fiscal analysis and agree with the described fiscal impacts associated with this rule. Changes to the Commercial Rental Assistance Program will further assist many of Utah's commercial property leasees in need of help because of the coronavirus pandemic.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Val Hale, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following</b>
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<b>state and federal laws. State code or constitution citations (required):</b>		
Section		
63N-14-202		

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Val Hale, Executive Director	<b>Date:</b>	06/30/2020
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**R357. Governor, Economic Development.**

**R357-32. COVID-19 Commercial Rental Assistance Program Rule**

**R357-32-101. Title.**

This rule is known as the "COVID-19 Commercial Rental Assistance Program Rule."

**R357-32-102. Definitions.**

In addition to the definitions under Section 63N-14-102 the following terms are defined:

(1) "Awardee" means a qualified business entity that has been awarded a grant under the program.

(2) "ComRent" means the COVID-19 Commercial Rental Assistance Program.

(3) "Master lease" means a rental agreement between the owner of a commercial property and its direct tenant.

**R357-32-103. Authority.**

This rule is adopted by the office under the authority of Section 63N-14-202.

**R357-32-104. Program and Documentation Requirements.**

(1) To qualify for a grant an applicant must be a direct tenant that has entered into a master lease.

(2) An awardee shall use program funds to pay the business entity's master lease costs.

(3) The office will not issue a grant until all required information and documentation is submitted and approved, as determined by the office. Only complete applications will be considered submitted.

(4) An applicant shall submit to the office:

(a) a copy of a current and active master lease;

(b) evidence of most recent master lease payment;

(c) signed W-9 form;

(d) profit & loss statement for a four week period within twelve months of application date; and

(e) profit & loss statement of the four week period of revenue loss.

**R357-32-105. Revenue loss calculation.**

To measure monthly gross revenue loss the business's gross revenue for any four week period after March 1, 2020, as designated by the business, shall be compared to the business's gross revenue for a four week period designated by the business within 12 months of the application date.

**KEY: rent assistance, commercial rent, small business**

**Date of Enactment or Last Substantive Amendment: June 30, 2020**

**Authorizing, and Implemented or Interpreted Law: 63N-14-202**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R382-10-22	Filing No. 52877

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>	
R382-10-22. Public Health Emergency Provisions	
<b>3. Effective Date:</b>	
06/24/2020	
<b>4. Purpose of the new rule or reason for the change:</b>	
The purpose of this change is to allow certain income exclusions to help members of the Children's Health Insurance Program (CHIP) remain eligible during the Coronavirus (COVID-19) Pandemic.	
<b>5. Summary of the new rule or change:</b>	
This emergency rule allows income exclusions for recovery rebates, employer payments of student loans, qualified charitable contributions, and federal pandemic employment payments.	
<b>6. 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>Specific reason and justification:</b>	
This emergency rule is necessary to help members of CHIP remain eligible during the COVID-19 Pandemic.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
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<b>A) State budget:</b>
There is an increase of about \$4,541,400 to the state budget to allow income exclusions for members of CHIP who wish to remain eligible during the COVID-19 public health emergency period.

<b>B) Local governments:</b>
There is no impact on local governments because they neither fund CHIP nor make CHIP eligibility determinations.

<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this rule simply helps members of CHIP to remain eligible during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There is no impact on Medicaid providers and Medicaid members as this rule simply helps members of CHIP to remain eligible during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply helps members of CHIP to remain eligible during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as this rule simply helps members of CHIP to remain eligible during the COVID-19 public health emergency period.

<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 26-1-5	Section 26-18-3	Pub. L. No. 116-136

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R382. Health, Children's Health Insurance Program.****R382-10. Eligibility.****R382-10-22. Public Health Emergency Provisions.**

(1) During the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, the Department will continue coverage of children enrolled in CHIP.

(a) This applies to an individual who is eligible and enrolled on March 18, 2020, the date of enactment of Pub. L. No. 116 127, or who subsequently becomes eligible and enrolled in medical assistance during the emergency period and any extensions.

(b) Coverage for an individual eligible for CHIP during the public health emergency period will end only under the following circumstances:

(i) when a beneficiary is no longer a Utah resident;

(ii) upon a beneficiary's request; or

(iii) upon a beneficiary's death. Coverage continues through the date of death.

(2) An individual is not required to pay CHIP Premiums through the duration of the emergency period and any extensions. The Department will refund the individual any premiums collected during the emergency period and any extensions.

(3) The Department shall exclude the following from an individual's income:

(a) \$600 per week federal pandemic unemployment payments as defined in Section 2102 and 2104(b) of the Coronavirus Aid, Relief, and Economic Security (Cares) Act, Pub. L. No. 116 136, for programs established under Title XXI of the Social Security Act; and

(b) recovery rebates for individuals as defined in Section 2201 of the Cares Act for programs established under Title XXI of the Social Security Act. These rebates are treated as a refundable tax credit and may be paid in advance or upon filing a 2020 tax return.

(4) The Department shall exclude from income certain employer payments of student loans as defined in Section 2206 of the Cares Act.

(a) Payments toward an employee's student loans may be paid directly to the employee or to the lender.

(b) This exclusion applies to payments made on or after the effective date of Pub. L. No. 116 136 and before January 1, 2021.

(5) The Department shall exclude the amount of qualified charitable contributions made by individuals during the taxable year as defined in Section 2204 of the Cares Act.

(a) Allowable taxable years begin in the year 2020.

(b) The excluded contributions must not exceed \$300.

(6) An individual is not required to pay any cost-sharing fees associated with Coronavirus (COVID-19) testing services and treatments, including vaccines, specialized equipment, and therapies during the duration of the emergency period.

**KEY: children's health benefits**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Notice of Continuation: April 11, 2018**

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

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-1C</b>	<b>Filing No. 52878</b>
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**Agency Information**

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

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

**General Information**

<b>2. Rule or section catchline:</b>	R414-1C. Coronavirus Public Health Emergency Period
<b>3. Effective Date:</b>	06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>	The purpose of this emergency rule is to ensure that administrative rules under Medicaid and the Children's Health Insurance Program (CHIP) do not conflict with provisions set forth by the U.S. Department of Health and Human Services, CMS, the Governor, or the State Legislature during the Coronavirus (COVID-19) public health emergency period.
<b>5. Summary of the new rule or change:</b>	This emergency rule suspends or revises Medicaid and CHIP rules that conflict with emergency waivers, state plan amendments, Governor executive orders, or actions set forth by the Legislature during the COVID-19 public health emergency period.
<b>6. 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>Specific reason and justification:</b>	

This emergency rule is necessary to ensure compliance with provisions set forth during the COVID-19 public health emergency period.

**Fiscal Information**

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

**A) State budget:**

There is no impact to the state budget as this rule only ensures state compliance with provisions set forth during the COVID-19 public health emergency period. It neither affects member services nor provider reimbursement.

**B) Local governments:**

There is no impact on local governments as this rule only ensures state compliance with provisions set forth during the COVID-19 public health emergency period. It neither affects member services nor provider reimbursement.

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

There is no impact on small businesses as this rule only ensures state compliance with provisions set forth during the COVID-19 public health emergency period. It neither affects member services nor provider reimbursement.

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

There is no impact on Medicaid providers and Medicaid members as this rule only ensures state compliance with provisions set forth during the COVID-19 public health emergency period. It neither affects member services nor provider reimbursement.

