

# UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

<b>NOTICES OF PROPOSED RULES .....</b>	<b>1</b>
AGRICULTURE AND FOOD	
Plant Industry	
R68-11. Quarantine Pertaining the Emerald Ash Borer .....	2
NATURAL RESOURCES	
Wildlife Resources	
R657-62. Drawing Application Procedures .....	5
WORKFORCE SERVICES	
Employment Development	
R986-700-901. Unearned Income, Pandemic .....	7
Unemployment Insurance	
R994-302-102. Due Dates for Contribution Payments .....	9
R994-302-103. Contribution Payments .....	12
R994-302-104. Due Dates for Filing Contribution and Equivalent Reports .....	14
<b>NOTICES OF CHANGES IN PROPOSED RULES .....</b>	<b>17</b>
ENVIRONMENTAL QUALITY	
Water Quality	
R317-8. Utah Pollutant Discharge Elimination System (UPDES) .....	18
HEALTH	
Disease Control and Prevention, Health Promotion	
R384-415. Electronic Cigarette Substance Standards .....	22
Health Care Financing, Coverage and Reimbursement Policy	
R414-12. Laboratory Services .....	27
<b>NOTICES OF 120-DAY (EMERGENCY) RULES .....</b>	<b>31</b>
SCHOOL AND INSTITUTIONAL TRUST LANDS	
Administration	
R850-80. Sale of Trust Lands .....	31
WORKFORCE SERVICES	
Employment Development	
R986-700-901. Unearned Income, Pandemic .....	36
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION .....</b>	<b>39</b>

TABLE OF CONTENTS

AGRICULTURE AND FOOD

    Marketing and Development

        R65-8. Management of the Junior Livestock Show Appropriation.....39

FAIR CORPORATION (UTAH STATE)

    Administration

        R325-1. Utah State Fair Competitive Exhibitor Rules .....40

        R325-2. Utah State Fair Commercial Exhibitor Rules .....40

        R325-3. Utah State Fair Patron Rules .....41

        R325-4. Interim Patron Rules (Other Than Utah State Fair) .....41

        R325-5. Interim Renters Rules (Other Than Utah State Fair) .....42

HEALTH

    Disease Control and Prevention, Laboratory Improvement

        R444-1. Approval of Clinical Laboratories .....43

INSURANCE

    Administration

        R590-144. Commercial Aviation Insurance Exemption From Rate and From Filings .....43

        R590-177. Life Insurance Illustrations Rule.....44

        R590-200. Diabetes Treatment and Management .....44

LABOR COMMISSION

    Antidiscrimination and Labor, Antidiscrimination

        R606-1. Antidiscrimination .....45

MONEY MANAGEMENT COUNCIL

    Administration

        R628-12. Certification of Qualified Depositories for Public Funds .....46

        R628-13. Collateralization of Public Funds.....46

        R628-16. Certification as a Dealer.....47

**NOTICES OF RULE EFFECTIVE DATES .....49**

## 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 February 17, 2021, 12:00 a.m., and March 01, 2021, 11:59 p.m. are included in this, the March 15, 2021, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least April 14, 2021. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through July 13, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R68-11	Filing No. 53328

**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
Robert Hougaard	801-982-2305	rhougaard@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>
R68-11. Quarantine Pertaining the Emerald Ash Borer
<b>3. Purpose of the new rule or reason for the change:</b>
This new rule is authorized by authority granted to the Department of Agriculture and Food (Department) in Subsection 4-2-103(1)(k)(ii) and Section 4-35-109. This rule provides for a quarantine of the emerald ash borer and sets guidelines related to that quarantine.
<b>4. Summary of the new rule or change:</b>
This rule provides guidelines governing the quarantine of emerald ash borer in the . This includes identification of areas under quarantine, regulated articles, and restrictions, as well as exemptions to the quarantine and requirements to qualify for an exemption.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There would be no anticipated cost or savings to the state budget related to this new rule. The work required by the quarantine is already occurring within the Department's nursery and inspection program. Review of compliance

agreements and shipments are a current routine inspection practice.

**B) Local governments:**

There is no anticipated cost or savings to local governments because they do not bring emerald ash borer into the state or regulate emerald ash borer.

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

There are no direct cost or savings to Utah small businesses related to this rule. The only potential cost would be on nurseries located in other states that are attempting to ship to Utah.

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

There are no direct cost or savings to Utah non-small businesses related to this rule. The only potential cost would be on nurseries located in other states that are attempting to ship to Utah.

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

There are no anticipated costs or savings to other persons. No Department fees have been changed by the addition of this rule.

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

There should be no direct changes in compliance costs by affected persons in the because this rule involves the entrance of emerald ash borer into the state from another state.

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

Regulatory Impact Table			
Fiscal Cost	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>	\$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 Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approves the regulatory impact analysis.

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

This rule should have no fiscal impact on businesses in the state of Utah.

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

Craig W. Butters, 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 4-2-103(1)(k)(ii)	Section 4-35-109
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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:** 04/14/2021

**10. This rule change MAY become effective on:** 04/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Butters, Commissioner	<b>Date:</b>	02/18/2021
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**R68. Agriculture and Food, Plant Industry.**

**R68-11. Quarantine Pertaining to the Emerald Ash Borer.**

**R68-11-1. Authority.**

Promulgated under authority of Subsection 4-2-103(1)(k)(ii) and Section 4-35-109.

**R68-11-2. Definitions.**

1) "Area Under Quarantine" means the United States and Canada.

2) "Ash" means any species of the genus *Fraxinus*.

3) "Commissioner" means the commissioner of the Utah Department of Agriculture and Food or their designee.

4) "Department" means the Utah Department of Agriculture and Food.

5) "Emerald Ash Borer", *Agrilus planipennis*, a beetle, family Buprestidae, which in the larval stage attacks and often kills Ash trees, genus *Fraxinus*.

5) "Person" means any individual, firm, association, partnership, corporation, government entity, or other legal entity.

6) "Regulated Article" means any article on which the Emerald Ash Borer, *Agrilus planipennis*, in any stage of development, may be present, including:

a) any ash trees, genus *Fraxinus*;

b) any green waste of ash trees;

c) ash firewood; or

d) any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner to present a hazard of spreading Emerald Ash Borer due to infestation or exposure to infestation by Emerald Ash Borer.

7) "Business days" means days the Utah Department of Agriculture and Food is open to the public.

**R68-11-3. Restrictions.**

1) Under this rule, a person may not transport, offer, expose, or hold for sale a regulated article in Utah from an area under quarantine unless each requirement under Section R68-11-7, Importation and Treatment has been met.

2) Any person that transports or supplies a regulated article in Utah from an area under quarantine shall maintain records, certificates, receipts, and any other related documents for two years from the date of issuance.

**R68-11-4. Importation and Treatment.**

Under this rule, each regulated article from an area under quarantine is prohibited entry into Utah unless:

- 1) an exemption has been granted by the department that satisfies the requirements of Section R68-11-6; and
- 2) the required certification is provided to the department.
  - a) Certification shall be issued by an authorized state agricultural official of the state of origin.
  - b) The certificate shall include the:
    - i) the name and address of the exporter;
    - ii) the name and address of the importer;
    - iii) the inspection and certificate date; and
    - iv) the signature of the authorized state agricultural officer.
  - c) Each certificate issued by the authorized state agricultural official of the state of origin shall certify that the regulated article has exclusively been grown, produced, stored, held, or handled in a state or county that has been granted an exemption under Section R68-11-9.
  - d) The certifying official shall mail or e-mail a copy of the certificate to Plant Industry Division, Utah Department of Agriculture and Food, email: UDAF-Nursery@utah.gov.
  - e) The exporter shall give ten business days advance notice of regulated article shipment to the department by email sent to UDAF-Nursery@utah.gov.
  - f) The importer shall notify the department upon arrival of the regulated article imported under the provisions of this rule and shall hold the regulated article for inspection for two business days.
  - g) The department may inspect and reject or release the regulated article within two business days of delivery. If the department does not inspect the shipment within two business days the regulated articles no longer need to be held by the importer.

**R68-11-5. Records.**

- 1) Each record, certificate, or other document related to a regulated article that a person who transports or supplies the regulated article provides to the department shall include information regarding the source of the regulated article and the disposition of the regulated article.
- 2) Each record, certificate, or other document of a person that sells a regulated article provides to the department shall include information regarding the source and supplier of the regulated article.
- 3) The department may inspect each record, certificate, document, inventory, and facility of a person that transports, supplies, or sells a regulated article from an area under quarantine at any time during reasonable business hours and may take samples of the regulated article for the purpose of enforcing this rule.

**R68-11-6. Exemptions.**

- 1) The Emerald Ash Borer, *Agilus planipennis*, in any stage of development is not exempt from this rule under any circumstances.
- 2) The Commissioner may declare particular regulated articles from individual states, counties, or provinces exempt from this rule if they request an exemption.
- 3) Requests for exemption shall be made to the department in writing and shall:
  - a) certify that Emerald Ash Borer is not known to be present in their jurisdiction;
  - b) provide documents outlining their Emerald Ash Borer monitoring program;
  - c) agree to provide their Emerald Ash Borer trapping data to the department, including:
    - i) how the trapping survey was carried out;
    - ii) the number and location of traps;

- iii) results of the trapping survey; and
- iv) history of the Emerald Ash Borer trapping survey;
- c) certify that they will notify the department of any Emerald Ash Borer detections within their jurisdiction within 48 hours; and
- d) provide written justification explaining why regulated articles from their state, county, or province present a low risk for Emerald Ash Borer introduction into Utah.
- 4) The department shall maintain a current and publicly available list of exempt states, counties, and provinces.
- 5) The department shall respond in writing within ten business days of the request for exemption.
- 6) Exemptions are valid for a 12-month period.
- 7) The department may at any time revoke an exemption due to a change in the risk assessment.
- 8) The department shall notify the jurisdiction, in writing, identifying the reason for the revocation.

**R68-11-7. Enforcing Powers.**

- 1) Authorized agents of the department shall refuse admittance into Utah any regulated article from an area under quarantine that does not meet the provisions of this rule.
- 2) Any shipment found within Utah in violation of this rule shall be destroyed or be returned to the exporter at once.

**R68-11-8. Violations and Penalties.**

- 1) Any fraudulent use of incorrect information to circumvent the enforcement of this rule is a violation.
- 2) Failure to comply with any provision of this rule is a violation.
- 3) Violators of this rule shall be subject to Section 4-2-304.
- 4) The department shall be subject to the notice requirements of Section 4-2-302 with respect to any penalty assessed.
- 4) Each ash tree or bulk sale shall be a separate violation of this rule.

**KEY: plant diseases**

**Date of Enactment or Last Substantive Amendment: 2021**  
**Authorizing, and Implemented or Interpreted Law: 4-2-103(1)(k)(ii); 4-35-109**

<b>NOTICE OF PROPOSED RULE</b>		
<b>TYPE OF RULE:</b> Amendment		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R657-62</b>	<b>Filing No. 53332</b>

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Wildlife Resources
<b>Room no.:</b>	Suite 2110
<b>Building:</b>	Department of Natural Resources
<b>Street address:</b>	1594 W North Temple
<b>City, state:</b>	Salt Lake City, UT
<b>Mailing address:</b>	PO Box 146301
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6301



<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Staci Coons	801-450-3093	stacicoons@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R657-62. Drawing Application Procedures
<b>3. Purpose of the new rule or reason for the change:</b>
This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to Big Game Applications.
<b>4. Summary of the new rule or change:</b>
The proposed amendments to this rule change the 90-day requirement to the end of the calendar year.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The proposed rule amendments amend the deadline allowing for deployed military sportsmen to acquire a bonus or preference point during applications periods without having to meet the combination/hunting license requirement, these changes can be initiated within the current workload and resources of the DWR. Therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.
<b>B) Local governments:</b>
Since the proposed amendment provides a waiver of a DWR requirement, this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed rule amendments will not directly impact small businesses because a service is not required of them.

<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
The proposed rule amendments will not directly impact non-small businesses because a service is not required of them.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
These amendments do not have the potential to create a cost impact to those deployed individuals wishing to participate in the hunting opportunities.
<b>F) Compliance costs for affected persons:</b>
DWR has determined that this amendment will not create additional costs for those participating in hunting in Utah.
<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.)

**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 Benefits</b>	<b>Fiscal</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 Natural Resources, Brian Steed, 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>				
Brian Steed, 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 23-14-18	Section 23-14-19	

**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>	04/14/2021

<b>10. This rule change MAY become effective on:</b>	04/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Rory Reynolds, DWR Interim Director	<b>Date:</b>	02/24/2021
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**R657. Natural Resources, Wildlife Resources.**

**R657-62. Drawing Application Procedures.**

**R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-26. Deployed Military.**

(1) Notwithstanding any other provision in this rule, a resident serving in the United States Military and deployed in connection with their military service may apply for and receive a bonus point or preference point without acquiring or possessing a hunting or combination license.

