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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: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.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 <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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TABLE OF CONTENTS

SPECIAL NOTICES	1
Health	
Health Care Financing, Coverage and Reimbursement Policy	
Medicaid Budget Hearing for Fiscal Year 2016.....	1
NOTICES OF PROPOSED RULES	3
Administrative Services	
Purchasing and General Services	
No. 38500 (Repeal and Reenact): R33-1 Utah State Procurement Rules Definitions.....	4
No. 38501 (Repeal and Reenact): R33-2 Procurement Organization.....	6
No. 38502 (Repeal and Reenact): R33-3 Source Selection and Contract Formation.....	9
No. 38503 (Repeal and Reenact): R33-4 Specifications.....	28
No. 38504 (Repeal and Reenact): R33-5 Construction and Architect-Engineer Selection.....	32
No. 38505 (Repeal and Reenact): R33-6 Modification and Termination of Contracts	
for Supplies, Services, Construction, and Technology.....	43
No. 38506 (Repeal and Reenact): R33-7 Cost Principles.....	49
No. 38507 (Repeal and Reenact): R33-8 Property Management.....	56
No. 38508 (Repeal and Reenact): R33-9 Insurance Procurement.....	59
No. 38509 (Repeal and Reenact): R33-10 State Construction Contracts and Drug and	
Alcohol Testing.....	62
No. 38524 (Repeal and Reenact): R33-11 Surplus Property.....	64
No. 38510 (Repeal and Reenact): R33-12 Rules of Procedure for Procurement Policy	
Board and Procurement Appeals Panel.....	71
No. 38511 (New Rule): R33-13 General Construction Provisions.....	79
No. 38512 (New Rule): R33-14 Procurement of Design-Build Transportation Project Contracts.....	83
No. 38513 (New Rule): R33-15 Architect-Engineer Services.....	84
No. 38514 (New Rule): R33-16 Controversies and Protests.....	86
No. 38515 (New Rule): R33-17 Procurement Appeals Board.....	87
No. 38516 (New Rule): R33-18 Appeal to the Utah Court of Appeals.....	89
No. 38518 (New Rule): R33-19 General Provisions Related to Protest or Appeal.....	90
No. 38519 (New Rule): R33-20 Records.....	91
No. 38520 (New Rule): R33-21 Interaction Between Procurement Units.....	92
No. 38526 (New Rule): R33-22 Reserved.....	94
No. 38527 (New Rule): R33-23 Reserved.....	95
No. 38521 (New Rule): R33-24 Unlawful Conduct.....	95
No. 38522 (New Rule): R33-25 Executive Branch Insurance Procurement.....	97
No. 38523 (New Rule): R33-26 State Surplus Property.....	98
Capitol Preservation Board (State)	
Administration	
No. 38479 (Amendment): R131-13 Health Reform - Health Insurance Coverage in	
State Contracts - Implementation.....	103
Commerce	
Occupational and Professional Licensing	
No. 38517 (Amendment): R156-40 Recreational Therapy Practice Act Rule.....	105
Education	
Administration	
No. 38541 (Amendment): R277-477 Distribution of Funds from the Interest and	
Dividend Account and Administration of the School LAND Trust Program.....	109
No. 38542 (Amendment): R277-491 School Community Councils.....	113
Rehabilitation	
No. 38539 (Amendment): R280-150 Adjudicative Proceedings Under the Vocational	
Rehabilitation Act.....	117
Environmental Quality	
Administration	
No. 38525 (Amendment): R305-4 Clean Fuels and Vehicle Technology Fund Grant	
and Loan Program.....	118