**8. Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule only ensures state compliance with provisions set forth during the COVID-19 public health emergency period. It neither affects member services nor provider reimbursement.

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

Businesses will see neither revenue nor costs as this rule only ensures COVID-19 emergency compliance.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3	Section 63G-3-304
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1C. Coronavirus Public Health Emergency Period.**

**R414-1C-1. Introduction and Authority.**

(1) This emergency rule is to ensure that any administrative rule does not conflict with measures taken by the state or the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) pertaining to the Coronavirus (COVID-19) public health emergency.

(2) This rule is authorized by Section 63G-3-304 and Section 1135 of the Social Security Act.

**R414-1C-2. Policy During the COVID-19 Emergency Period.**

(1) The Division of Medicaid and Health Financing (DMHF) suspends any of its administrative rules under R382, R410, and R414 that conflict with:

(a) emergency waivers or state plan amendments approved by CMS during the declared COVID-19 emergency period;

(b) an executive order set forth by the Governor during the declared COVID-19 emergency period; or

(c) an action set forth by the Legislature during the declared COVID-19 emergency period.

(2) This rule shall remain in effect through the declared COVID-19 emergency period.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5; 63G-3-304**

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-303-13</b>	<b>Filing No. 52879</b>
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**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>Mailing address:</b>	PO Box 143102
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-303-13. Coronavirus (COVID-19) Testing Coverage
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to implement provisions for testing coverage during the Coronavirus (COVID-19) public health emergency period.
<b>5. Summary of the new rule or change:</b>
This emergency rule adds a section to this rule to provide COVID-19 testing for a new optional eligibility group that meets the definition of "uninsured individual" under federal law. These services are limited to in-vitro diagnostic testing and COVID-19 testing-related services.
<b>6. 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>Specific reason and justification:</b>
This emergency rule is necessary to provide testing coverage for uninsured individuals during the COVID-19 public health emergency period.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is a cost of about \$10,600,000 in federal funds to help uninsured individuals receive COVID-19 testing during the public health emergency period.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

There is no impact on small businesses as this rule simply assists uninsured individuals to receive COVID-19 testing during the public health emergency period. It neither increases business revenue nor costs.

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

There is no impact on Medicaid providers and Medicaid members as this rule simply assists uninsured individuals to receive COVID-19 testing during the public health emergency period. It neither increases business revenue nor costs.

**8. Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply assists uninsured individuals to receive COVID-19 testing during the public health emergency period. It neither increases business revenue nor costs.

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

Businesses will see neither revenue nor costs as this rule simply assists uninsured individuals to receive COVID-19 testing during the public health emergency period.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 26-1-5	Section 26-18-3	Pub. L. No. 116-127

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-303. Coverage Groups.**

**R414-303-13. Coronavirus (COVID-19) Testing Coverage.**

(1) The Department provides coverage to individuals described in Subsection 6004(a)(3) of the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116 127. This coverage shall be referred to as COVID-19 Testing Coverage.

(2) This coverage may be effective no earlier than March 18, 2020, and extends through the end of the public health emergency

NOTICES OF 120-DAY (EMERGENCY) RULES

period and any extensions as defined in Subsection 1135(g)(1)(B) of the Social Security Act.

(3) An individual must meet citizenship or alien status criteria as defined in Section R414-302-3.

(4) An individual must meet residency requirements as defined in Section R414-302-4.

(5) An individual must meet the definition of an uninsured individual as defined in Subsection 1902(ss) of the Social Security Act, and added through Section 6004 of FFCRA, Pub. L. No. 116 127.

(6) An individual receives a limited package of services related to COVID-19 as defined in Subsection 6004(a)(3)(A)(ii) under FFCRA, Pub. L. No. 116 127.

**KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Notice of Continuation: January 8, 2018**

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

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R414-304-17	Filing No. 52880

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R414-304-17. Public Health Emergency Income Provisions
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to allow certain income exclusions to help Medicaid members remain eligible during the Coronavirus (COVID-19) Pandemic.

<b>5. Summary of the new rule or change:</b>	
This emergency rule allows income exclusions for recovery rebates, employer payments of student loans, qualified charitable contributions, and federal pandemic employment payments.	
<b>6. 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>Specific reason and justification:</b>	
This emergency rule is necessary to help Medicaid members remain eligible during the COVID-19 Pandemic.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>	
<b>A) State budget:</b>	
There is no impact to the state budget as excluded incomes become newly available to members who qualify through the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This change keeps the interaction between economic conditions and Medicaid enrollment the same as it was before CARES Act passage.	
<b>B) Local governments:</b>	
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.	
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>	
There is no impact to small businesses as excluded incomes become newly available to members who qualify through the CARES Act. This change keeps the interaction between economic conditions and Medicaid enrollment the same as it was before CARES Act passage.	
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>	
There is no impact on Medicaid providers and Medicaid members as excluded incomes become newly available to members who qualify through the CARES Act. This change keeps the interaction between economic conditions and Medicaid enrollment the same as it was before CARES Act passage.	
<b>8. Compliance costs for affected persons:</b>	
There are no compliance costs to a single Medicaid provider or to a Medicaid member as excluded incomes	

become newly available to members who qualify through the CARES Act. This change keeps the interaction between economic conditions and Medicaid enrollment the same as it was before CARES Act passage.

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

Businesses will see neither revenue nor costs as economic conditions and Medicaid enrollment will remain the same as before CARES Act passage.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3	
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-304. Income and Budgeting.**

**R414-304-17. Public Health Emergency Income Provisions.**

The following treatment of certain income applies as defined in this section.

(1) The Department shall exclude from income the \$600 per week federal pandemic unemployment payments as defined in Section 2102 and 2104(b) of the Coronavirus Aid, Relief, and Economic Security (Cares) Act, Pub. L. No. 116 136, for programs established under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

(2) The Department shall exclude from income the recovery rebates for individuals as defined in Section 2201 of the Cares Act, for programs established under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq. These rebates are treated as a refundable tax credit and may be paid in advance or upon filing a 2020 tax return.

(3) The Department shall exclude from income certain employer payments of student loans as defined in Section 2206 of the Cares Act, Pub. L. No. 116 136 for coverage groups subject to the use of MAGI-based methodologies as defined in Section R414-304-5.

(a) Payments toward an employee's student loans may be paid directly to the employee or to the lender.

(b) This exclusion applies to payments made on or after the effective date of Pub. L. No. 116 136 and before January 1, 2021.

(4) The Department shall exclude the amount of qualified charitable contributions made by individuals during the taxable year as defined in Section 2204 of the Cares Act, Pub. L. No. 116 136, for coverage groups subject to the use of MAGI-based methodologies as defined in Section R414-304-5.

(a) Allowable taxable years begin in the year 2020.

(b) The excluded contributions must not exceed \$300.