(2) To obtain a bonus point or preference point without a hunting or combination license, an eligible resident must:

(a) be deployed ~~at~~ 90 consecutive days or more during the [time]calendar year of application[and during the hunting seasons applicable to the point];

(b) not have previously received a bonus or preference point for the species and hunt type in the same year;

(c) otherwise be eligible to receive a bonus or preference point;

(d) pay a \$10 application fee; and

(e) (i) submit an application to the Division no later than [30 days prior to the opening date of the first season for the species and hunt type corresponding to the bonus point or preference point sought.]December 31<sup>st</sup> of the calendar year of qualifying deployment; and

([3]ii) [The application shall]include the following information in the application:

([a]A) full name, date of birth, Division customer identification number, permanent and current physical address, email address, and any other information required by the Division;

([b]B) proof of residency; and

([e]C) copy of official military documentation ordering deployment and specifying its term and location.

(3) All other regulations in rule and guidebook for receiving a bonus point or preference point are applicable to an applicant under this section, except for the application process and the requirement to possess a hunting or combination license.

(4) A person qualifying for a bonus point or preference point under this section may not surrender and receive a refund on:

(a) an unexpired hunting or combination license previously purchased; or

(b) a previously awarded bonus point or preference point.

(5) For purposes of this section:

(a) "Active duty" means full-time duty in the active military.

(b) "Deployed" means movement from a military personnel's permanent duty station to active duty outside the state of Utah based on orders from military command.

(c) "Military" means the United States Army, Navy, Airforce, Marines, Coast Guard, and National Guard Reserve Units.

(d) "Resident" has the same meaning as defined in Section 23-13-2.

**KEY:** wildlife, permits

**Date of Enactment or Last Substantive Amendment:** [January 7,] 2021

**Notice of Continuation:** April 9, 2019

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R986-700-901	Filing No. 53330

#### Agency Information

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Employment Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state:</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>
R986-700-901. Unearned Income, Pandemic
<b>3. Purpose of the new rule or reason for the change:</b>
The purpose of this rule change is to maintain services for child care subsidy families and providers during the COVID-19 pandemic.
<b>4. Summary of the new rule or change:</b>
This rule change allows the Department of Workforce Services (Department), Office of Child Care to exclude Federal Pandemic Unemployment Compensation from unearned income for purposes of determining eligibility for child care subsidy payments. Due to the COVID-19 pandemic there are child care subsidy (CC) customers who have lost employment through no fault of their own and require additional funds in order to care for their children. Excluding the \$300 per week Lost Wage Assistance (LWA) and \$300 per week Federal Pandemic Unemployment Compensation (FPUC) payments from CC income eligibility determinations will allow families who are eligible for CC to maintain eligibility while receiving LWA and FPUC, thus allowing them to return to work more quickly once business resumes. (EDITOR'S NOTE: A

corresponding 120-day emergency rule that is effective as of 02/19/2021 is under Filing No. 53329 in this issue, March 15, 2021, of the Bulletin.)

#### Fiscal Information

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state revenues or expenditures. There are no additional state employees or resources needed to oversee the new changes. The new changes will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state through the federal Child Care and Development Fund.
<b>B) Local governments:</b>
This rule change is not expected to have any fiscal impact on local government 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 majority of child care providers are small businesses (North American Industry Classification System (NAICS) 624410). This rule change will not result in any costs to those small businesses and may have a fiscal benefit to those small businesses. The Department cannot predict when or if a CC recipient might become unemployed, then subsequently qualify for unemployment and LWA or FPUC. The Department also cannot predict how long the COVID-19 public health emergency may impact CC recipient families' employment. Therefore, the Department cannot accurately estimate the fiscal benefit to small business providers who will continue receiving CC payments as a result of this rule change. Based on data obtained on April 17, 2020, approximately 397 families with 725 children were receiving child care subsidy. The average subsidy payment per child each month is \$534 in CY 2020. This rule change will allow up to \$387,150 per month in CC payments to continue to flow to child care providers during the COVID-19 public health emergency, so they can maintain their businesses. In the absence of this rule change, these programs might lose this funding at a time when enrollment and revenues in programs are dramatically reduced.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
Some child care providers are non-small businesses (NAICS 624410). This rule change will not result in any costs to those non-small businesses and may have a fiscal benefit to those non-small businesses. The Department cannot predict when or if a CC recipient might become unemployed, then subsequently qualify for unemployment and LWA or FPUC. The Department also cannot predict

how long the COVID-19 public health emergency may impact CC recipient families' employment. Therefore, the Department cannot accurately estimate the fiscal benefit to non-small business providers who will continue receiving CC payments as a result of this rule change. Based on data obtained on April 17, 2020, approximately 397 families with 725 children were receiving child care subsidy. The average subsidy payment per child each month is \$534 in CY 2020. This rule change will allow up to \$387,150 per month in CC payments to continue to flow to child care providers during the COVID-19 public health emergency, so they can maintain their businesses. In the absence of this rule change, these programs might lose this funding at a time when enrollment and revenues in programs are dramatically reduced.

**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 Department cannot predict when or if a CC recipient might become unemployed, then subsequently qualify for unemployment and LWA or FPUC. The Department also cannot predict how long the COVID-19 public health emergency may impact CC recipient families' employment. Therefore, the Department cannot accurately estimate the fiscal benefit to CC recipient families who will continue receiving CC payments as a result of this rule change. Based on data obtained on April 17, 2020, approximately 397 families with 725 children were receiving CC. Many of those families have experienced a period of unemployment during the public health emergency. This rule change will support low-income parents experiencing a period of unemployment to maintain their child care arrangements during the COVID-19 public health emergency.

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

This rule change is not expected to cause any compliance costs for affected persons because the new changes do not create any new administrative fees. Provider compliance responsibilities are not changed with this new change.

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

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

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

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

The Executive Director of the Department of Workforce Services, Casey R. Cameron, has reviewed and approved this fiscal analysis.

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

The funding for child care is provided by the federal Child Care and Development Block Grant (CCDBG). At this time, child care programs continue to receive subsidy payments for all families that were determined eligible for subsidies at the time of application unless their earnings exceed the federally established income threshold of 85% of the state median income (SMI). The CCDBG Act allows states to establish the definition of "income" for purposes of determining whether a family is at 85% SMI. Utah includes standard unemployment benefits as "income" for purposes of eligibility. This rule will not change that underlying requirement. However, by excluding the \$300 per week Lost Wages Assistance paid pursuant to the Lost Wages Assistance paid pursuant to the August 8, 2020, Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available other needs assistance for lost wages in accordance with Subsection 408(e)(2) of the Stafford Act (42 U.S.C. Subsection 5174(e)(2)), and the \$300 per week Federal Pandemic Unemployment Compensation paid pursuant to Section 203 of the Continued Assistance Act, part of the Consolidated Appropriations Act, 2021, for all qualified UI recipients, Utah will be supporting the child care businesses that rely on family tuition payments to meet most operating expenses by maintaining program income through a stable child care subsidy program. This is of great economic importance to Utah given that

approximately 38% of licensed centers and 18% of licensed family child care programs temporarily closed during the COVID-19 pandemic due to low enrollment.

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

Casey R. Cameron, Executive Director

**Citation Information**

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

Section 35A-3-310	Section 53F-5-210	Subsection 35A-3-203(12)
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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:** 04/14/2021

**10. This rule change MAY become effective on:** 04/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	02/19/2021
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**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-901. Unearned Income, Pandemic.**

(1) This Section supersedes any conflicting provisions of Rules R986-200 and R986-700.

(2) Federal Pandemic Unemployment Compensation under Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(3) Lost Wages Assistance paid pursuant to the August 8, 2020, Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available other needs assistance for lost wages in accordance with Section 408(e)(2) of the Stafford Act (42 U.S.C. Subsection 5174(e)(2)), is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(4) Federal Pandemic Unemployment Compensation under section 203 of the Continued Assistance Act, part of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, enacted on December 27, 2020, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

**KEY: child care, grant programs**

**Date of Enactment or Last Substantive Amendment:** 2021[August 14, 2020]

**Notice of Continuation:** August 28, 2020

**Authorizing, and Implemented or Interpreted Law:** 35A-3-203(12); 35A-3-310; 53F-5-210

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R994-302-102</b>	<b>Filing No.</b>	<b>53336</b>
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**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Unemployment Insurance	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R994-302-102. Due Dates for Contribution Payments

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

This rule change requires that all employer payments to the Department of Workforce Services (Department) be made electronically on the Department's website. Mail-in payments are no longer accepted. This change will increase operational efficiency and enhance payment security and timeliness. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.

**4. Summary of the new rule or change:**  
 This amendment removes references to payment by mail, as contribution payments must be paid online.

**Fiscal Information**

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

**A) State budget:**  
 This rule change is not expected to have any significant fiscal impact on state government revenues or expenditures. However, the Department had one-time costs to implement the online filing requirement and currently pays all associated processing charges for online payments. The Department believes it will recoup these costs with efficiencies gained from spending less time on opening and processing mail.

**B) Local governments:**  
 This rule change is expected to have an indirect fiscal benefit on local governments' revenues or expenditures in that it may save local government employer's costs associated with paying contributions via cash or check payments. The full impact to local governments cannot be estimated as the necessary data concerning the cost savings to local governments is unavailable.

**C) Small businesses** ("small business" means a business employing 1-49 persons):  
 This rule change is expected to have an indirect fiscal benefit on small businesses' revenues or expenditures in that it may save small business employer's costs associated with paying contributions via cash or check payments. The full impact to small businesses cannot be estimated as the necessary data concerning the cost savings to small businesses is unavailable.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):  
 This rule change is expected to have some fiscal impact on non-small businesses' revenues or expenditures in that it may save non-small business employer's costs associated with paying contributions via cash or check payments. The full impact to non-small businesses cannot be estimated as the necessary data concerning the cost savings to non-small businesses is unavailable.

**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 expected to have an indirect fiscal benefit on other person's revenues or expenditures, in that it may save other person's costs associated with paying contributions via cash or check payments. The full impact to other persons cannot be estimated as the necessary

data concerning the cost savings to other persons is unavailable.

**F) Compliance costs for affected persons:**  
 This rule change is not expected to cause compliance costs for affected persons because there are no processing charges for online payments.

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$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, Casey R. Cameron, has reviewed and approved this fiscal analysis.

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

After a thorough analysis, it was determined that this proposed rule change will not result in a measurable fiscal impact to businesses.

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

Casey R. Cameron, Executive Director

**Citation Information**

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

Section 35A-4-302

**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:** 04/14/2021

**10. This rule change MAY become effective on:** 04/22/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	03/01/2021
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**R994. Workforce Services, Unemployment Insurance.  
R994-302. Employer Contribution Payments.  
R994-302-102. Due Dates for Contribution Payments.**

(1) ~~Quarterly~~ A contribution payment is ~~are~~ due each quarter from an employer[s] who ~~is~~ is subject to the Utah Employment Security Act except as noted in subsections (2) and (3) of this section. The payment is due on the last day of the month that follows the end of each calendar quarter unless the Department, after

giving written notice, changes the due date. Interest and penalties for a late payment[s] begins to accrue the day after the due date. ~~Contribution payments postmarked on or before the due date are considered paid timely.~~

(2) ~~D~~ A domestic employer[s] defined in Subsection 35A-4-204(2)(k) may elect to pay contributions annually. The payment is due on January 31 of the year following the year wages were paid.

(3) ~~E~~ An employer[s] with seasonal employment may petition the Department to ~~only~~ pay contributions one, two, or three calendar quarters a year. The payment is due on the last day of the month that follows the end of the calendar quarter unless the Department, after giving written notice, changes the due date.

(4) The Department may establish a different due date for the payment of contributions when[=

~~(a) T~~ the employing unit can show a reasonable basis for contending that the status of the employing unit as an employer, the status of any service performed for the employer, or the status of any contribution liability is doubtful. Appealing or disagreeing with a ~~the~~ Department[s] decision regarding the employer's status or status of the liability does not in itself show the status is doubtful. Some examples of when a separate due date may be established by the Department are when an employer can show a reasonable basis for erroneously:

~~(a) i~~ reporting wages to another state;

~~(b) ii~~ not reporting wages the employer considered to be exempt as agricultural labor pursuant to Section 35A-4-206; or

~~(c) iii~~ not reporting wages for an individual the employer considered exempt from employment.

~~(b) 5~~ The Department may establish a different due date for the payment of contributions when ~~t~~ the possible collection of any contribution will be jeopardized by delaying the collection thereof until the regular due date.

~~(5) 6~~ An extension of up to 90 days for making a quarterly payment[s] may be granted if the employer makes a written request within ten days after the date the written demand for payment is mailed by the Department. ~~F~~ A further extension[s] may be granted if in the judgment of the Department an extension would preserve the possibility of collecting payment[s] ~~due~~. Interest will accrue on the outstanding balance from the original due date.

**KEY: unemployment compensation, employer liability**

**Date of Enactment or Last Substantive Amendment: April 22, 2021** ~~July 1, 2007~~

**Notice of Continuation: May 3, 2016**

**Authorizing, and Implemented or Interpreted Law: 35A-4-302**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

<b>Utah Admin. Code Ref (R no.):</b>	<b>R994-302-103</b>	<b>Filing No.</b>	<b>53337</b>
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**Agency Information**

<b>1. Department:</b>	Workforce Services
<b>Agency:</b>	Unemployment Insurance
<b>Building:</b>	Olene Walker Building
<b>Street address:</b>	140 E Broadway (300 S)
<b>City, state:</b>	Salt Lake City, UT 84111
<b>Mailing address:</b>	PO Box 45244

<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R994-302-103. Contribution Payments
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change requires that all employer payments to the Department of Workforce Services (Department) be made electronically on the Department's website. Mail-in payments are no longer accepted. This change will increase operational efficiency and enhance payment security and timeliness. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.
<b>4. Summary of the new rule or change:</b>
This amendment removes references to payment by mail, as contributions payments must be paid online.