**KEY: financial disclosures, income, budgeting**  
**Date of Enactment or Last Substantive Amendment: June 24, 2020**  
**Notice of Continuation: January 8, 2018**  
**Authorizing, and Implemented or Interpreted Law: 26-18-3**

NOTICE OF EMERGENCY (120-DAY) RULE		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-308-11</b>	<b>Filing No. 52881</b>

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>	R414-308-11. Public Health Emergency Provisions						
<b>3. Effective Date:</b>	06/24/2020						
<b>4. Purpose of the new rule or reason for the change:</b>	The purpose of this change is to implement provisions that comply with the Families First Coronavirus Response Act (FFCRA) during the Coronavirus (COVID-19) public health emergency period.						
<b>5. Summary of the new rule or change:</b>	This emergency rule includes a section that assures continued coverage through the public health emergency period, assures coverage through a beneficiary's death, and assures compliance with presumptive eligibility decisions related to the uninsured testing group.						
<b>6. Regular rulemaking would:</b>	<table border="1"> <tr> <td>X</td> <td>cause an imminent peril to the public health, safety, or welfare;</td> </tr> <tr> <td></td> <td>cause an imminent budget reduction because of budget restraints or federal requirements; or</td> </tr> <tr> <td></td> <td>place the agency in violation of federal or state law.</td> </tr> </table>	X	cause an imminent peril to the public health, safety, or welfare;		cause an imminent budget reduction because of budget restraints or federal requirements; or		place the agency in violation of federal or state law.
X	cause an imminent peril to the public health, safety, or welfare;						
	cause an imminent budget reduction because of budget restraints or federal requirements; or						
	place the agency in violation of federal or state law.						

<b>Specific reason and justification:</b>
This emergency rule is necessary to provide continued coverage for Medicaid families during the COVID-19 public health emergency period.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is an increase of about \$109,403,800 to the state budget to help Medicaid families receive coverage through the public health emergency period.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this rule simply helps Medicaid families receive coverage through the public health emergency period.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There is no impact on Medicaid providers and Medicaid members as this rule simply helps Medicaid families receive coverage through the public health emergency period.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply helps Medicaid families receive coverage through the public health emergency period.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as this rule simply helps Medicaid families receive coverage through the public health emergency period.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following</b>
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<b>state and federal laws. State code or constitution citations (required):</b>		
Section 26-1-5	Section 26-18-3	Pub. L. No. 116-127

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-308. Application, Eligibility Determinations, Improper Medical Assistance, and Suspension of Benefits.**

**R414-308-11. Public Health Emergency Provisions.**

(1) In accordance with the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, the Department complies with the provisions of the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116 127, Subsection 6008(b).

(a) The Department shall assure continued coverage through the duration of the emergency period for individuals who are eligible and enrolled on March 18, 2020, the date of enactment of Pub. L. No. 116 127, or who subsequently become eligible and enrolled in medical assistance during the emergency period and any extensions.

(b) In addition to terminating benefits when a beneficiary stops being a Utah resident or upon request by the beneficiary, coverage may only continue through the date of the beneficiary's death.

(2) During the public health emergency period, and any extensions, a hospital provider contracted to complete presumptive eligibility for Medicaid shall complete decisions for the uninsured testing group as defined in Section R414-303-13.

**KEY: public assistance programs, applications, eligibility, Medicaid**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Notice of Continuation: January 8, 2018**

**Authorizing, and Implemented or Interpreted Law: 26-18**

<b>NOTICE OF EMERGENCY (120-DAY) RULE</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-311-7</b>	<b>Filing No. 52882</b>

**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Health Care Financing, Coverage and Reimbursement Policy
<b>Building:</b>	Cannon Health Building
<b>Street address:</b>	288 N 1460 W
<b>Mailing address:</b>	PO Box 143102
<b>City, state, zip:</b>	Salt Lake City, UT 84114-3102
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Craig Devashrayee	801-538-6641	cdevashrayee@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R414-311-7. Public Health Emergency Provisions
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this change is to incorporate coverage and income provisions for the Targeted Adult Medicaid (TAM) Program set forth during the Coronavirus (COVID-19) public health emergency period.
<b>5. Summary of the new rule or change:</b>
This amendment adds a section to the rule, which states that the TAM Program complies with provisions set forth in Section R414-304-17 and Section R414-308-11, in relation to the COVID-19 Pandemic. (EDITOR'S NOTE: The emergency rule on Section R414-304-17 is under Filing No. 52880 and the emergency rule on Section R414-308-11 is under Filing No. 52881 in this issue, July 15, 2020, of the Bulletin.)
<b>6. 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>Specific reason and justification:</b>
This emergency rule is necessary to ensure that members of the TAM Program receive the assistance they need during the COVID-19 public health emergency period.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is an increase of about \$3,829,500 to the state budget to fund the needs of the TAM Program during the COVID-19 public health emergency period.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.

<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as this rule simply assists the TAM Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no impact on Medicaid providers and Medicaid members as this rule simply assists the TAM Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply assists the TAM Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as this rule simply assists the TAM Program during the COVID-19 public health emergency period.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Section 26-1-5      Section 26-18-3

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**  
**R414-311. Targeted Adult Medicaid.**  
**R414-311-7. Public Health Emergency Provisions.**  
 The Targeted Adult Medicaid Program is in accordance with emergency provisions set forth in Section R414-304-17 and Section R414-308-11.

**KEY: Medicaid, Targeted Adult Medicaid, eligibility**  
**Date of Enactment or Last Substantive Amendment: June 24, 2020**  
**Authorizing, and Implemented or Interpreted Law: 26-18**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R414-312-7	Filing No. 52883

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R414-312-7. Public Health Emergency Provisions
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this emergency rule is to incorporate coverage and income provisions for adult Medicaid members set forth during the Coronavirus (COVID-19) public health emergency period.
<b>5. Summary of the new rule or change:</b>
This emergency adds a section to this rule, which states that the Adult Expansion Medicaid Program will be administered in accordance with the provisions set forth in Section R414-304-17 and Section R414-308-11, in relation to the COVID-19 Pandemic. (EDITOR'S NOTE: The emergency rule on Section R414-304-17 is under Filing No. 52880 and the emergency rule on Section R414-308-11 is under Filing No. 52881 in this issue, July 15, 2020, of the Bulletin.)
<b>6. 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>Specific reason and justification:</b>	
This emergency rule is necessary to ensure that adult Medicaid members receive the assistance they need during the COVID-19 public health emergency period.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is an increase of about \$14,779,900 to the state budget to fund the needs of the Adult Medicaid population during the COVID-19 public health emergency period.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as this rule simply assists Medicaid members during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
There is no impact on Medicaid providers and Medicaid members as this rule simply assists Medicaid members during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply assists Medicaid members during the COVID-19 public health emergency period. It neither increases business revenue nor costs.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as this rule simply assists Medicaid members during the COVID-19 public health emergency period.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-312. Adult Expansion Medicaid.**

**R414-312-7. Public Health Emergency Provisions.**

The Adult Expansion Medicaid Program will be administered in accordance with the emergency provisions for Coronavirus (COVID-19) set forth in Section R414-304-17 and Section R414-308-11.

**KEY: Medicaid, adult expansion, eligibility**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Authorizing, and Implemented or Interpreted Law: 26-18**

<b>NOTICE OF EMERGENCY (120-DAY) RULE</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-320-17</b>	<b>Filing No. 52886</b>

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R414-320-17. Public Health Emergency Provisions
<b>3. Effective Date:</b>
06/24/2020

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

The purpose of this emergency rule is to incorporate coverage and income provisions for Utah's Premium Partnership (UPP) for Health Insurance Program set forth during the Coronavirus (COVID-19) public health emergency period.

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

This emergency rule adds a section to this rule, which states that the UPP Program will comply with provisions set forth in Section R414-304-17 and Section R414-308-11, in relation to the COVID-19 Pandemic. (EDITOR'S NOTE: The emergency rule on Section R414-304-17 is under Filing No. 52880 and the emergency rule on Section R414-308-11 is under Filing No. 52881 in this issue, July 15, 2020, of the Bulletin.)

**6. Regular rulemaking would:**

<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.

**Specific reason and justification:**

This emergency rule is necessary to ensure that members of the UPP Program receive the assistance they need during the COVID-19 public health emergency period.

**Fiscal Information**

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

**A) State budget:**

There is an increase of about \$107,400 to the state budget to fund the needs of the UPP Program during the COVID-19 public health emergency period.

**B) Local governments:**

There is no impact on local governments because they neither fund Medicaid eligibility groups nor make eligibility determinations.

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

There is no impact on small businesses as this rule simply assists the UPP Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

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

There is no impact on Medicaid providers and Medicaid members as this rule simply assists the UPP Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

**8. Compliance costs for affected persons:**

There are no compliance costs to a single Medicaid provider or to a Medicaid member as this rule simply assists the UPP Program during the COVID-19 public health emergency period. It neither increases business revenue nor costs.

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

Businesses will see neither revenue nor costs as this rule simply assists the UPP Program during the COVID-19 public health emergency period.

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

Joseph K. Miner, MD, Executive Director

**Citation Information**

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

Section 26-1-5	Section 26-18-3	
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.**

**R414-320-17. Public Health Emergency Provisions.**

Utah's Premium Partnership for Health Insurance (UPP) will be administered in accordance with the emergency provisions for Coronavirus (COVID-19) set forth in Section R414-304-17 and Section R414-308-11.

**KEY: CHIP, Medicaid, PCN, UPP**

**Date of Enactment or Last Substantive Amendment: June 24, 2016**

**Notice of Continuation: February 1, 2016**

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

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-502-3</b>	<b>Filing No. 52884</b>
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**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R414-503-3. Approval of Level of Care
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The purpose of this emergency rule is to allow individuals with Coronavirus (COVID-19), or who experience active symptoms, to receive nursing facility level of care during the public health emergency period.
<b>5. Summary of the new rule or change:</b>
This emergency rule provisions to allow individuals infected by COVID-19 to receive nursing facility level of care. It also includes other admission criteria.
<b>6. 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>Specific reason and justification:</b>
This emergency rule is necessary to allow individuals with COVID-19 to receive nursing facility level of care during the public health emergency period.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as nursing facility level of care falls within current appropriations.

<b>B) Local governments:</b>
There is no impact on local governments as nursing facility level of care falls within current appropriations.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
There is no impact on small businesses as nursing facility level of care falls within current appropriations.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There is no impact on Medicaid providers and Medicaid members as nursing facility level of care falls within current appropriations.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as nursing facility level of care falls within current appropriations.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as nursing facility level of care falls within current appropriations.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
Section 26-1-5      Section 26-18-3

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-502. Nursing Facility Levels of Care.**

**R414-502-3. Approval of Level of Care.**

(1) The Department shall document that at least two of the following factors exist when it determines whether an applicant has mental or physical conditions that require the level of care provided in a nursing facility or equivalent care provided through a Medicaid Home and Community-Based Waiver program:

(a) Due to diagnosed medical conditions, the applicant requires substantial physical assistance with daily living activities above the level of verbal prompting, supervising, or setting up;

(b) The attending physician has determined that the applicant's level of dysfunction in orientation to person, place, or time requires nursing facility care; or equivalent care provided through a Medicaid Home and Community-Based Waiver program[-]; or

(c) The medical condition and intensity of services indicate that the care needs of the applicant cannot be safely met in a less structured setting, or without the services and supports of a Medicaid Home and Community-Based Waiver program.

(2) The Department shall determine whether at least two of the factors described in Subsection R414-502-3(1) exist by reviewing the following clinical documentation:

(a) A current history and physical examination completed by a physician;

(b) A comprehensive resident assessment completed, coordinated and certified by a registered nurse;

(c) A social services evaluation that meets the criteria in 42 CFR 456.370 and completed by a person licensed as a social worker, or higher degree of training and licensure;

(d) A written plan of care established by a physician;

(e) A physician's written certification that the applicant requires nursing facility placement; and

(f) Documentation which indicates that all less restrictive alternatives or services to prevent or defer nursing facility care have been explored.

(3) If the Department finds that at least two of the factors described in Section R414-502-3(1) exist, the Department shall determine whether the applicant meets nursing facility level of care and is medically-approved for Medicaid reimbursement of nursing facility services or equivalent care provided through a Medicaid Home and Community-Based Waiver program. Meeting medical eligibility for nursing facility services does not guarantee Medicaid payment. Financial eligibility and other Home and Community-Based Waiver targeting criteria shall apply.

(4) During the Coronavirus (COVID-19) public health emergency period, an individual shall temporarily meet nursing facility level of care for a period of illness, when the individual:

(a) is COVID-19 positive;

(b) is experiencing active COVID-19 symptoms;

(c) is admitting directly from:

(i) a licensed assisted living facility;

(ii) a licensed intermediate care facility for people with intellectual disabilities; or

(iii) an acute care, inpatient hospital.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Notice of Continuation: May 31, 2019**

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

<b>NOTICE OF EMERGENCY (120-DAY) RULE</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R414-510-2</b>	<b>Filing No. 52885</b>

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>	
R414-510-2. Definitions	
<b>3. Effective Date:</b>	
06/24/2020	
<b>4. Purpose of the new rule or reason for the change:</b>	
The purpose of this emergency rule is to provide individuals concerned with the Coronavirus (COVID-19) Pandemic, additional breaks in stay at intermediate care facilities (ICFs), to help them qualify for services within the Community Supports Waiver (CSW).	
<b>5. Summary of the new rule or change:</b>	
This emergency rule adjusts the definition for "length of stay to provide additional breaks in stay at ICFs for individuals concerned with COVID-19, who wish to qualify for CSW services.	
<b>6. 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>Specific reason and justification:</b>	
This emergency rule is necessary to provide individuals concerned with COVID-19 the opportunity to qualify for CSW services.	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no impact to the state budget as waiver services fall within appropriations set forth by the Legislature.
<b>B) Local governments:</b>
There is no impact on local governments because they neither fund nor provide waiver services under the Medicaid program.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no impact on small businesses as waiver services fall within appropriations set forth by the Legislature.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b>):</b>
There is no impact on Medicaid providers and Medicaid members as waiver services fall within appropriations set forth by the Legislature.
<b>8. Compliance costs for affected persons:</b>
There are no compliance costs to a single Medicaid provider or to a Medicaid member as waiver services fall within appropriations set forth by the Legislature.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
Businesses will see neither revenue nor costs as waiver services fall within appropriations set forth by the Legislature.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Joseph K. Miner, MD, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 26-1-5	Section 26-18-3	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Joseph K. Miner, MD, Executive Director	<b>Date:</b>	06/23/2020
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**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.**

**R414-510-2. Definitions.**

(1) "Departments" means the Utah Department of Health and the Utah Department of Human Services.

(2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(3) "Guardian" means an individual, who is legally authorized to make decisions on an individual's behalf.

(4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately-owned intermediate care facilities for individuals with intellectual disabilities.

(6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state of Utah. The Departments consider a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days, Breaks in stay due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence, if due to health concerns related to COVID-19, will not be considered a break in stay when evaluating Subsection R414-510-3(5).

(7) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(8) "State staff" means employees of the Division of Medicaid and Health Financing or the Division of Services for People with Disabilities.