**Fiscal Information**

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any significant fiscal impact on state government revenues or expenditures. However, the Department did have one-time costs to implement the online filing requirement and currently pays all associated processing charges for online payments. The Department believes it will recoup these costs with efficiencies gained from spending less time on opening and processing mail.
<b>B) Local governments:</b>
This rule change is expected to have an indirect fiscal benefit on local governments' revenues or expenditures in that it may save local government employers costs associated with paying contributions via cash or check payments. The full impact to local governments cannot be estimated as the necessary data concerning the cost savings to local governments is unavailable.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):

This rule change is expected to have an indirect fiscal benefit on small businesses' revenues or expenditures in that it may save small business employers costs associated with paying contributions via cash or check payments. The full impact to small businesses cannot be estimated as the necessary data concerning the cost savings to small businesses is unavailable.

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

This rule change is expected to have an indirect fiscal benefit on non-small businesses' revenues or expenditures in that it may save non-small business employers costs associated with paying contributions via cash or check payments. The full impact to non-small businesses cannot be estimated as the necessary data concerning the cost savings to non-small businesses is unavailable.

**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 expected to have an indirect fiscal benefit on other person's revenues or expenditures in that it may save other persons costs associated with paying contributions via cash or check payments. The full impact to other persons cannot be estimated as the necessary data concerning the cost savings to other persons is unavailable.

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

This rule change is not expected to cause compliance costs for affected persons because there are no processing charges for online payments.

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

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



<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$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, Casey R. Cameron, has reviewed and approved this fiscal analysis.

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

After a thorough analysis, it was determined that this proposed rule change will not result in a measurable fiscal impact to businesses.

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

Casey R. Cameron, Executive Director

**Citation Information**

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

Section 35A-4-302

**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:** 04/14/2021

**10. This rule change MAY become effective on:** 04/21/2021

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

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	03/01/2021
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**R994. Workforce Services, Unemployment Insurance.**

**R994-302. Employer Contribution Payments.**

**R994-302-103. Contribution Payments.**

The amount of a quarterly contribution payment is ~~due will be~~ based on wages paid during the quarter for subject employment, as defined by Rule R994-204 ~~[Section R994-401-205]~~.

(1) ~~[All]~~ A contribution payment[s] or other payment[s] shall ~~should~~ be made online at the Department website and shall be payable in United States currency to the Utah Unemployment Compensation Fund or to a depository account specified by the Department or Utah State Treasurer.

(2) ~~[C]~~ A contribution payment[s] will be reflected on the Department records on the day received. Payment ~~[s other than cash]~~ will constitute payment on the day received ~~[only]~~ if the payment is honored by the financial institution. In the event ~~[that the]~~ a payment is not honored in full, the Department will remove the dishonored payment from the employer's account and may assess fees pursuant to ~~[as provided for in]~~ Section 35A-4-305 and Title 7, Chapter 15, Dishonored Instruments ~~[Utah Code Title 07, Chapter 15]~~.

~~(3) If a non-cash payment instrument has been given in payment and has been returned by the depository institution unpaid, the Department reserves the right thereafter to accept from the employer only cash, certified cashier's check, or money order.~~

~~(3)~~ (4) ~~[C]~~ A contribution[s], interest, or penalty payment[s] received without a report or billing will be applied first to any unpaid costs, then to the oldest quarter in which an amount is due and will be applied first to the contribution payment[s], then to any ~~[the]~~ interest and finally to any penalty ~~[the penalties]~~ due in that quarter. Any payment ~~[Payments]~~ will be applied in this manner unless the employer or Department specifies otherwise. Any payment ~~[Payments]~~ accompanied by a contribution report or a billing will be applied to the quarter or quarters shown on that report or billing.

**KEY: unemployment compensation, employer liability**

**Date of Enactment or Last Substantive Amendment:** 2021 ~~[July 1, 2007]~~

**Notice of Continuation:** May 3, 2016

**Authorizing, and Implemented or Interpreted Law:** 35A-4-302

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R994-302-104	Filing No. 53338

### Agency Information

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Unemployment Insurance	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E Broadway (300 S)	
<b>City, state:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 45244	
<b>City, state, zip:</b>	Salt Lake City, UT 84145-0244	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amanda McPeck	801-517-4709	ampeck@utah.gov

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

### General Information

<b>2. Rule or section catchline:</b>
R994-302-104. Due Dates for Filing Contribution and Equivalent Reports
<b>3. Purpose of the new rule or reason for the change:</b>
This rule change removes a sentence no longer necessary to this rule due to the Department of Workforce Services (Department) no longer accepting paper filings. This change will increase operational efficiency and timeliness of reports. This rule change also makes technical, conforming, and stylistic changes in accordance with the Rulewriting Manual for Utah.
<b>4. Summary of the new rule or change:</b>
This amendment removes references to reports received through the mail.

### Fiscal Information

<b>5. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any significant fiscal impact on state government revenues or expenditures. However, the Department did have one-time costs to implement the online filing requirement. The Department believes it will recoup these costs with efficiencies gained from spending less time on opening and processing mail.

<b>B) Local governments:</b>
This rule change is expected to have an indirect fiscal benefit on local governments' revenues or expenditures in that it may save local government employers costs associated with paper filings of reports. The full impact to local governments cannot be estimated as the necessary data concerning the cost savings to local governments is unavailable.

<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
This rule change is expected to have an indirect fiscal benefit on small businesses' revenues or expenditures in that it may save small business employers costs associated with paper filings of reports. The full impact to small businesses cannot be estimated as the necessary data concerning the cost savings to small businesses is unavailable.

<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
This rule change is expected to have indirect fiscal benefits on non-small businesses' revenues or expenditures in that it may save non-small business employers costs associated with paper filings of reports. The full impact to non-small businesses cannot be estimated as the necessary data concerning the cost savings to non-small businesses are unavailable.

<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 expected to have an indirect fiscal benefit on other persons' revenues or expenditures in that it may save other persons costs associated with paper filings of reports. The full impact to other persons cannot be estimated as the necessary data concerning the cost savings to other persons are unavailable.

<b>F) Compliance costs for affected persons:</b>
This rule change is not expected to cause compliance costs for affected persons because the amendment removes the requirement to file paper reports.

**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 Workforce Services, Casey R. Cameron, has reviewed and approved this fiscal analysis.			
<b>6. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>			
After a thorough analysis, it was determined that these proposed rule change will not result in a measurable fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Casey R. Cameron, Executive Director			

**Citation Information**

<b>7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):</b>		
Section 35A-4-302		

**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>	04/14/2021
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<b>10. This rule change MAY become effective on:</b>	04/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	03/01/2021
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**R994. Workforce Services, Unemployment Insurance.**

**R994-302. Employer Contribution Payments.**

**R994-302-104. Due Dates for Filing Contribution and Equivalent Reports.**

(1) [~~C~~]A contribution report[~~s and any~~] or equivalent report[s] required of an[~~those~~] employer[s] liable for payments in lieu of a contribution payment is [~~are~~] due quarterly on the last day of the month that follows the end of each calendar quarter; unless the Department, after giving written notice, changes the due date. [~~Reports postmarked on or before the due date are considered filed timely.~~]

(2)[a] [~~Extension for Filing Reports.~~]  
 \_\_\_\_\_]The Department may, for good cause, grant an extension of time for filing a report if the employer makes a written request not later than the due date of the report.

**KEY: unemployment compensation, employer liability**

**Date of Enactment or Last Substantive Amendment: 2021|July 1, 2007]**

**Notice of Continuation: May 3, 2016**

**Authorizing, and Implemented or Interpreted Law: 35A-4-302**

**End of the Notices of Proposed Rules Section**



## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends April 14, 2021.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Office of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through July 13, 2021, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

**CHANGES IN PROPOSED RULES** are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

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

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R317-8	Filing No. 53240

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Water Quality	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state, zip:</b>	Salt Lake City, UT 84116	
<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>
Donald Hall	801-536-4492	dghall@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>		
R317-8. Utah Pollutant Discharge Elimination System (UPDES)		
<b>3. Change in Proposed Rule:</b>		
Changes FILING Name, Publication date of prior filing:	R317-8, Utah Pollutant Discharge Elimination System (UPDES), originally published on 01/01/2021	
<b>4. Reason for this change:</b>		
Minor changes are made in response to public notice comments.		
<b>5. Summary of this change:</b>		
In Subsection R317-8-10(10.2), changes the "Certified Nutrient Management Planner" definition. This change allows for additional certified nutrient management planner training programs, not just programs through Natural Resources Conservation Service and Division of Water Quality (DWQ), that are approved by the Director. This change will allow DWQ to work closely with the Utah Department of Agriculture and Food in development of a training program and providing that training for nutrient management planner certification.		
In Subsection R317-8-10(10.2), changes the "Small CAFO" definition. This proposed change requires consultation with the Chair of the Utah Conservation Commission when the Director considers designating a small animal feeding operation (AFO) as a concentrated		

animal feeding operation (CAFO). The current rule requires notification instead of consultation with the Chair of the Commission when an AFO is designated as a CAFO.

This is a public notice only. No additional comments are being solicited. The initial amendment along with this Change in Proposed Rule (CPR) should become effective at the end of the notice period, April 15, 2021. (EDITOR'S NOTE: The original proposed amendment upon which this CPR was based was published in the January 1, 2021, issue of the Utah State Bulletin, on page 30. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**Fiscal Information**

<b>6. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
None--The rule changes would have no net effect on the state budget or the budget of the DWQ. There would be no additional costs or savings implementing the changes in the Certified Nutrient Management Planner definition. The DWQ would approve training programs instead of individual certified planners. Any new labor for a training program would be performed by existing employees. Any new material costs, which would be minimal, would come from budgets for office supplies. There will only be 5 to 15 trained certified planners and any new training program would mostly use or entirely use free internet educational resources from the U.S. Department of Agriculture, Natural Resource Conservation Service.
The Small CAFO definition is just a change in how DWQ communicates with the Utah Department of Agriculture and Food in CAFO designation decisions.
<b>B) Local government:</b>
None--There would be no effect on costs or savings to local governments. Local governments do not have oversight of AFOs and CAFOs as pertaining to the state rule.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
None--The rule changes would have no effect on costs or savings to the regulated community and no effect on other small businesses. The definitions only effect state agency interactions and programs.

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

None--There are 5 or fewer businesses in the regulated community employing 50 or more persons. The rule changes would have no effect on costs to the regulated community and have no effect on other non-small businesses. The changes would effect only state agencies, the DWQ and the Utah Department of Agriculture and Food.

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

None--There should be no costs to any person or agency. The changes could only affect the state agencies that may provide certified planner training and CAFO designation decision making.

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

None--There will be no compliance costs to AFOs and CAFOs, the regulated community. There currently are no costs for the affected persons and there would be no new costs if the rule changes are implemented.

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

**Regulatory Impact Table**

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

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

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

The Executive Director of the Utah Department of Environmental Quality, Kim Shelley, has reviewed and approved this regulatory impact analysis and fiscal analysis.

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

The proposed rule changes would not affect non-animal agriculture businesses financially, either positively or negatively. Also, the regulated community would not have additional costs from the proposed rule changes.

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

Kim Shelley, Executive Director

**Citation Information**

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

Title 19, Chapter 5	40 CFR 122	40 CFR 124
40 CFR 412	40 CFR 503	

**Public Notice Information**

<b>11. This rule change MAY become effective on:</b>	04/14/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, 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 B. Gaddis, DWQ Director	<b>Date:</b>	03/01/2021
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**R317. Environmental Quality, Water Quality.  
R317-8. Utah Pollutant Discharge Elimination System (UPDES).**

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**R317-8-10. Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs).**

10.1 Applicability of Rule R317-8, Rule Compatibility, and Federal Rule Incorporation.

(1) Section R317-8-10, including the federal regulations incorporated by reference, shall be applicable to animal feeding operations and concentrated animal feeding operations.

(2) Where any requirements, definitions, or conditions in Section R317-8-10 conflict with the requirements, definitions, or conditions pertaining to animal feeding operations or concentrated animal feeding operations in other parts of Rule R317-8, the requirements, definitions, and conditions in Section R317-8-10 shall govern.

10.2 Definitions.

"25-year, 24-hour storm event" means the 25-year, 24-hour storm event and "100-year, 24-hour storm event" means the 100-year, 24-hour storm event as defined in 40 CFR 412.2(i).

"Animal Feeding Operation" (AFO) means a lot or facility (other than aquatic animal production facility) where the following conditions are met:

(a) animals have been, are, or will be stabled, housed, or confined and fed or maintained for a total of forty-five (45) days or more in any 12-month period;

(b) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

(c) two or more AFOs under common ownership are considered to be a single AFO if they adjoin each other or if they use a common area or system for the storage or disposal of waste.

"Certified Nutrient Management Planner" means a person who ~~after appropriate NRCS or division training, is approved and~~ is certified by the Utah Natural Resources Conservation Services (NRCS), or by an alternative certification program approved by the Director, to develop and approve nutrient management plans and comprehensive nutrient management plans.