(9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Notice of Continuation: October 12, 2016**

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

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R477-7-20	Filing No. 52907

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Building:</b>	State Office Building
<b>Street address:</b>	2120 State Office Building

<b>City, state, zip:</b>	Salt Lake City, Utah 84114	
<b>Mailing address:</b>	2120 State Office Building	
<b>City, state, zip:</b>	Salt Lake City, Utah 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R477-7-20. Postpartum Recovery Leave
<b>3. Effective Date:</b>
07/01/2020
<b>4. Purpose of the new rule or reason for the change:</b>
The legislature postponed the effective date of the underlying statute (Section 67-19-14.7) on 06/18/2020 (S.B. 5021, passed in the 2020 Fifth Special Session).
<b>5. Summary of the new rule or change:</b>
This emergency rule removes Section R477-7-20 as the program implementation was postponed. (EDITOR'S NOTE: A corresponding proposed amendment is under Filing No. 52913 in this issue, July 15, 2020, of the Bulletin.)
<b>6. Regular rulemaking would:</b>
<input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare;
<input checked="" 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>Specific reason and justification:</b>
Program implementation was postponed along with its funding.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
In the 2020 General Session, S.B. 207 appropriated \$507,000 to fund postpartum recovery leave. This funding was pulled in the 2020 Fifth Special Session under S.B. 5021. Removing this section implementing postpartum recovery leave ensures that there can be no claim for leave which is no longer funded.

<b>B) Local governments:</b>
This emergency rule is not expected to have any fiscal impact on local governments because this rule only applies to the executive branch of state government.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This emergency rule is not expected to have any fiscal impact on small businesses because this rule only applies to the executive branch of state government.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
This emergency rule is not expected to have any fiscal impact on other individuals because this rule only applies to the executive branch of state government.
<b>8. Compliance costs for affected persons:</b>
There are no direct compliance costs for this change. This rule only effects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
After conducting a thorough analysis, it was determined that these proposed rule changes will not result in a fiscal impact to businesses. Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and this rule to employees of the executive branch of state government.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Paul Garver, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 67-19-14.7		

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryan Embley, HR Strategy Consultant	<b>Date:</b>	06/22/2020
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**R477. Human Resource Management, Administration.**

**R477-7. Leave.**

~~[R477-7-20. Postpartum Recovery Leave.~~

~~Postpartum recovery leave means leave hours a state employer provides to an eligible employee to recover from childbirth.~~

~~(1) An employee is eligible for postpartum recovery leave when:~~

~~(a) the employee is eligible for benefits under Subsections R477-6-8(1) and R477-7-1(1);~~

~~(b) the employee is not reemployed post retirement as defined in Section 49-11-1202;~~

~~(c) the employee gives birth to a child; and~~

~~(d) the employee is not an employee of:~~

~~(i) the State Board of Education; or~~

~~(ii) an independent entity as defined in Section 63E-1-102.~~

~~(2) Agency management shall grant paid leave to an eligible employee who requests postpartum recovery leave.~~

~~(a) An eligible employee may receive up to three weeks of paid leave based on the employee's normal work schedule, including normally scheduled work hours in excess of 40 hours per week.~~

~~(b) The amount of leave does not change if there are multiple births from a single pregnancy.~~

~~(c) Postpartum recovery leave shall begin on the date the employee gives birth unless a health care provider certifies the medical necessity of an earlier start date.~~

~~(d) Postpartum recovery leave may not be used intermittently.~~

~~(e) Postpartum recovery leave runs concurrently with leave under Section R477-7-15.~~

~~(f) Postpartum recovery leave may not be charged against any accrued leave balance on the employee's record.~~

~~(3) To request postpartum recovery leave, the employee or an appropriate spokesperson shall notify management of the need for leave:~~

~~(a) thirty days in advance; or~~

~~(b) as soon as practicable in emergencies.~~

~~(4) No person may interfere with an employee's intent to use postpartum recovery leave or retaliate against an employee who receives postpartum recovery leave.]~~

**KEY: holidays, leave benefits, vacations**

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

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14[; 67-19-14.7]**

**NOTICE OF EMERGENCY (120-DAY) RULE**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R990-400</b>	<b>Filing No. 52887</b>
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**Agency Information**

<b>1. Department:</b>	Workforce Services
<b>Agency:</b>	Housing and Community Development
<b>Building:</b>	Olene Walker Building
<b>Street address:</b>	140 E 300 S
<b>City, state, zip:</b>	Salt Lake City, Utah 84111
<b>Mailing address:</b>	PO Box 45244
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244

Contact person(s):		
Name:	Phone:	Email:
Amanda B. McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R990-400. Pandemic Housing Assistance
<b>3. Effective Date:</b>
06/24/2020
<b>4. Purpose of the new rule or reason for the change:</b>
This first emergency rule establishes criteria to administer funds received from the Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. 116-136, and any funds appropriated by the Legislature, to assist individuals negatively impacted by the COVID-19 pandemic with retaining or obtaining housing.
<b>5. Summary of the new rule or change:</b>
This first emergency rule was effective from 06/24/2020 to 07/06/2020. It was superseded on 07/06/2020 by the second emergency rule Filing No. 52920. This emergency rule explains how the Department of Workforce Services, Housing and Community Development will administer a housing program to assist state residents financially harmed by the COVID-19 pandemic. (EDITOR'S NOTE: The second emergency rule for Rule R990-400 is under Filing No. 52920 in this issue, July 15, 2020, of the Bulletin.)
<b>6. 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>Specific reason and justification:</b>
Due to the COVID-19 pandemic, there are residents who have lost employment through no fault of their own and need immediate assistance to retain or obtain housing. New programs are needed to support individuals who are at risk of losing housing due to loss of income caused by the COVID-19 pandemic. Without this emergency rule, households may not be able to meet their housing obligations which will negatively impact both landlords and financial institutions securing mortgages. The emergency rule is being enacted to allow assistance to be provided immediately while regular rulemaking is pursued.

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Any fiscal impact on state budget revenues or expenditures were accounted for by the fiscal note to S.B. 5005, passed in the 2020 Fifth Special Session. This emergency rule 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 emergency rule. This emergency rule will not increase workload and can be carried out with the existing budget.
<b>B) Local governments:</b>
The emergency rule is not expected to have any fiscal impacts on local governments' revenues or expenditures because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
The emergency rule is expected to have a positive fiscal impact on small businesses by enabling residents to continue making timely payments of rent.
<b>D) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
It is anticipated that this emergency rule will have a positive fiscal impact on other persons by allowing households to receive housing support payments.
<b>8. Compliance costs for affected persons:</b>
The emergency rule is not expected to cause any compliance costs for affected persons. There are no administrative fees with the emergency rule.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
After conducting a thorough analysis, it was determined that this emergency rule will result in a positive fiscal impact to businesses.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
Jon Pierpont, Executive Director

**Citation Information**

<b>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>
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NOTICES OF 120-DAY (EMERGENCY) RULES

Section 35A-8-2302		
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jon Pierpont, Executive Director	<b>Date:</b>	06/24/2020
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**R990. Workforce Services, Housing and Community Development.**

**R990-400. Pandemic Housing Assistance**

**R990-400-1. Purpose.**

The purpose of this rule is to establish criteria to administer funds the state receives from the Coronavirus Relief Fund described in the CARES Act for housing assistance.

**R990-400-2. Authority. Duties of Divisions within the Department.**

Section 35A-8-2302 requires HCDD to assist state residents financially harmed on or after March 1, 2020 to retain or obtain housing by using funds the state receives from the Coronavirus Relief Fund described in the CARES Act.

**R990-400-3. Definitions.**

Terms used in these rules are defined in Section 35A-8-2301. In addition:

(1) "CARES Act" means Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136.

(2) "HCDD" means Department of Workforce Services, Housing and Community Development Division.

(3) "Unemployment benefits" means regular compensation or extended benefits under State or Federal law, pandemic emergency unemployment compensation, or pandemic unemployment assistance.

**R990-400-4. Applicant Qualifications.**

(1) An individual shall submit an application to the eligible agency for the individual's county of residence to be considered for assistance. A list of eligible entities for each county is available on the Department of Workforce Services website.

(2) An individual may be eligible for assistance if that person meets one of the following:

(a) the individual does not qualify for unemployment benefits;

(b) the individual is working, has experienced a reduction in regular pay, and is not eligible for unemployment benefits;

(c) the individual has applied for unemployment benefits and has not yet received an approval or denial; or

(d) the individual meets any other eligibility requirement published by HCDD on the Department of Workforce Services website.

**R990-400-5. Eligible Agency.**

(1) HCDD shall select an eligible entity for each county to operate the housing assistance program for residents of the county.

(2) An eligible agency may be:

(a) a non-profit organization; or

(b) an association of governments.

(3) An eligible entity may choose to subcontract all program operations with advance written approval from HCDD.

**R990-400-6. Use of Funds.**

(1) Pandemic Housing Assistance funds shall be distributed to an eligible agency.

(2) An eligible agency shall pay Pandemic Housing Assistance funds directly to the landlord of an eligible applicant.

(3) Pandemic Housing Assistance may be used to pay:

(a) rent;

(b) mortgage;

(c) a utility payment;

(d) a security deposit; or

(e) arrears.

**R990-400-7. Determination of Funding Amounts.**

(1) HCDD shall allocate the available funding based on the percentage of renters by county compared to the state's total housing population.

(2) An eligible agency will receive the funding amount for each county the agency serves.

**KEY: pandemic housing assistance, antipoverty programs**

**Date of Enactment or Last Substantive Amendment: June 24, 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-8-2302**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R990-400	Filing No. 52920

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Housing and Community Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda B. McPeck	801-517-4709	ampeck@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R990-400. Pandemic Housing Assistance
<b>3. Effective Date:</b>
07/06/2020
<b>4. Purpose of the new rule or reason for the change:</b>
This second emergency rule supersedes the previous emergency rule Filing No. 52887. One change has been

made for clarity. The word "all" has been changed to "any" in Subsection R990-400-5(3). The emergency rule establishes criteria to administer funds received from the Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. 116-136, and any funds appropriated by the Legislature, to assist individuals negatively impacted by the COVID-19 pandemic with retaining or obtaining housing. (EDITOR'S NOTE: The first emergency rule filing for Rule R990-400 is under No. 52887 in this issue, July 15, 2020, of the Bulletin.)

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

This emergency rule explains how the Department of Workforce Services, Housing and Community Development will administer a housing program to assist state residents financially harmed by the COVID-19 pandemic. (EDITOR'S NOTE: A corresponding proposed new Rule R990-400 is under Filing No. 52888 in this issue, July 15, 2020, of the Bulletin.)

**6. Regular rulemaking would:**

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

**Specific reason and justification:**

Due to the COVID-19 pandemic, there are residents who have lost employment through no fault of their own and need immediate assistance to retain or obtain housing. New programs are needed to support individuals who are at risk of losing housing due to loss of income caused by the COVID-19 pandemic. Without this emergency rule, households may not be able to meet their housing obligations which will negatively impact both landlords and financial institutions securing mortgages. This emergency rule is being enacted to allow assistance to be provided immediately while regular rulemaking is pursued.

**Fiscal Information**

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

**A) State budget:**

Any fiscal impact on state budget revenues or expenditures were accounted for by the fiscal note to S.B. 5005, passed in the 2020 Fifth Special Session. This emergency rule is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee this new emergency rule. This emergency rule will not increase workload and can be carried out with the existing budget.

**B) Local governments:**

This emergency rule 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 emergency rule is expected to have a positive fiscal impact on small businesses, by enabling residents to continue making timely payments of rent.

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

It is anticipated that this emergency rule will have a positive fiscal impact on other persons by allowing households to receive housing support payments.

**8. Compliance costs for affected persons:**

This emergency rule is not expected to cause any compliance costs for affected persons. There are no administrative fees with this emergency rule.

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

After conducting a thorough analysis, it was determined that this emergency rule will result in a positive fiscal impact to businesses.

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

Jon Pierpont, Executive Director

**Citation Information**

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

Section 35A-8-2302		
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jon Pierpont, Executive Director	<b>Date:</b>	07/06/2020
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NOTICES OF 120-DAY (EMERGENCY) RULES

**R990. Workforce Services, Housing and Community Development.**

**R990-400. Pandemic Housing Assistance**

**R990-400-1. Purpose.**

The purpose of this rule is to establish criteria to administer funds the state receives from the Coronavirus Relief Fund described in the CARES Act for housing assistance.

**R990-400-2. Authority. Duties of Divisions within the Department.**

Section 35A-8-2302 requires HCDD to assist state residents financially harmed on or after March 1, 2020 to retain or obtain housing by using funds the state receives from the Coronavirus Relief Fund described in the CARES Act.

**R990-400-3. Definitions.**

Terms used in these rules are defined in Section 35A-8-2301. In addition:

(1) "CARES Act" means Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136.

(2) "HCDD" means Department of Workforce Services, Housing and Community Development Division.

(3) "Unemployment benefits" means regular compensation or extended benefits under State or Federal law, pandemic emergency unemployment compensation, or pandemic unemployment assistance.

**R990-400-4. Applicant Qualifications.**

(1) An individual shall submit an application to the eligible agency for the individual's county of residence to be considered for assistance. A list of eligible entities for each county is available on the Department of Workforce Services website.

(2) An individual may be eligible for assistance if that person meets one of the following:

(a) the individual does not qualify for unemployment benefits;

(b) the individual is working, has experienced a reduction in regular pay, and is not eligible for unemployment benefits;

(c) the individual has applied for unemployment benefits and has not yet received an approval or denial; or

(d) the individual meets any other eligibility requirement published by HCDD on the Department of Workforce Services website.

**R990-400-5. Eligible Agency.**

(1) HCDD shall select an eligible entity for each county to operate the housing assistance program for residents of the county.

(2) An eligible agency may be:

(a) a non-profit organization; or

(b) an association of governments.

(3) An eligible entity may choose to subcontract any program operations with advance written approval from HCDD.

**R990-400-6. Use of Funds.**

(1) Pandemic Housing Assistance funds shall be distributed to an eligible agency.

(2) An eligible agency shall pay Pandemic Housing Assistance funds directly to the landlord of an eligible applicant.

(3) Pandemic Housing Assistance may be used to pay:

(a) rent;

(b) mortgage;

(c) a utility payment;

(d) a security deposit; or

(e) arrears.

**R990-400-7. Determination of Funding Amounts.**

(1) HCDD shall allocate the available funding based on the percentage of renters by county compared to the state's total housing population.

(2) An eligible agency will receive the funding amount for each county the agency serves.