"Concentrated Animal Feeding Operation" (CAFO) means:

- (a) an AFO that is a Large CAFO; or
- (b) an AFO that is a Medium CAFO; or
- (c) an AFO that is Designated as a CAFO.

"Approved Agriculture Certificate of Environmental Stewardship Program (ACES)" means a program approved by the Water Quality Board as meeting the substantive standards of this rule and the Utah Water Quality Act, Title 19, Chapter 5.

"Designated CAFO" means an AFO that is designated as a CAFO by the Director according to criteria in 40 CFR 122.23(c) and thereby required to obtain a UPDES permit.

"Discharge" has the same meaning as "Discharge of a Pollutant" in Subsection R317-8-1.5, except that in Section R317-8-10,

"discharge" shall refer only to the addition of pollutants to surface waters of the state.

"Large CAFO" means an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, or veal: 1,000 or more
- (b) Cows (milking and dry): 700 or more
- (c) Layers, broilers (wet system): 30,000 or more
- (d) Other than layers (dry system): 125,000 or more
- (e) Layers (dry system): 82,000 or more
- (f) Turkeys: 55,000 or more
- (g) Swine (55 pounds or more): 2,500 or more
- (h) Swine (less than 55 pounds): 10,000 or more
- (i) Sheep: 10,000 or more
- (j) Horses: 500 or more
- (k) Ducks (dry system): 30,000 or more
- (l) Ducks (wet system): 5,000 or more

"Large Weather Event" in Subsection 19-5-105.5(3)(b)(iii) means either:

(a) a single event or a series of precipitation events, including snow, received over a 30 day period at an AFO or CAFO that yields precipitation greater than the area's monthly average precipitation for the 30-day period, plus either:

(i) a 100-year, 24-hour storm event for poultry, swine, or veal AFO or CAFO; or

(ii) a 25-year, 24-hour storm event for any other AFOs or CAFOs; or

(b) rapid snow or ice melt at the AFO or CAFO that occurs during a 7-day period which results in the runoff of a volume of water equivalent to (a).

"Medium AFO" means a lot or facility that is an AFO that stables, houses or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, or veal: 300-999
- (b) Cows (milking and dry): 200-699
- (c) Layers or broilers (wet system): 9,000-29,999
- (d) Other than layers (dry system): 37,500-124,999
- (e) Layers (dry system): 25,000-81,999
- (f) Turkeys: 16,500-54,999
- (g) Swine (55 pounds or more): 750-2,499
- (h) Swine (less than 55 pounds): 3,000-9,999
- (i) Sheep: 3,000-9,999
- (j) Horses: 150-499
- (k) Ducks (dry system): 10,000-29,999
- (l) Ducks (wet system): 1,500-4,999

"Medium CAFO" means a Medium AFO where the conditions specified in 40 CFR 122.23(b)(6)(ii) are met.

"Reasonable Measures" in Subsection 19-5-105.5(3)(b)(iii) means the measures described in Subsection R317-8-10.8.

"Small AFO" means a lot or facility that is an AFO that stables, houses, or confines the type and number of animals that fall within any of these ranges:

- (a) Beef, calves, heifers, or veal: 1-299
- (b) Cows (milking and dry): 1-199
- (c) Layers, broilers (wet system): 1-8,999
- (d) Other than layers (dry system): 1-37,499
- (e) Layers (dry system): 1-24,999
- (f) Turkeys: 1-16,499
- (g) Swine (55 pounds or more): 1-749



- (h) Swine (less than 55 pounds): 1-2,999
- (i) Sheep: 1-2,999
- (j) Horses: 1-149
- (k) Ducks (dry system): 1-9,999
- (l) Ducks (wet system): 1-1,499

"Small CAFO" means a Small AFO where the following conditions are met:

- (a) the Small AFO discharges:
  - (i) through a man-made ditch, flushing system, or other similar man-made device; or
  - (ii) into surface waters of the state which waters originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined at the operation; and
- (b) the Director has designated the Small AFO as a CAFO according to criteria in 40 CFR 122.23(c) after ~~providing written notification to~~ consulting with the Chair of the Utah Conservation Commission.

"Surface Waters of the State" for purposes under Section R317-8-10 means Waters of the State as defined in Subsection R317-8-1.5 that are not ground water, except ground water that has hydrologic connection to surface waters of the state.

10.3 UPDES Permit Requirement.

- (1) The following animal feeding operations are required to apply for a UPDES permit:
  - (a) Large CAFOs that discharge;
  - (b) Medium CAFOs; and
  - (c) Designated CAFOs.
- (2) CAFOs with land application discharges are subject to the requirements provided in 40 CFR 122.23(e) and 40 CFR 122.42(e)(1)(xi) through (ix). CAFOs that do not meet these requirements must apply for a UPDES permit.

(3) An AFO shall be designated as a CAFO per the criteria in 40 CFR 122.23(c).

10.4 Timing of UPDES Permit Application.

- (1) An animal feeding operation that has an operational change that results in a requirement to obtain a UPDES CAFO permit shall submit an application no later than 90 days after the time a facility has conditions that require CAFO permit coverage.
- (2) No later than 180 days before the expiration of a permit, or as provided by the Director, a permitted CAFO must submit an application to renew its permit in accordance with 40 CFR 122.21(d) unless the CAFO will not discharge upon expiration of the permit.
- (3) For facilities in operation prior to April 14, 2003 that have an operational change where the facility becomes a Large CAFO that discharges, or a Medium or Designated CAFO, must seek to obtain UPDES permit coverage no later than 90 days after the time a facility has conditions that require CAFO permit coverage.
- (4) New source CAFOs that require CAFO permit coverage and CAFOs constructed after April 14, 2003 that require CAFO permit coverage must seek to obtain UPDES CAFO permit coverage no later than 180 days prior to the time a facility commences operation with the conditions that require CAFO permit coverage.
- (5) A CAFO that is required to obtain an individual permit or that is a Designated CAFO, shall apply for a permit within 60 days of notification of permit requirement by the Director, unless otherwise determined by the Director.

10.5 UPDES CAFO Permit Application Requirements.

In order to apply for a UPDES CAFO permit, an AFO or CAFO shall submit to the Director an application containing the

information specified in 40 CFR 122.21(i). Application forms may be obtained from the Division of Water Quality. If the applicant is seeking coverage under a general permit, it shall submit a notice of intent and nutrient management plan to the Director, along with any information required under the general permit. If the Director has not issued a general permit for which the AFO or CAFO is eligible, the owner or operator must submit an application, including a nutrient management plan, for an individual permit to the Director.

10.6 Nutrient Management Plans.

(1) Nutrient Management Plan (NMP) or Comprehensive Nutrient Management Plan (CNMP) content and requirements for compliance under this rule will include, as applicable and needed for an AFO or CAFO, the following:

- (a) the federal requirements incorporated by rule in Subsection R317-8-1.10;
- (b) the requirements of 40 CFR 122.42(e)(1)(i) through (ix) and the technical standards needed to implement those requirements at an AFO or CAFO as specified in rule R317-8-10.7; and
- (c) for permitted AFOs and CAFOs, the NMP or CNMP must also include and be consistent with the requirements of the UPDES permit.

(2) NMPs or CNMPs shall be developed and implemented for the following AFOs and CAFOs, as applicable, and must be approved by a certified nutrient management planner:

- (a) AFOs and CAFOs seeking CAFO permit coverage or with CAFO permit coverage;
- (b) AFOs and CAFOs with permit by rule coverage;
- (c) AFOs and CAFOs with coverage under a compliance assistance program approved by the Director for purposes of compliance to reasonable measures under Subsection 19-5-105.5(3)(b)(ii);
- (d) AFOs and CAFOs participating in the ACES Program;
- (e) AFOs and CAFOs seeking to receive grant or loan funding through a division funding program; and
- (f) AFOs and CAFOs under an enforcement action issued by the Director.

(3) NMPs or CNMPs for AFOs and CAFOs listed in Subsections R317-8-10.6(2)(a), (e), and (f), shall be signed or stamped by a Utah Professional Engineer or signed by a Natural Resources Conservation Service employee/engineer with proper engineering job approval authority delegated from the Natural Resources Conservation Service, when new or existing structures or facilities need to be designed, constructed or substantially altered at an AFO's or CAFO's production area or land application area.

10.7 Technical Standards.

(1) Technical standards for NMP or CNMP preparation, content, and implementation are:

- (a) the practices, standards, and requirements of the Utah Natural Resources Conservation Service (NRCS) Practice Standard 590, Nutrient Management, dated October 2019 and the Utah Manure Application Risk Index (UMARI); and
- (b) the NRCS practice standards, policies, specifications, and best management practices needed for NMP or CNMP preparation, content, or implementation for compliance with 40 CFR 122.42(e)(1)(i) through (ix), as needed for a specific AFO or CAFO.

(2) Implementation of these standards requires evaluation and nutrient management planning specific to each individual AFO or CAFO.

10.8 Reasonable Measures for Large Weather Events and Agriculture Discharges.

NOTICES OF CHANGES IN PROPOSED RULES

(1) As provided in Subsection 19-5-105.5(3)(b)(iii), no penalty shall apply with respect to an agriculture discharge resulting from a large weather event if the agriculture producer has taken reasonable measures to prevent an agriculture discharge.

(2) An AFO or CAFO will be considered to have taken reasonable measures as provided by Subsection 19-5-105.5(3)(b)(iii), if it has implemented a NMP or CNMP according to Subsection R317-8-10.6, as applicable to an AFO or CAFO, and is participating in any of the following:

- (a) a UPDES CAFO permit;
- (b) permit by rule as outlined in Subsection R317-10.8(3);
- (c) a compliance assistance program approved by the

Director; or

- (d) the ACES Program.
- (3) An AFO will be permitted by rule if:

(a) it has obtained and is in compliance with a site-specific NMP that implements Technical Standards and the requirements of 40 CFR 122.42(e)(1)(i) through (viii), and the practices and protocols identified under those provisions;

(b) it keeps records adequate to demonstrate that it has met the requirements in Subsection R317-8-10.8(3) and has, upon request, made those records available for review by the Director or the Director's representative; and

(c) the facility has provided to the Director a notice of intent to be covered by this permit by rule provision and has confirmed that it is meeting the requirements of Subsection R317-8-10(3).

**KEY: water pollution, discharge permits**

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

**Notice of Continuation: September 12, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-5; 40 CFR 122; 40 CFR 124; 40 CFR 412; 40 CFR 503**

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R384-415	Filing No. 53257

**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, zip:</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>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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>
R384-415. Electronic Cigarette Substance Standards

<b>3. Change in Proposed Rule:</b>
Changes FILING R384-415. Electronic Cigarette Substance Standards, published date of prior filing: 01/15/2021

<b>4. Reason for this change:</b>
Utah Department of Health (UDOH) reviewed and evaluated the comments received between January 15, 2021, and February 15, 2021, and seeks to incorporate the following four changes to the original rule filing.

<b>5. Summary of this change:</b>
There are four changes in this change in proposed rule (CPR). First is eliminating the requirement for nicotine-free labeling on manufacturer sealed electronic cigarette substances in Subsections R384-415-3(3) and R384-415-3(8)(b), second is correcting a reference error in Subsection R384-415-3(6), third is clarifying the prohibition language in Subsection R384-415-4(2), and fourth is eliminating the 3% or 36mg/mL manufacturer sealed electronic cigarette substance nicotine content requirements in Subsection R384-415-5(1)(b). (EDITOR'S NOTE: The original proposed amendment upon which this CPR was based was published in the January 15, 2021, issue of the Utah State Bulletin, on page 20. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**Fiscal Information**

<b>6. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
Enactment of this CPR is not expected to have any fiscal costs to the state budget. Manufacturer sealed electronic cigarette substances should have been excluded from the nicotine free labeling, as the federal law only mandates child-resistant packaging for containers that are meant to be refilled or that are able to be opened by an adult; therefore, a manufacturer sealed container is exempt from the Poison Prevention Packaging Act of 1970.

**B) Local government:**

Enactment of this CPR is not expected to have any fiscal impact on the local government budgets, as local health departments will continue to conduct retail observations and investigations in accordance with respective state tobacco control laws, state administrative rules, and local health department regulations using existing allocated resources to enforce the amended rule.

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

Enactment of this CPR may result in a direct cost to small businesses that employ fewer than 50 employees and choose to sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine.

The rule amendment may result in a direct fiscal cost to small businesses that primarily rely on the sale of tobacco products (retail tobacco specialty businesses) and operate under the North American Industry Classification System (NAICS) codes of 453991, 424940. Other small businesses that sell manufacturer sealed electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, (453991) tobacco stores, (424940) tobacco product merchant wholesalers, (453220) gift, novelty, and souvenir stores, (721110) hotels, (813410) civic and social organizations. A review of UDOH combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, shows that there are approximately 1,175 small businesses that sell some type of electronic cigarette substances in Utah, or approximately 88% of Utah tobacco retailers.

UDOH does not know how many of these 1,175 small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine. Only tobacco retailers that currently sell manufacturer sealed electronic cigarette substances with a higher nicotine concentration may experience a direct fiscal impact.

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

Enactment of this CPR may result in a direct cost to non-small businesses that employ more than 50 employees and choose to sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine.

The rule amendment may result in a direct fiscal cost to non-small businesses that sell manufacturer sealed electronic cigarette substances among other products they choose to sell include (445120) convenience stores, (447110) gas stations with convenience stores, (445110) supermarkets and other grocery stores, (452319) general merchandise and discount stores, (447190) other gasoline stations, and (453220) gift, novelty, and souvenir stores. A review of UDOH combined local health department tobacco retail compliance check logs for fiscal year 2020 and cross-referenced with Utah Department of Workforce Services (DWS) Firm Find Data, shows that there are approximately 208 non-small businesses that sell some type of electronic cigarette substances in Utah, or approximately 12% of Utah tobacco retailers.

UDOH does not know how many of these 208 non-small businesses sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine. Only tobacco retailers that currently sell manufacturer sealed electronic cigarette substances with a higher nicotine concentration may experience a direct fiscal impact.

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

Enactment of this CPR may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine and individuals who work for small businesses or non-small businesses that sell manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine.

The indirect costs or indirect benefits to persons is unknown and difficult to determine, as the potential impact on consumers is unknown as they could choose to vape manufacturer sealed electronic cigarette substances with a lower nicotine concentration, or they may choose to quit using manufacturer sealed electronic cigarettes because of enactment of this CPR.

Likewise, the indirect costs or indirect benefits to persons employed at tobacco retail businesses is unknown and it is difficult to determine the impact on individual tobacco retail employees, who may be employed at either small businesses or non-small businesses which could be impacted as already indicated in 5C. and 5D above, because of enactment of this CPR.

NOTICES OF CHANGES IN PROPOSED RULES

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

Enactment of this CPR may result in an indirect cost or indirect benefit to persons, which can include both consumers who buy manufacturer sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine and individuals who work for small businesses or non-small businesses that sell manufacture sealed electronic cigarette substances with nicotine concentrations higher than either 5% by weight per container or exceed 59 mg/ml concentration of nicotine.

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

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

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

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

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

The fiscal impact of this CPR is inestimable because retailers have the option to sell manufacturer sealed electronic cigarette substances with nicotine concentrations equal to or less than 5% by weight per container or 59 mg/ml concentration of nicotine.

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

Richard G. Saunders, Executive Director

**Citation Information**

**8. 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 26-57-103(2)		
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**Public Notice Information**

**10. 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>	04/14/2021
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<b>11. This rule change MAY become effective on:</b>	04/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	02/25/2021
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**R384. Disease Control and Prevention, Health Promotion.****R384-415. Electronic Cigarette Substance Standards.****R384-415-1. Authority and Purpose.**

(1) This rule is authorized by Section 26-57-103.

(2) The purpose of this rule is to establish standards for labeling, nicotine content, packaging, and product quality for non-manufacturer sealed electronic cigarette substances and manufacturer sealed electronic cigarette substances for the regulation of selling electronic cigarette products.

(3) A person may only sell a non-manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

(4) Beginning on July 1, 2021, a person may only sell a manufacturer sealed electronic cigarette substance that is compliant with the established standards and requirements set forth in this rule.

(5) A product in compliance with this rule is not endorsed as safe.

**R384-415-2. Definitions.**

As used in this rule:

(1) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R. 1700.1(a)(4) and is tested in accordance with the method described in 16 C.F.R. 1700.20.

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

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

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

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

(6) "Local health department" means the same as that term is defined in Subsection 26A-1-102(5).

(7) "Industrial hemp product" means the same as that term defined is in Section 4-41-102.

(8) "Manufacture" means the same as that term is defined in Section 26-57-102.

(9) "Manufacturer" means the same as that term is defined in Section 26-57-102.

(10) "Manufacturer sealed electronic cigarette substance" means the same as that term defined is in Section 26-57-102.

(11) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

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

(13) "Non-manufacturer sealed electronic cigarette substance" means:

(a) an electronic cigarette substance that is not a manufacturer sealed electronic cigarette substance; and

(b) an electronic cigarette substance container the electronic cigarette manufacturer does intend for a consumer to open or refill.

(14) "Package" or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in

which an electronic cigarette substance or a manufacturer sealed electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.

(15) "Permit" means the same as that term is defined in Section 26-62-101.

(16) "Retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance to a consumer. This definition is without regard to the quantity of a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(17) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the non-manufacturer sealed electronic cigarette substance or the [-]manufacturer sealed electronic cigarette substance is in compliance with the standards in this rule.

**R384-415-3. Labeling.**

(1) The retailer shall ensure that nicotine containing non-manufacturer sealed electronic cigarette substance or manufacturer sealed electronic cigarette substance offered for sale to the consumer features on the product package label the required safety warning stating "WARNING: This product contains nicotine. Nicotine is an addictive chemical."

(2) Consistent with 21 C.F.R. 1143.3, the safety warning statements required in Subsection (1), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, [-]and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, with all other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (1); and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(3) The retailer shall ensure that a non-manufacturer sealed electronic cigarette substance ~~[or a manufacturer sealed electronic cigarette substance]~~ marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(4) The safety warning statements required in Subsection (3), the required safety warning statement must appear directly on the package and must be clearly visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principal display panels of the package and the warning area

NOTICES OF CHANGES IN PROPOSED RULES

must comprise at least 30 percent of each of the principal display panels;

(b) be printed in at least 12-point font size and ensures that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(c) be printed in conspicuous and legible Helvetica bold or Arial bold type, or other sans serif fonts, and in black text on a white background or white text on a black background in a manner that contrasts by typography, layout, or color, consistent with the other printed material on the package;

(d) be capitalized and punctuated as indicated in Subsection (3); and

(e) be centered in the warning area in which the text is required to be printed and positioned such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(5) A retailer will not be in violation of this section for packaging that:

(a) contains a health warning;

(b) is supplied to the retailer by the electronic cigarette substance manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and

(c) is not altered by the retailer in a way that is material to the requirements of this section.

(6) A non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance package that would otherwise be required to bear the safety warning in Subsection (1) or ~~(2)~~(3) but is too small or otherwise unable to accommodate a safety warning label with sufficient space to bear such information is exempt from compliance with the requirement provided that:

(a) the information and specifications required in Subsection (1) and (3) appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or

(b) appear on a tag otherwise firmly and permanently affixed to the non-manufacturer sealed electronic- cigarette substance package or the manufacturer sealed electronic cigarette substance package.

(7) In the case of Subsection (6)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.

(8) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Section R68-26-5, unless:

(a) an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance marketed as containing nicotine and offered for sale or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as containing nicotine and offered for sale is in compliance with the safety warning requirements in Subsection (1) and (2); or

(b) an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale ~~or an industrial hemp product that is a manufacturer sealed electronic cigarette substance marketed as nicotine-free and offered for sale~~ is exempt from the safety warning requirements in

Subsection (3) and (4); if the product is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp and Section R68-26-5.

**R384-415-4. Prohibited Sales.**

(1) The retailer shall be prohibited from selling a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance that is labeled as containing:

(a) additives that create the impression that a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance has a health benefit;

(b) additives that are associated with energy and vitality;

(c) illegal or controlled substances as identified in Section 58-37-3; and

(d) additives having coloring properties for emissions.

(2) The retailer shall ~~ensure that~~ be prohibited from selling an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic cigarette substance unless it is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; Section R68-26-5; and Section R68-33-5.

**R384-415-5. Nicotine Content.**

(1) The retailer shall be prohibited from selling a non-manufacturer sealed electronic cigarette substance or a manufacturer sealed electronic cigarette substance to the consumer if the product is not compliant with the following:

(a) the nicotine concentration for a non-manufacturer sealed electronic cigarette substance is limited to 360 mg nicotine per container, or does not exceed a 24mg/mL concentration of nicotine; and

(b) the nicotine concentration for a manufacturer sealed electronic cigarette substance is limited[;

~~—(i)—] to 5% nicotine by weight per container, or does not exceed a 59mg/mL concentration of nicotine, effective July 1, 2021[;~~

~~and~~  
~~—(ii)—] to 3% nicotine by weight per container, or does not exceed a 36mg/mL concentration of nicotine, effective January 1, 2022].~~

**R384-415-6. Packaging.**

(1) The retailer shall ensure that the packaging of a non-manufacturer sealed electronic cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention.

(2) The retailer shall sell non-manufacturer sealed electronic cigarette substances and manufacturer sealed electronic cigarette substances in the product's original packaging.

(3) The retailer shall be prohibited from repackaging or dispensing any non-manufacturer sealed electronic cigarette substance or any manufacturer sealed electronic cigarette substance for retail sale.

(4) The retailer shall be prohibited from refilling a manufacturer sealed electronic cigarette substance that is not intended to be opened by a retailer or a consumer.

(5) The retailer shall ensure that an industrial hemp product that is a non-manufacturer sealed electronic cigarette substance or an industrial hemp product that is a manufacturer sealed electronic

cigarette substance is compliant with Title 4, Chapter 41, Part 1, Industrial Hemp; and Rule R68-26.

**R384-415-7. Product Quality.**

(1) No manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product complies with each of the relevant electronic cigarette product standards established by the U.S. Food and Drug Administration under 21 U.S.C. 387g(3).

(2) Notwithstanding Subsection (3), after September 9, 2021, no manufacturer or retailer shall sell, offer for sale, or distribute an electronic cigarette, an electronic cigarette product, or an electronic cigarette substance unless the product has received marketing authorization from the U.S. Food and Drug Administration (FDA) under 21 U.S.C. 387j(c)(1)(A)(i), 21 U.S.C. 387j(a)(2)(A)(i), or 21 U.S.C. 387j(a)(2)(A)(ii).

(3) This section will take effect on the date that manufacturers are required to secure marketing orders from the FDA to continue marketing their products in the United States. Any delays in enforcement efforts by FDA due to litigation will not impact the effective date of this section.

**R384-415-8. Record Keeping and Testing.**

(1) The retailer shall provide the non-manufacturer sealed electronic cigarette substance transaction statements or manufacturer sealed electronic cigarette substance transaction statements to the Department or the local health department within 14 calendar days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

(a) the labeling standards are compliant with Section R384-415-3;

(b) the nicotine content of a non-manufacturer sealed electronic cigarette substance is compliant with Subsection R384-415-5(1)(a) and the nicotine content of a manufacturer sealed electronic cigarette substance is compliant with Subsection R384-415-5(1)(b);

(c) the packaging standards are compliant with Section R384-415-6; and

(d) the product quality standards are compliant with Section R384-415-7.

(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 14 calendar days of a request.

(3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the non-manufacturer sealed electronic cigarette substance or the manufacturer sealed electronic cigarette substance.

**R384-415-9. Enforcement.**

(1) In enforcing or seeking penalties of any violation as set forth in this rule or Section 26-57-103, the Department and local health departments shall comply with the enforcement requirement in Title 26, Chapter 62, Part 3, Enforcement.

**KEY: electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act**

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

**Notice of Continuation: December 8, 2020**

**Authorizing, and Implemented or Interpreted Law: 26-57-103**

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R414-12	53099

**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>		
R414-12. Laboratory Services		
<b>3. Change in Proposed Rule:</b>		
Changes in Name, Publication date of prior filing:	FILING	R414-12. Laboratory Services, Published 10/15/2020
<b>4. Reason for this change:</b>		
This change is based on public comment and internal review.		
<b>5. Summary of this change:</b>		
This change in proposed rule clarifies coverage procedures for urine drug testing. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the October 15, 2020, issue of the Utah State Bulletin, on page 27. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)		

NOTICES OF CHANGES IN PROPOSED RULES

**Fiscal Information**

<b>6. Aggregate anticipated cost or savings to:</b>			
<b>A) State budget:</b>			
There is no impact to the state budget as this change solely clarifies coverage procedures for urine drug testing. It neither includes additional services nor removes existing ones.			
<b>B) Local government:</b>			
There is no impact to local governments as they neither fund nor provide laboratory services under the Medicaid program.			
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):			
There is no impact to small businesses as this change solely clarifies coverage procedures for urine drug testing. It neither includes additional services nor removes existing ones.			
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):			
There is no impact to non-small businesses as this change solely clarifies coverage procedures for urine drug testing. It neither includes additional services nor removes existing ones.			
<b>E) Persons other than small businesses, non-small businesses, or 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 to Medicaid providers and Medicaid members as this change solely clarifies coverage procedures for urine drug testing. It neither includes additional services nor removes existing ones.			
<b>F) Compliance costs for affected persons:</b>			
There is no impact to a single Medicaid provider or Medicaid member as this change solely clarifies coverage procedures for urine drug testing. It neither includes additional services nor removes existing ones.			
<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 Health, Richard G. Saunders, has reviewed and approved this fiscal analysis.			
<b>7. A) Comments by the department head on the fiscal impact the rule may have on businesses:</b>			
This clarification to the proposed rule will not result in a fiscal impact to businesses.			
<b>B) Name and title of department head commenting on the fiscal impacts:</b>			
Richard G. Saunders, Executive Director			

**Citation Information**

<b>8. 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	



**Public Notice Information**

**10. 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>	04/14/2021
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<b>11. This rule change MAY become effective on:</b>	05/01/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	01/26/2021
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**R414. Health, Health Care Financing, Finance Policy.**

**R414-12. Laboratory Services.**

**R414-12-1. Introduction and Authority.**

(1) Laboratory services provide a scope of services to meet the basic medical needs of eligible Medicaid members.