**KEY: pandemic housing assistance, antipoverty programs**

**Date of Enactment or Last Substantive Amendment: July 6, 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-8-2302**

**End of the Notices of 120-Day (Emergency) Rules Section**

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

**REVIEWS** are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R251-301	Filing No. 50364

### Agency Information

<b>1. Department:</b>	Corrections	
<b>Agency:</b>	Administration	
<b>Street address:</b>	14717 S Minuteman Dr	
<b>City, state, zip:</b>	Draper, UT 84020	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gehrke	385-237-8040	sgehrke@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R251-301. Employment, Educational or Vocational Training for Community Correctional Center Offenders
<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 Sections 63G-3-201, 64-13-10, and 64-13-14.5 of the Utah Code. The purpose of this rule is to provide the requirements for employers who employ offenders. This rule also provides the requirements for offenders' participation in an educational or vocational training program.

<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments on this rule 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>
The purpose of this rule is to provide the requirements for employers who employ offenders and the requirements for offenders' participation in education or vocational training program. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Mike Haddon, Executive Director	<b>Date:</b>	06/10/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R251-709	Filing No. 50367

### Agency Information

<b>1. Department:</b>	Corrections
<b>Agency:</b>	Administration
<b>Street address:</b>	14717 S Minuteman Dr
<b>City, state, zip:</b>	Draper, UT 84020
<b>Contact person(s):</b>	

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gehrke	385-237-8040	sgehrke@utah.gov
Please address questions regarding information on this notice to the agency.		

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7656	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R251-709. Transportation of Inmates
<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 under Sections 63G-3-201 and 64-13-10 of the Utah Code. This rule addresses requirements regarding the transportation of inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department of Corrections (Department).
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments on this rule 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>
The purpose of this rule is to address transportation requirements for inmates in order to provide for public safety and the security of inmates under the jurisdiction of the Department. Therefore, this rule should be continued.

**General Information**

<b>2. Rule catchline:</b>
R277-303. Educator Preparation Programs
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the State Board of Education (Board); Subsection 53E-3-401(4) allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Subsection 53E-6-201(3)(a) allows the Board to establish the criteria for obtaining licenses; and Section 53E-6-302 requires the Board to establish standards for approval of educator preparation programs.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There were no written comments received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is still necessary because it establishes criteria for educator preparation programs in the . Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Haddon, Executive Director	<b>Date:</b>	06/30/2020
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	06/05/2020
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R277-303</b>	<b>Filing No. 50393</b>

<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R477-16</b>	<b>Filing No. 51166</b>

**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state, zip:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200

**Agency Information**

<b>1. Department:</b>	Human Resource Management
<b>Agency:</b>	Administration
<b>Building:</b>	State Office Building
<b>Street address:</b>	2120 State Office Building

<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	2120 State Office Building	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bryan Embley	801-618-6720	Bkembley@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R477-16. Abusive Conduct Prevention
<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 67-19-44(4) requires the Department of Human Resource Management (DHRM) to "amend" administrative rules to govern abusive conduct prevention as follow up to the original statutory requirement from 2015 to create the rule.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received by DHRM regarding this rule since its propagation in 2015.
<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>
Since Section 67-19-44 is still in effect and requires DHRM to maintain this rule in order to implement the statutory abusive conduct requirements in the executive branch of state government, therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Bryan Embley, HR Strategy Consultant	<b>Date:</b>	06/22/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R497-100</b>	<b>Filing No. 51178</b>

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Administration, Hearings	Administrative

<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Jonah Shaw	801-538-4219	jshaw@utah.gov
Sonia Sweeney	801-538-8241	ssweeney@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R497-100. Adjudicative Proceedings
<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>
Authority granted through Section 62A-1-111, and the Administrative Procedures Act established in Section 63G-4-103, the Department of Human Services and the Office of Administrative Hearings have establish the standards of adjudicative proceedings through this rule.
<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 during and since the last five-year review of 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>
The continuation of this rule is justifiable as it establishes the Office of Administrative Hearings adjudicative proceedings; specifically, the form of proceedings, exceptions, commencement, availability, procedures for informal proceedings, declaratory orders, agency review, reconsideration, scope, and applicability.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark Brasher, Deputy Director	<b>Date:</b>	06/19/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R698-6</b>	<b>Filing No. 51860</b>

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

**Agency Information**

<b>1. Department:</b>	Public Safety	
<b>Agency:</b>	Administration	
<b>Building:</b>	Calvin Rampton Complex	
<b>Street address:</b>	4501 S 2700 W 1st Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84119-5994	
<b>Mailing address:</b>	PO Box 141775	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-1775	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R698-6. Honoring Heroes Restricted Account
<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 53-1-118, which provides that the commissioner shall make rules providing procedures for an organization to apply to receive funds from the account.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

There have been no written comments received during and since the last five-year review of this rule.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule is required under Section 53-1-118, and is necessary in order to outline the procedures for an organization to apply for and be awarded funds from the Public Safety Honoring Heroes Restricted Account. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jess L. Anderson, Commissioner	<b>Date:</b>	06/30/2020
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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		
Utah Admin. Code Ref (R no.):	R277-418	Filing No. 50417

### Agency Information

<b>1. Department:</b>	Education	
<b>Agency:</b>	Administration	
<b>Building:</b>	Board of Education	
<b>Street address:</b>	250 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 144200	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-4200	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R277-418. Distance, Blended, Online, or Competency Based Learning Program
<b>3. Reason for requesting the extension and the new deadline date:</b>
This extension would provide Utah State Board of Education (USBE) enough time to decide whether to repeal (and file the repeal and make it effective) or continue the rule, based on the Board's decision to repeal the rule during the 07/09/2020 Board meeting. The new deadline is 11/05/2020.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent	<b>Date:</b>	06/24/2020
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### NOTICE OF FIVE-YEAR REVIEW EXTENSION

Utah Admin. Code Ref (R no.):	R356-2	Filing No. 50850
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### Agency Information

<b>1. Department:</b>	Governor	
<b>Agency:</b>	Criminal and Juvenile Justice (State Commission on)	
<b>Room no.:</b>	Suite 330	
<b>Building:</b>	Senate Building	
<b>Street address:</b>	350 N State Street	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142330	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2330	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Cordova	801-598-14312	kimcordova@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R356-2. Judicial Nominating Commissions

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

**3. Reason for requesting the extension and the new deadline date:**

Due to a change in personnel, the review was not ready by the deadline. The Commission requests an extension to get the five-year review done. The new deadline is 10/24/2020.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Kim Cordova, Executive Director	<b>Date:</b>	06/30/2020
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**End of the Notices of Five-Year Review Extensions 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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### Administrative Services

#### Debt Collection

No. 52679 (Amendment): R21-3 Debt Collection Through Administrative Offset  
Published: 05/15/2020  
Effective: 06/22/2020

#### Risk Management

No. 52678 (Amendment): R37-4 Adjusted Utah Governmental Immunity Act Limitations on Judgments.  
Published: 05/15/2020  
Effective: 07/01/2020

### Agriculture and Food

#### Animal Industry

No. 52706 (New Rule): R58-26 Custom Exempt Slaughter Verification of Ownership  
Published: 05/15/2020  
Effective: 07/07/2020

#### Chemistry Laboratory

No. 52729 (Repeal): R63-1 Fee Schedule  
Published: 05/15/2020  
Effective: 07/07/2020

### Commerce

#### Consumer Protection

No. 52767 (New Rule): R152-57 Maintenance Funding Practices Act Rule  
Published: 06/01/2020  
Effective: 07/09/2020