(2) Laboratory services are a mandatory Medicaid service authorized by Title XIX of the Social Security Act.

**R414-12-2. Definitions.**

(1) "COT" means chronic opioid therapy.

(2) "SUD" means substance use disorder.

(3) "Presumptive and qualitative drug testing" means testing used to determine the presence or absence of drugs or drug classes in a urine sample, with results expressed as negative, positive or as a numerical result, and includes competitive immunoassays and thin layer chromatography.

(4) "Definitive quantitative confirmation" means to identify specific medications, illicit substances and metabolites, which report the results of analytes absent or present typically in nanogram per milliliter concentrations. Definitive methods include gas chromatography-mass spectrometry (GC-MS) and lethal concentration-tandem mass spectrometry testing methods (LC-MS/MS).

**R414-12-3. Eligibility Requirements.**

Laboratory services are available to each eligible Medicaid member.

**R414-12-4. Program Access Requirements.**

An eligible Medicaid member may obtain laboratory services from any Utah Medicaid provider.

**R414-12-5. Service Coverage and Limitations.**

(1) Medicaid covers urine drug testing when medically necessary for COT or SUD as follows:

(a) annual quantity limits of 60 presumptive tests and 16 definitive tests;

(b) daily quantity limits of one presumptive test and one definitive test.

(2) Medicaid evaluates quantity limit exceptions on a case-by-case basis.

**KEY: Medicaid**

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

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

**End of the Notices of Changes in Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R850-80	Filing No. 53333

### Agency Information

<b>1. Department:</b>	School and Institutional Trust Lands	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 500	
<b>Street address:</b>	675 E 500 S	
<b>City, state, zip:</b>	Salt Lake City, UT 84102-2818	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michelle McConkie	801-538-5183	meastmconkie@utah.gov
Lisa Wells	801-538-5154	lisawells@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>	
R850-80. Sale of Trust Lands	
<b>3. Effective Date:</b>	
02/26/2021	
<b>4. Purpose of the new rule or reason for the change:</b>	
Due to the COVID-19 epidemic, restrictions for a public gathering at a land sale auction are limited.	
<b>5. Summary of the new rule or change:</b>	
This rule change allows the sale procedure to be conducted electronically, as well as orally, limiting a public gathering due to COVID-19 epidemic's restrictions.	
<b>6. Regular rulemaking would:</b>	
X	cause an imminent peril to the public health, safety, or welfare;
	cause an imminent budget reduction because of budget restraints or federal requirements; or

X	place the agency in violation of federal or state law.
<b>Specific reason and justification:</b>	
Due to the COVID-19 epidemic and subsequent restrictions on the size of public gatherings, an in-person public land sale auction would cause peril to public health and would violate local requirements. The agency, therefore, desires for the public auction to be held electronically.	
The proposed rule changes to replace the previous emergency rule was not submitted to and approved by the School and Institutional Trust Lands Administration (SITLA) Board before the ending of the previous 120-days of the emergency rule that was effective November 1, 2020. Therefore, an additional 120-days emergency rule is required to avoid any lapsed in the SITLA surface sale procedures.	
(EDITOR'S NOTE: The previous 120-day emergency rule (Filing No. 53098), that was effective on November 1, 2020, expired on 03/01/2021.)	

**Fiscal Information**

<b>7. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The purpose of this rule change is to establish an electronic bidding process for public land sales. The contractor the agency will use for the online auction charges 3% of the sales price for their services. The agency has increased the minimum sales prices for the auction parcels to account for the 3%. Since the price for these services will be included in the final purchase price of each parcel and will therefore be passed on to the successful bidder of the parcel, it is not anticipated that any additional costs will be incurred by the state due to this rule change.
<b>B) Local governments:</b>
The purpose of this rule change is to establish an electronic bidding process for public lands sales. It is not anticipated that local governments will be affected as a result of this rule change because local governments typically do not participate in land sale auctions.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
The purpose of this rule change is to establish an electronic bidding process for public land sales. If a small business is the successful bidder for a parcel, then the 3% contractor charge would be passed along to that bidder. These costs are unknown since the final purchase price of a parcel will not be determined until the close of the auction.

Potential bidders (including small businesses) may save money as a result of this rule change if they would have ordinarily paid to travel to an in-person public auction held by the agency since these expenses would no longer be required for online bidding.
<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 agency):</b>
The purpose of this rule change is to establish an electronic bidding process for public land sales. If a person is the successful bidder for a parcel, then the 3% contractor charge would be passed along to that bidder. These costs are unknown since the final purchase price of a parcel will not be determined until the close of the auction.
Potential bidders may save money as a result of this rule change if they would have ordinarily paid to travel to an in-person public auction held by the agency since these expenses would no longer be required for online bidding.
<b>8. Compliance costs for affected persons:</b>
The purpose of this rule change is to establish an electronic bidding process for public land sales. No compliance costs will be charged by the contractor providing this service or incurred by the agency.
<b>9. A) Comments by the department head on the fiscal impact this rule may have on businesses:</b>
The intent of this rule is to provide another mechanism for offering trust lands for sale to the private sector. As such, no adverse fiscal impact for business is anticipated.
<b>B) Name and title of department head commenting on the fiscal impacts:</b>
David Ure, Director

**Citation Information**

28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, 12	Subsection 53C-2-201(1)(a)	Subsection 53C-1-302(1)(a)(ii)
Article X	Subsection 53C-4-101(1)	
Article XX	Section 53C-4-102	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	David Ure, Director	<b>Date:</b>	02/25/2021
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**R850. School and Institutional Trust Lands, Administration.****R850-80. Sale of Trust Lands.****R850-80-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to prescribe the terms and conditions for the sale of trust land.

**R850-80-150. Planning.**

In addition to those other planning responsibilities described herein, the agency shall:

1. Submit proposals for the sale of trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;

2. Evaluate and respond to comments received through the RDCC process; and

3. Evaluate any comments received through the notice and advertising processes conducted pursuant to R850-80-600 and R850-80-615.

**R850-80-200. Sale of Trust Lands.**

The agency may sell trust land if the agency determines that the sale of the land would be in the best interest of the trust beneficiaries and provided that the land is sold for no less than fair market value.

**R850-80-250. Evaluation of Temporary Easements, Rights-of-Entry and Existing Rights of Record.**

Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-40-250(2) to evaluate whether any temporary easement or right-of-entry exists on the subject property. The agency shall also evaluate the presence and impact of other valid existing rights of record on the subject property prior to sale, and take any appropriate steps to mitigate adverse impacts resulting from such rights.

**R850-80-300. Sales Initiation Process.**

The sales process shall be initiated by an agency determination to evaluate the appropriateness of the sale of a particular parcel of trust land. The evaluation shall be undertaken in accordance with R850-80-500. In determining the appropriateness of a parcel of trust land for sale, the agency may consider nominations by interested parties.

**R850-80-400. Sales Deposits.**

If the agency evaluates a parcel of trust land for sale due to a nomination by an interested party, the person making such nomination may be required to deposit funds in an amount determined by the agency to be used to offset costs incurred in preparing the parcel for sale. In the event the person making the deposit is the successful purchaser of such land, the deposit shall be a credit against any fees charged by the agency to the purchaser for preparing the land for sale. In the event the person making the deposit is not the successful purchaser of such land or the land is not offered for sale, the deposit shall be refunded.

**R850-80-500. Sale Determination Procedures.**

## 1. Preliminary Analysis

(a) The director shall not offer trust land for sale when:

i) the subject property is appreciating in value at a rate in excess of the anticipated return from the investment of the principle;

ii) there is no evidence of competitive market interest, unless the purpose of the sale is to test the market in a particular area;

iii) the sale would create obstacles to future mineral development on trust lands; or

iv) in the sole discretion of the director, it has been determined that the sale would foreclose future development or management options which would likely result in greater long term economic benefit.

## 2. Market Analysis

(a) The agency shall conduct a market analysis of a proposed sale of trust land which shall include an estimate of value. If the estimate of value is determined by an appraisal, the cost of the appraisal shall be borne by the successful purchaser.

(b) The market analysis may also include the evaluation of:

i) real estate trends;

ii) market demand;

iii) opportunity costs including potential for appreciation; and

iv) associated management costs of retention.

## 3. Sale Determination

(a) The director may take into account any factor and circumstances deemed relevant, as well as any applicable policy adopted by the board, when making a determination as to whether to sell trust land. Prior to the sale of trust land, the agency shall take prudent and cost-effective actions to increase the value of the land.

(b) If a sale is determined to be appropriate, the agency shall determine the minimum acceptable selling price of the subject property, which minimum acceptable selling price shall not be less than fair market value. This determination may include information from any of the following:

i) the appraisal;

ii) the data gathered pursuant to R850-80-500(2); and

iii) any other information which the agency considers relevant.

(c) The minimum acceptable selling price shall be provided protected records status until the sale is consummated, unless otherwise ordered by the director.

**R850-80-550. Methods of Sale.**

The agency may sell land or assets using one of the methods described below:

1. A public sale pursuant to R850-80-610, or

2. A negotiated sale pursuant to R850-80-620.

**R850-80-600. Public Sale Notice and Advertising.**

1. At least 30 days prior to a public sale, notice shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and

(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) the date and[;] time[ ~~and location where~~] for the sale[ ~~will be held~~];

(b) a general description of the subject property including township, range, and section and a brief description of the location of the subject property;[ ~~and~~]

(c) information on the electronic means whereby the lands will be offered for sale or the location where the lands will be offered for sale, as applicable; and

\_\_\_\_\_ (d) contact information of the agency office where interested parties can obtain more information.

NOTICES OF 120-DAY (EMERGENCY) RULES

3. The agency may advertise public sales using any other methods the director has determined may increase the potential for additional competition at the sale.

**R850-80-610. Public Sale Auctions.**

Public sale auctions shall be conducted as follows:

1. Public sale auctions may be conducted orally or electronically, at the discretion of the director.

2. If the public auction is conducted orally:

(a) Sealed bids shall be accepted until the day prior to the auction by the agency, or on the day of the auction by the officer conducting the auction.

(b) A sealed bid shall contain funds in an amount equal to at least 10% of the total bid amount offered to purchase the subject property and may be required to consist of certified funds. Bids and bid deposits shall be a specified dollar amount. The agency reserves the right to reject any bid however submitted.

(c) Purchasers who have defaulted on certificates of sale may be required to make larger down-payments or submit sealed bids in the form of certified funds even if such a requirement is not contained in the notice of sale.

(d) The persons submitting the three highest bids shall be allowed to enter into oral bidding, which shall begin at the amount of the highest sealed bid, subject to those terms and conditions of R850-80-610(5)(e). Those persons who submit a sealed bid that is within 20% of the third highest sealed bid shall also be allowed to participate in oral bidding, subject to those terms and conditions of R850-80-610(5)(e).

(e) In the event the minimum selling price of a property is disclosed prior to the auction, persons who bid less than the disclosed minimum selling price shall be disqualified and shall not be eligible for oral bidding, even if such bids would otherwise meet those requirements in R850-80-610(4)(d) or (6)(f).

(f) Only current grazing permittees, materials permittees and special use lessees on the subject property who submit sealed bids shall automatically qualify to enter into oral bidding, subject to those terms and conditions of R850-80-610(5)(e).

(g) ~~All bids, whether sealed or oral, constitute a valid offer to purchase.~~ An attempt to withdraw a sealed bid after the first sealed bid has been read, or an attempt to withdraw or amend an oral bid may result in the forfeiture of the bid deposit and any other remedy afforded the agency at law or equity.

(h) If, after the first round of oral bidding, no bid is submitted which equals or exceeds the agency's minimum selling price, then the sale shall not be made except as provided below.

(i) At the discretion of the officer conducting the sale, qualified bidders may enter into additional rounds of oral bidding, starting at the high bid reached in the previous round.

(ii) To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum selling price.

(i) At the conclusion of the auction, the agency shall collect from the successful bidder:

(i) a down payment in the amount required by the sale notice;

(ii) interest on the unpaid balance from the date of sale to the first day of the following month; and

(iii) reimbursement of costs incurred in preparing the parcel for sale, which may include costs incurred for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

3. Bidding procedures and other sales notices for an electronic auction will be published on the agency's website prior to the electronic auction.

4. All bids in either an oral or electronic auction will constitute a valid offer to purchase.

(5) The first payment shall be due one year from the first day of the month following the sale; subsequent payments shall be due on the first day of the same month each year thereafter until the balance is paid in full.

(6) Amounts paid in excess of the current obligations shall be applied to principal. The unpaid balance, plus interest to date, may be paid in full at any time without penalty.

(7) If the successful bidder defaults on the down payment or otherwise fails to meet the requirements of R850-80-610(9)(4), the property may, upon approval by the director, be offered for sale to the person whose bid was second highest at the auction provided that the terms of the sale shall meet or exceed the minimum acceptable selling price established for the subject property. The second highest bidder shall have 30 days from the date of the agency's offer to submit the amounts required under R850-80-610(9)(4).

(8) The interest rate which shall be charged against any unpaid balance at the conclusion of the auction shall be the prime rate, as determined by the agency on the date the public sale is approved by the director, plus 2 1/2% (Prime Rate + 2 1/2%). Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as determined by the agency on the date of billing, plus 2 1/2% (Prime Rate + 2 1/2%).

(9) Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days from the date of the sale to remove the improvements. This provision is not applicable when such improvements are permitted under a valid existing right of record when such right survives the sale of the parcel.

**R850-80-615. Negotiated Sale Notice and Advertising.**

1. Prior to an agency decision to initiate a negotiated sale, notice of such shall be sent by certified mail to:

(a) the appropriate county authority in which the subject property is located with a request to have the notice posted in the governmental administrative building or courthouse and other appropriate locations;

(b) lessees/permittees of record on the subject property; and  
(c) adjoining landowners as shown on county records.

2. The notice of sale shall include:

(a) a general description of the subject property including township, range, and section and a brief description of the location of the subject property; and

(b) contact information of the agency office where interested parties can obtain more information.

3. The agency may advertise negotiated sales using any other methods the director has determined may increase the potential for additional interest in the subject property.

**R850-80-620. Negotiated Sale Procedures.**

1. Negotiated sales shall be advertised in the manner set forth in R850-80-615. In the event a competing offer(s) is received, the agency shall evaluate the offers and determine what action is in the best interest of the beneficiaries.

2. The board and affected beneficiary institution(s) shall be provided notice 30 days prior to the sale describing the terms, reasons, and other pertinent facts of the proposed negotiated sale.

3. Board approval of a negotiated sale is required if:  
 (a) the value of the subject property exceeds \$250,000.00;  
 (b) the subject property exceeds 320 acres in size; or  
 (c) additional interested person(s) indicate to the agency an interest in purchasing the subject property.

4. A purchaser of trust land sold at a negotiated sale may be required to reimburse the agency for costs incurred in preparing the parcel for sale, which may include costs for advertising, appraisal, cultural resource investigations, environmental assessments, and a sale processing charge.

**R850-80-700. Certificates of Sale.**

1. Following a public sale or upon concurrence of the parties in a negotiated sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the subject property, and shall include:

- (a) information regarding the amount paid;
- (b) the amount due;
- (c) the time when the principal and interest shall become due;
- (d) the beneficiary of the land;
- (e) provisions for remedies the agency may elect in the event of a default, as such remedies are set forth in R850-80-700(8); and
- (f) any other terms, covenants, deed restrictions, or conditions which the agency considers appropriate.

2. Certificates of sale must be executed by the purchaser and returned to the agency within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice shall be sent to the purchaser giving notice that after 30 days the sale may be canceled with all monies received, including the down-payment, forfeited to the agency. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to cancel a sale of trust land for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the director, and that no assignment is effective until approval is given by the director in writing.

5. An assignment of a certificate of sale shall be consistent with these rules, executed by the assignee and assignor and acknowledged, and shall clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from any obligations under the original certificate of sale.

7. Upon payment in full and surrender of the original certificate of sale for any tract of land sold, or payment in full of any amounts required under R850-80-750(3) for the partial release of property, the agency shall issue a patent to the appropriate person.

8. In the event of a purchaser's default under the certificate of sale, the agency's remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the certificate of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity.

**R850-80-750. Partial Releases.**

Partial release of property sold under a certificate of sale may be allowed at the discretion of the director. The following conditions shall be met:

1. Access to the remainder of the land must be preserved without restriction;

2. All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate shall have the capacity and capability to service all trust land originally included in the certificate;

3. Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the original price per acre, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of certified funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

4. Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph 3 above shall not include the 10% down payment or any annual installment paid under the certificate of sale;

5. The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released and the remaining land under the certificate; and

6. The value of the remaining land shall not be reduced to an amount less than the remaining principal balance of the certificate.

**KEY: administrative procedures, sales**

**Date of Enactment or Last Substantive Amendment: February 26, 2021**

**Notice of Continuation: June 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-4-101(1); 53C-4-102; 53C-4-202(6); 63G-2-305; 72-5-203(1)(a)(i); 72-5-203(2)(a)**

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R986-700-901	Filing No. 53329

**Agency Information**

<b>1. Department:</b>	Workforce Services	
<b>Agency:</b>	Employment Development	
<b>Building:</b>	Olene Walker Building	
<b>Street address:</b>	140 E 300 S	
<b>City, state, 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**

**2. Rule or section catchline:**

R986-700-901. Unearned Income, Pandemic

**3. Effective Date:**

02/19/2021

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

The purpose of this rule change is to maintain services for child care subsidy families and providers during the COVID-19 pandemic.

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

This emergency rule changes allow the Department of Workforce Services, Office of Child Care to exclude Lost Wages Assistance and Federal Pandemic Unemployment Compensation from unearned income for purposes of determining eligibility for child care subsidy payments. (EDITOR'S NOTE: A corresponding proposed amendment to Section R986-700-901 is under Filing No. 53330 in this issue, March 15, 2021, of the Bulletin.)

**6. Regular rulemaking would:**

- 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.

**Specific reason and justification:**

Due to the ongoing COVID-19 pandemic there are child care subsidy (CC) customers who have lost employment through no fault of their own and require additional funds in order to care for their children. After the final rule regarding unearned pandemic income was submitted for regular rulemaking, additional federal unearned pandemic income programs were created or continued. On August 8, 2020, President Donald J Trump issued a Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available Lost Wages Assistance (LWA) for certain unemployed persons. On December 27, 2020 the Consolidated Appropriations Act, 2021, was enacted, which included provisions for federal Pandemic Unemployment Compensation (FPUC) under section 203 of the Continued Assistance Act. Excluding the \$300 per week LWA and FPUC payments from CC income eligibility determinations will allow families who are eligible for CC to maintain eligibility while receiving LWA or FPUC, thus allowing them to return to work more quickly once business resumes. This emergency rule also allows child care providers to continue to receive CC funding based on the enrollment of families covered. This will allow child care providers to have the resources to maintain payroll, pay rent, pay for materials, and meet health and safety requirements for

families continuing to need child care. This emergency rule is being put in place until a final rule can be enacted under the regular rulemaking process.

**Fiscal Information**

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

**A) State budget:**

The emergency rule change 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 changes. The new changes will not increase workload and can be carried out with existing budget. Any costs will be paid with funds granted to the state through the federal Child Care and Development Fund.

**B) Local governments:**

The emergency rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the program is federally-funded and does not rely on local governments for funding, administration, or enforcement.

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

The majority of child care providers are small businesses (North American Industry Classification System (NAICS) 624410). It is anticipated that these changes will allow approximately 397 families with 725 children to continue to receive child care based on data obtained on April 17, 2020. The average subsidy payment per child each month is \$534 in CY 2020. As a result, this will allow approximately \$387,150 per month to continue to flow to child care providers so they can maintain their businesses. In the absence of the emergency rule change, these programs will lose this funding at a time when enrollment and revenues in programs are dramatically reduced.

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

It is anticipated that this rule will allow approximately 397 families with 725 children to continue to receive child care based on data obtained on April 17, 2020. The average subsidy payment per child each month is \$534 for CY 2020. The emergency rule change will support low-income parents to maintain their child care arrangements during the COVID-19 pandemic.

**8. Compliance costs for affected persons:**

The emergency rule change is not expected to cause any compliance costs for affected persons because the change does not create any new administrative fees.



Provider compliance responsibilities are not changed with these changes.

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

This emergency rule change is also being submitted through regular rulemaking. The funding for child care is provided by the federal Child Care and Development Block Grant (CCDBG). At this time, child care programs continue to receive subsidy payments for all families that were determined eligible for subsidies at the time of application unless their earnings exceed the federally established income threshold of 85% of the state median income (SMI). The CCDBG Act allows states to establish the definition of "income" for purposes of determining whether a family is at 85% SMI. Utah includes standard unemployment benefits as "income" for purposes of eligibility. This rule will not change that underlying requirement. However, by excluding the \$300 per week Lost Wages Assistance paid pursuant to the Lost Wages Assistance paid pursuant to the August 8, 2020, Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available other needs assistance for lost wages in accordance with Subsection 408(e)(2) of the Stafford Act (42 U.S.C. Subsection 5174(e)(2)), and the \$300 per week Federal Pandemic Unemployment Compensation paid pursuant to section 203 of the Continued Assistance Act, part of the Consolidated Appropriations Act, 2021, for all qualified UI recipients, Utah will be supporting the child care businesses that rely on family tuition payments to meet most operating expenses by maintain program income through a stable child care subsidy program. This is of great economic importance to Utah given that approximately 38% of licensed centers and 18% of licensed family child care programs temporarily closed during the COVID-19 pandemic due to low enrollment.

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

Casey R. Cameron, 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-3-310	Section 53F-5-210	Subsection 35A-3-203(12)
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Casey R. Cameron, Executive Director	<b>Date:</b>	02/19/2021
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**R986. Workforce Services, Employment Development.**

**R986-700. Child Care Assistance.**

**R986-700-901. Unearned Income, Pandemic.**

(1) This Section supersedes any conflicting provisions of Rules R986-200 and R986-700.

(2) Federal Pandemic Unemployment Compensation under Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(3) Lost Wages Assistance paid pursuant to the August 8, 2020, Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available other needs assistance for lost wages in accordance with Section 408(e)(2) of the Stafford Act (42 U.S.C. Subsection 5174(e)(2)), is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(4) Federal Pandemic Unemployment Compensation under section 203 of the Continued Assistance Act, part of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, enacted on December 27, 2020, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

**KEY: child care, grant programs**

**Date of Enactment or Last Substantive Amendment: February 19, 2021**

**Notice of Continuation: August 28, 2020**

**Authorizing, and Implemented or Interpreted Law: 35A-3-203(12); 35A-3-310; 53F-5-210**

**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.):	R65-8	Filing No. 50129

### Agency Information

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Marketing and Development	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state, zip:</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
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Linda Gillmor	801-982-2354	lgillmor@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule catchline:</b>
R65-8. Management of the Junior Livestock Show Appropriation

### 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:

This rule is promulgated under the authority of Subsection 4-2-103(1)(i) which gives the Department of Agriculture and Food (Department) rulemaking power related to laws governing agriculture. The Department also has authority under Subsection 4-2-103(1)(m) that allows the Department to take charge of any agricultural exhibit within the state.

### 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No written comments were received.

### 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule is needed because it establishes a Junior Livestock Show Association to manage and carry out the Junior Livestock Show Appropriation, including developing and maintaining a formula to govern distribution of the appropriation. Therefore, this rule should be continued.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	02/19/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R325-1	Filing No. 50789

**Agency Information**

<b>1. Department:</b>	Fair Corporation (Utah State)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	155 N 1000 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>
Larry Mullenax	801-538-8400	lmullenax@utahstatefair.com
Judy Duncombe	801-538-8445	judy@utahstatefair.com
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R325-1. Utah State Fair Competitive Exhibitor Rules
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 63H-6-103 requires the Utah State Fair Corporation to hold an annual exhibition that is called the state fair or a similar name; promotes and highlights agriculture throughout the state; includes exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah; and includes the award of premiums for the best specimens of the exhibited articles and animals. This requires the corporation to set rules and guidelines for exhibitors, renters, and the public.
<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 is no record of written comments having been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The Fair includes over 10,000 competitive entries each year and must have basic guidelines that are enforceable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Larry R. Mullenax, Executive Director	<b>Date:</b>	02/23/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R325-2	Filing No. 50793

**Agency Information**

<b>1. Department:</b>	Fair Corporation (Utah State)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	155 N 1000 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>
Larry Mullenax	801-538-8400	lmullenax@utahstatefair.com
Judy Duncombe	801-538-8445	judy@utahstatefair.com
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R325-2. Utah State Fair Commercial Exhibitor Rules
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 63H-6-103 requires the Utah State Fair Corporation to hold an annual exhibition that is called the state fair or a similar name; promotes and highlights agriculture throughout the state; includes exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah; and includes the award of premiums for the best specimens of the exhibited articles and animals. This requires the corporation to set rules and guidelines for exhibitors, renters, and the public.
<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 is no record of written comments having been received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

The Fair rents space to over 350 commercial exhibitors each year and must have basic guidelines that are enforceable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Larry R. Mullenax, Executive Director	<b>Date:</b>	02/23/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R325-3</b>	<b>Filing No. 50790</b>
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**Agency Information**

<b>1. Department:</b>	Fair Corporation (Utah State)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	155 N 1000 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>
Larry Mullenax	801-538-8400	lmullenax@utahstatefair.com
Judy Duncombe	801-538-8445	judy@utahstatefair.com
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R325-3. Utah State Fair Patron Rules
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 63H-6-103 requires the Utah State Fair Corporation to hold an annual exhibition that is called the state fair or a similar name; promotes and highlights agriculture throughout the state; includes exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah; and includes the award of premiums for the best specimens of the exhibited articles and animals. This requires the corporation to set rules and guidelines for exhibitors, renters, and the public.

**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 is no record of written comments having been received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Over 280,000 patrons attend the Fair annually, so the Corporation must have basic guidelines that are enforceable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Larry R. Mullenax, Executive Director	<b>Date:</b>	02/23/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R325-4</b>	<b>Filing No. 50799</b>
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**Agency Information**

<b>1. Department:</b>	Fair Corporation (Utah State)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	155 N 1000 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>
Larry Mullenax	801-538-8400	lmullenax@utahstatefair.com
Judy Duncombe	801-538-8445	judy@utahstatefair.com
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R325-4. Interim Patron Rules (Other Than Utah State Fair)
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 63H-6-103 requires the Utah State Fair Corporation to hold an annual exhibition that is called the state fair or a similar name; promotes and highlights agriculture throughout the state; includes exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that in the

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah; and includes the award of premiums for the best specimens of the exhibited articles and animals. This requires the corporation to set rules and guidelines for exhibitors, renters, and the public.