### Occupational and Professional Licensing

No. 52708 (Amendment): R156-15a Administration of Building Code Inspector Training Fund, Building Code Construction-Related Training Fund, and Factory Built Housing Fees Account  
Published: 05/15/2020  
Effective: 06/23/2020

No. 52675 (Amendment): R156-79 Hunting Guides and Outfitters Licensing Act Rule  
Published: 05/15/2020  
Effective: 06/23/2020

### Real Estate

No. 52654 (Amendment): R162-2c Justin Barney  
Published: 05/15/2020  
Effective: 07/08/2020

No. 52645 (Amendment): R162-2g Real Estate Appraiser Licensing and Certification Administrative Rules  
Published: 05/15/2020  
Effective: 06/30/2020

### Education

#### Administration

No. 52770 (Amendment): R277-101 Public Participation in Utah State Board of Education Meetings  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52771 (Amendment): R277-301 Educator Licensing  
Published: 06/01/2020  
Effective: 07/09/2020

NOTICES OF RULE EFFECTIVE DATES

No. 52773 (New Rule): R277-302 Educator Licensing Renewal  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52741 (Amendment): R277-304 Teacher Preparation Programs  
Published: 05/15/2020  
Effective: 06/22/2020

No. 52774 (Amendment): R277-306 Educator Preparation Programs for School Psychologists, Audiologists, Speech-Language Pathologists, Speech-Language Technicians, Counselors, and School Social Workers  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52775 (New Rule): R277-326 Early Learning Professional Learning Grant Program  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52776 (New Rule): R277-327 School Leadership Development Grant.  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52777 (Amendment): R277-406 Early Literacy Program and Benchmark Reading Assessment  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52742 (Amendment): R277-415 School Nurses Matching Funds  
Published: 05/15/2020  
Effective: 06/22/2020

No. 52769 (Amendment): R277-419 Pupil Accounting  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52778 (New Rule): R277-476 Civics Engagement Pilot Program.  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52779 (Amendment): R277-489 Kindergarten Entry and Exit Assessment - Early Intervention Program  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52780 (Amendment): R277-490 Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52781 (Repeal): R277-493 Kindergarten Supplemental Enrichment Program  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52782 (Repeal): R277-500 Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52783 (Amendment): R277-603 Autism Awareness Restricted Account Distribution  
Published: 06/01/2020  
Effective: 07/09/2020

No. 52743 (Amendment): R277-712 Competency-based Grant Programs  
Published: 05/15/2020  
Effective: 06/22/2020

No. 52744 (New Rule): R277-736 Juvenile Court or Law Enforcement Notice and Information Dissemination  
Published: 05/15/2020  
Effective: 06/22/2020

Governor

Economic Development

No. 52785 (New Rule): R357-29 Rural County Grant Program Rule  
Published: 06/01/2020  
Effective: 07/09/2020

Health

Disease Control and Prevention, Health Promotion

No. 52772 (Amendment): R384-201 School-Based Vision Screening for Students in Public Schools  
Published: 06/01/2020  
Effective: 07/09/2020

Health Care Financing, Coverage and Reimbursement Policy

No. 52668 (Amendment): R414-60 Limitations  
Published: 05/01/2020  
Effective: 06/19/2020

No. 52745 (Amendment): R414-401 Assessment  
Published: 05/15/2020  
Effective: 07/01/2020

No. 52746 (Amendment): R414-506 Hospital Provider Assessments  
Published: 05/15/2020  
Effective: 07/01/2020

No. 52632 (Amendment): R414-516 Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program  
Published: 04/15/2020  
Effective: 06/19/2020

No. 52747 (Amendment): R414-517 Inpatient Hospital Provider Assessments  
Published: 05/15/2020  
Effective: 07/01/2020

Family Health and Preparedness, Emergency Medical Services  
 No. 52667 (Amendment): R426-8 Emergency Medical Services Ground Ambulance Rates and Charges  
 Published: 05/01/2020  
 Effective: 07/01/2020

Family Health and Preparedness, Maternal and Child Health  
 No. 52740 (New Rule): R433-2 Early Childhood Utah Advisory Council Membership, Duties and Procedures  
 Published: 05/15/2020  
 Effective: 06/22/2020

#### Human Resource Management

##### Administration

No. 52709 (Amendment): R477-1 Definitions  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52713 (Amendment): R477-2 Administration  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52714 (Amendment): R477-3 Classification  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52715 (Amendment): R477-4 Filling Positions  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52716 (Amendment): R477-5 Employee Status and Probation  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52717 (Amendment): R477-6 Compensation  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52718 (Amendment): R477-7 Leave  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52719 (Amendment): R477-8 Working Conditions  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52720 (Amendment): R477-9 Employee Conduct  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52721 (Amendment): R477-10 Employee Development  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52722 (Amendment): R477-11 Discipline  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52723 (Amendment): R477-12 Separations  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52724 (Amendment): R477-13 Volunteer Programs  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52725 (Amendment): R477-14 Substance Abuse and Drug-Free Workplace  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52726 (Amendment): R477-15 Workplace Harassment Prevention  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52727 (Amendment): R477-16 Abusive Conduct Prevention  
 Published: 05/15/2020  
 Effective: 07/01/2020

No. 52728 (Amendment): R477-101 Administrative Law Judge Conduct Committee  
 Published: 05/15/2020  
 Effective: 07/01/2020

##### Recovery Services

No. 52710 (Amendment): R527-258 Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program  
 Published: 05/15/2020  
 Effective: 06/22/2020

#### Natural Resources

##### Wildlife Resources

No. 52734 (Amendment): R657-5 Taking Big Game  
 Published: 05/15/2020  
 Effective: 06/22/2020

No. 52735 (Amendment): R657-10 Taking Cougar  
 Published: 05/15/2020  
 Effective: 06/22/2020

No. 52736 (Amendment): R657-33 Taking Bear  
 Published: 05/15/2020  
 Effective: 06/22/2020

No. 52737 (Amendment): R657-37 Cooperative Wildlife Management Units for Big Game or Turkey  
 Published: 05/15/2020  
 Effective: 06/22/2020

No. 52673 (Amendment): R657-57 Division Variance Rule  
 Published: 05/15/2020  
 Effective: 06/22/2020

No. 52738 (Amendment): R657-62 Drawing Applications  
 Published: 05/15/2020  
 Effective: 06/22/2020

NOTICES OF RULE EFFECTIVE DATES

Public Service Commission

Administration

No. 52732 (Amendment): R746-8 Calculation and

Application of UUSF Surcharge

Published: 06/01/2020

Effective: 07/08/2020

Utility Facility Review Board

No. 52739 (New Rule): R747-1 Utility Facility Review Board Rule

Published: 06/01/2020

Effective: 07/09/2020

Tax Commission

Auditing

No. 52762 (Amendment): R865-19S-99 Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104

Published: 06/01/2020

Effective: 07/09/2020

No. 52763 (Amendment): R865-19S-85 Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104

Published: 06/01/2020

Effective: 07/09/2020

No. 52764 (Amendment): R865-19S-35 Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104

Published: 06/01/2020

Effective: 07/09/2020

Motor Vehicle Enforcement

No. 52694 (Amendment): R877-23V-24 Advisory Board Procedures

Published: 05/15/2020

Effective: 07/09/2020

No. 52761 (Amendment): R877-23V-23 Secure Areas

Published: 06/01/2020

Effective: 07/09/2020

**End of the Notices of Rule Effective Dates Section**