**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 is no record of written comments having been received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Over 150 different events and activities take place at the Fairpark each year, so the Corporation must have basic guidelines that are enforceable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Larry R. Mullenax, Executive Director	<b>Date:</b>	02/23/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R325-5</b>	<b>Filing No. 50803</b>
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**Agency Information**

<b>1. Department:</b>	Fair Corporation (Utah State)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	155 N 1000 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>
Larry Mullenax	801-538-8400	lmullenax@utahstatefair.com
Judy Duncombe	801-538-8445	judy@utahstatefair.com

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

**General Information**

<b>2. Rule catchline:</b>
R325-5. Interim Renters Rules (Other Than Utah State Fair)

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Section 63H-6-103 requires the Utah State Fair Corporation to hold an annual exhibition that is called the state fair or a similar name; promotes and highlights agriculture throughout the state; includes exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah; and includes the award of premiums for the best specimens of the exhibited articles and animals. This requires the corporation to set rules and guidelines for exhibitors, renters, and the public.

**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 is no record of written comments having been received.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

Over 150 different events and activities take place at the Fairpark each year, so the Corporation must have basic guidelines that are enforceable. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Larry R. Mullenax, Executive Director	<b>Date:</b>	02/23/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R444-1</b>	<b>Filing No. 51119</b>
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**Agency Information**

<b>1. Department:</b>	Health
<b>Agency:</b>	Disease Control and Prevention, Laboratory Improvement
<b>Building:</b>	Unified State Laboratories
<b>Street address:</b>	4431 S Constitution Blvd
<b>City, state, zip:</b>	Taylorsville, UT 84129
<b>Contact person(s):</b>	

<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy Heidman	801-965-2531	nheidman@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R444-1. Approval of Clinical Laboratories
<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 for this rule is from Subsection 26-1-30(2)(m) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health.
<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 have been no responses or comments received 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>
Clinical laboratories fall under the jurisdiction of federal law through the Clinical laboratory Improvement Amendments, 1988. This rule allows Utah to regulate laboratories to the same standard. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Richard G. Saunders, Executive Director	<b>Date:</b>	02/25/2021
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<b>FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION</b>		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-144</b>	<b>Filing No. 51361</b>

**Agency Information**

<b>1. Department:</b>	Insurance
<b>Agency:</b>	Administration
<b>Room no.:</b>	3110
<b>Building:</b>	State Office Building
<b>Street address:</b>	450 N State St
<b>City, state, zip:</b>	Salt Lake City, UT 84114
<b>Mailing address:</b>	PO Box 146901

<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-144. Commercial Aviation Insurance Exemption From Rate and From Filings
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-2-201 authorizes the Insurance Commissioner to adopt rules to implement the provisions of Title 31A, Insurance Code. Section 31A-19-a-103 authorizes the Insurance Commissioner to exempt any market segment from the provisions of Title 31A, Chapter 19a, Rate Regulation. Subsection 31A-21-101(5) authorizes the Insurance Commissioner to exempt any class of insurance contract or class of insurer from the provisions of Title 31A, Chapter 21, Insurance Contracts in General, and Title 31A, Chapter 22, Contracts in Specific Lines. Taken together, these provisions authorize the Insurance Commissioner to exempt commercial aviation insurance from the requirement to file insurance policy rates and forms with the department.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance (Department) has received no written comments regarding this rule during the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
Because of the unique nature of commercial aviation risks, aviation insurance premiums rely on individual risk analysis, underwriting judgment, and the negotiation of a sophisticated business transaction between the insurer and an informed insured. These types of risks also require individually tailored manuscript-type policies. Because of the uniqueness of each risk, it is not reasonable to set general rates and forms for them. For this reason, it is important that this rule continue in force, exempting commercial aviation insurance from the requirement to file policy rates and forms with the Department. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/25/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-177</b>	<b>Filing No. 51393</b>
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**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R590-177. Life Insurance Illustrations Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 31A-2-201(3)(a) authorizes the Insurance Commissioner to write rules to implement the provisions of Title 31A, Insurance Code. Subsection 31A-22-425(1)(c) authorizes the Insurance Commissioner to make rules to establish standards for illustrations that are used in connection with the solicitation or sale of a life insurance policy or contract. Subsection 31A-23a-402(8) states that a person may not engage in unfair methods of competition or deception in the practice of insurance. This rule describes filing requirements for life illustrations and standards for the format, use, delivery, and retention of life illustrations used in the sale of life policies. Insurers are required to appoint an actuary to certify that their illustrations meet certain standards and requirements.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>

The Department of Insurance has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule provides consumer protection by stating the requirements and restrictions on the values that can be shown in the projections contained in a life insurance illustration. Unregulated illustrations have been found to provide values that are unrealistic and could entice a consumer into purchasing a product that will never perform as the company has illustrated. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/25/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-200</b>	<b>Filing No. 51395</b>
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**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	3110	
<b>Building:</b>	State Office Building	
<b>Street address:</b>	450 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-538-3803	sgooch@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R590-200. Diabetes Treatment and Management
<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>
Subsections 31A-2-201(1) and 31A-2-201(3)(a) authorize the Insurance Commissioner to write and enforce rules to



implement the provisions of Title 31A, Insurance Code. Section 31A-22-626 authorizes the Insurance Commissioner to establish by rule minimum standards of coverage for diabetes for accident and health policies that provide a health insurance benefit. Section 31A-22-626 also authorizes the Insurance Commissioner to write rules with limits, deductibles, coinsurance, and requirements regarding self-management training and management training that are equitable or identical to coverage provided for the treatment of other diseases or illnesses, as well as requiring coverage for equipment and supplies that are considered to be medically necessary for that care.

**4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:**

The Department of Insurance has received no written comments regarding this rule during the past five years.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule details the minimum standards for diabetic care that must be covered under health insurance. It includes diabetes education, training, supplies, and prescriptions necessary for a person to manage their diabetes. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	02/25/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R606-1</b>	<b>Filing No. 51494</b>

**Agency Information**

<b>1. Department:</b>	Labor Commission	
<b>Agency:</b>	Antidiscrimination	and Labor, Antidiscrimination
<b>Building:</b>	Heber M Wells	
<b>Street address:</b>	160 E 300 S, 3rd Floor	
<b>City, state, zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146600	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-6600	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Chris Hill	801-530-6113	chill@utah.gov

Kendra Shirey	801-530-6921	kshirey@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R606-1. Antidiscrimination

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

This rule is enacted in accordance with the Utah Antidiscrimination Act, Subsection 34A-5-104(1)(b), which provides "[t]he commission may adopt, publish, amend, and rescind rules, consistent with, and for the enforcement of this chapter."

**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 regarding this rule since its last five-year review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule must continue to remain in place in order to for the Labor Commission to enforce the Utah Antidiscrimination Act. Rule R606-1 sets forth the process for an employment discrimination case, provides information as to what information obtained during an investigation may be released, and the process for obtaining declaratory orders, as well as how to compute time periods for filing a discrimination complaint.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jaceson R. Maughan, Commissioner	<b>Date:</b>	02/17/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R628-12</b>	<b>Filing No. 51527</b>

**Agency Information**

<b>1. Department:</b>	Money Management Council
<b>Agency:</b>	Administration
<b>Room no.:</b>	180
<b>Building:</b>	Utah State Capitol
<b>Street address:</b>	350 N State St

<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142315	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ann Pedroza	801-538-1883	apedroza@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R628-12. Certification of Qualified Depositories for Public Funds
<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 51-7-3(29) defines a qualified depository as an institution that has met the requirements for this chapter and rules of the Money Management Council (Council) to be eligible to receive deposits of public funds. In Subsection 51-7-18(2)(b), it states that the Council may make rules governing the conditions and procedures for maintaining and revoking a financial institution's designation as a qualified depository.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The Council reviewed this rule for the five-year review continuation in their October 22, 2020, meeting. No comments in opposition to this rule have been received. The statute requires that there be rules in place to govern deposits of Utah public funds in Utah financial institutions. This rule needs to be continued to provide criteria for financial institutions to become qualified to hold Utah public funds. If this rule were not in place, public entities would not be able to use financial institutions to deposit funds.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Douglas L. DeFries, President	<b>Date:</b>	02/19/2021
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R628-13</b>	<b>Filing No. 51528</b>

**Agency Information**

<b>1. Department:</b>	Money Management Council	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	180	
<b>Building:</b>	Utah State Capitol	
<b>Street address:</b>	350 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142315	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ann Pedroza	801-538-1883	apedroza@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R628-13. Collateralization of Public Funds
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 51-7-18 allows the Money Management Council (Council) to make rules requiring collateral on public fund deposits from qualified depositories only in the event that the public funds on deposit are more than the maximum uninsured public funds allotment.
<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 supporting or opposing this rule have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule needs to be continued to allow the Council to receive collateral in the event that a qualified depository's allotment is reduced or the qualified depository goes over the allotment for reasons described in this rule. Allowing collateral in these instances protects public funds from potential loss. There have been no comments in opposition to this rule for the Council to respond to. The Council reviewed this rule in their December 21, 2020, meeting and agreed to the continuation.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Douglas L. DeFries, President	<b>Date:</b>	02/22/2021
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	R628-16	<b>Filing No. 51522</b>
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**Agency Information**

<b>1. Department:</b>	Money Management Council	
<b>Agency:</b>	Administraiton	
<b>Room no.:</b>	180	
<b>Building:</b>	Utah State Capitol	
<b>Street address:</b>	350 N State St	
<b>City, state, zip:</b>	Salt Lake City, UT 84114	
<b>Mailing address:</b>	PO Box 142315	
<b>City, state, zip:</b>	Salt Lake City, UT 84114-2315	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Ann Pedroza	801-538-1883	apedroza@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R628-16. Certification as a Dealer

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:**

Under Section 51-7-18 it is stated that the Money Management Council (Council) may make rules governing the conditions and procedures for maintaining and revoking the status of a certified dealer.

**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 since the last review.

**5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:**

This rule needs to be in place to allow public treasurers that may want to purchase allowable securities to have access to certified dealers that have met minimum requirements to work with public treasurers and have signed that they have read the Utah Money Management Act (Title 51, Chapter 7) and agree to abide by it. Without this rule to provide these minimum requirements, public treasurers would not be able to purchase allowable securities. There have been no comments in opposition to this rule. Therefore, this rule was reviewed in the Council's January 2021 meeting and unanimously agreed on to be continued at that time.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Douglas L. DeFries, President	<b>Date:</b>	02/25/2021
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**End of the Five-Year Notices of Review and Statements of Continuation Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

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### Administrative Services

#### Finance

No. 53269 (Amendment) R25-7: Reimbursement for Transportation  
Published: 01/15/2021  
Effective: 02/23/2021

### Environmental Quality

#### Administration

No. 53259 (New Rule) R305-10: Local Health Department Minimum Performance Standards  
Published: 01/15/2021  
Effective: 02/23/2021

### Health

#### Family Health and Preparedness, Children with Special Health Care Needs

No. 53264 (New Rule) R398-15: Adult Autism Treatment Program  
Published: 01/01/2021  
Effective: 02/10/2021

#### Health Care Financing, Coverage and Reimbursement Policy

No. 53270 (Amendment) R414-505: Intergovernmental Transfer (IGT) Certification  
Published: 01/15/2021  
Effective: 02/25/2021

### Human Services

#### Administration

No. 53267 (Repeal) R495-862: Communicable Disease Control Act  
Published: 01/15/2021  
Effective: 02/24/2021

Administration, Administrative Services, Licensing  
No. 53226 (Amendment) R501-14: Human Service Program Background Screening  
Published: 12/15/2020  
Effective: 02/16/2021

#### Substance Abuse and Mental Health

No. 53225 (Amendment) R523-2: Local Mental Health Authorities and Local Substance Abuse Authorities  
Published: 01/01/2021  
Effective: 02/26/2021

#### Recovery Services

No. 53260 (Amendment) R527-35: Non-IV-A Fee Schedule  
Published: 01/15/2021  
Effective: 02/24/2021

### Insurance

#### Administration

No. 53272 (Amendment) R590-238: Fee Schedule. Initial Application. Renewal  
Published: 01/15/2021  
Effective: 02/23/2021

#### No. 53179 (New Rule) R590-285: Limited Long-Term Care Insurance

Published: 11/15/2020  
Effective: 02/23/2021

#### No. 53179 (Change in Proposed Rule) R590-285: Limited Long-Term Care Insurance

Published: 01/15/2021  
Effective: 02/23/2021

NOTICES OF RULE EFFECTIVE DATES

Natural Resources

Wildlife Resources

No. 53242 (Amendment) R657-9: Taking Waterfowl,

Wilson's Snipe and Coot

Published: 01/15/2021

Effective: 02/23/2021

No. 53243 (Amendment) R657-38: Dedicated Hunter  
Program

Published: 01/15/2021

Effective: 02/23/2021

**End of the Notices of Rule Effective Dates Section**