TABLE OF CONTENTS

Air Quality	
No. 38493 (Amendment): R307-101-3 Version of Code of Federal Regulations Incorporated by Reference.....	122
No. 38492 (Amendment): R307-214 National Emission Standards for Hazardous Air Pollutants.....	123
No. 38491 (Amendment): R307-401-12 Reduction in Air Contaminants.....	127
No. 38489 (Amendment): R307-410-2 Definitions.....	128
No. 38490 (Amendment): R307-410-6 Stack Heights and Dispersion Techniques.....	129
Drinking Water	
No. 38535 (Amendment): R309-545 Facility Design and Operation: Drinking Water Storage Tanks.....	130
No. 38536 (Amendment): R309-550 Facility Design and Operation: Transmission and Distribution Pipelines.....	135
Water Quality	
No. 38530 (Amendment): R317-1-3 Requirements for Waste Discharges.....	141
No. 38531 (Amendment): R317-10 Certification of Wastewater Works Operators.....	143
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 38528 (Amendment): R414-9 Federally Qualified Health Centers.....	150
No. 38529 (Amendment): R414-99 Chiropractic Services.....	151
No. 38532 (Amendment): R414-510 Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.....	153
Center for Health Data, Vital Records and Statistics	
No. 38537 (New Rule): R436-55 Hemp Extract Registration.....	155
Insurance	
Administration	
No. 38534 (New Rule): R590-270 Risk Adjustment Data Submission Requirements.....	158
Natural Resources	
Wildlife Resources	
No. 38483 (Amendment): R657-13 Taking Fish and Crayfish.....	160
No. 38482 (Amendment): R657-45 Wildlife License, Permit, and Certificate of Registration Forms.....	163
No. 38484 (Amendment): R657-67 Utah Hunter Mentoring Program.....	165
NOTICES OF CHANGES IN PROPOSED RULES.....	167
Environmental Quality	
Water Quality	
No. 38288: R317-2-14 Numeric Criteria.....	168
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION.....	171
Crime Victim Reparations	
Administration	
No. 38498: R270-3 ADA Complaint Procedure.....	171
No. 38499: R270-4 Government Records Access and Management Act.....	171
Education	
Rehabilitation	
No. 38538: R280-150 Adjudicative Proceedings Under the Vocational Rehabilitation Act.....	172
Environmental Quality	
Air Quality	
No. 38494: R307-101 General Requirements.....	172
Water Quality	
No. 38481: R317-401 Graywater Systems.....	173
Technology Services	
Administration	
No. 38480: R895-13 Access to the Identity Theft Reporting Information System Database.....	174

NOTICES OF RULE EFFECTIVE DATES..... 175

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)..... 177**

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Medicaid Budget Hearing for Fiscal Year 2016

The Utah Department of Health invites you to attend a special Medical Care Advisory Committee (MCAC) meeting to obtain public input on the Medicaid budget for Fiscal Year 2016 (July 1, 2015, through June 30, 2016). The meeting will be Thursday, June 19, 2014, from 4:00 p.m. until 6:00 p.m. in the Cannon Health Building, 288 N 1460 W, Room 125, Salt Lake City, UT.

If you know of special medical needs not being met by Medicaid, or want to speak on a budgetary matter of importance to you, please come prepared to make a short (no more than three-minute) presentation to the Committee. Copy services will be provided, if you have a handout. Signed petitions are encouraged. Your input will assist the MCAC in recommending a budget that will be more representative of Medicaid providers and clients.

If you cannot attend the public hearing, but would like to write to the Committee about special medical needs, please mail comments to: MCAC, PO Box 143112, Salt Lake City, UT 84114-3112.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between May 02, 2014, 12:00 a.m., and May 15, 2014, 11:59 p.m. are included in this, the June 01, 2014, 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 Division 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 Division 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 July 1, 2014. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 29, 2014, the agency may notify the Division 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 Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

**Administrative Services, Purchasing
and General Services
R33-1
Utah State Procurement Rules
Definitions**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38500

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule defines terms used in the procurement rules as stated in the Utah Procurement Code, Title 63G, Chapter 6a. The definitions in this rule are being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. There are no new substantive changes in this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because the change simply updates the terms used in the procurement rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because the change simply updates the terms used in the procurement rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because the change simply updates the terms used in the procurement rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because the change

simply updates the terms used in the procurement rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because the change simply updates the terms used in the procurement rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

[R33-1. Utah State Procurement Rules Definitions.

R33-1-1. Definitions.

~~A. Terms used in the procurement rules are defined in Section 63G-6-103.~~

~~B. In addition:~~

~~(1) Actual Costs means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.~~

~~(2) Adequate Price Competition means when competitive sealed proposals are solicited and at least two responsible offerors independently contend for a contract to be awarded to the responsible~~

offeror submitting the lowest evaluated price by submitting priced best and final offers meeting the requirements of the request for proposals. If the foregoing conditions are met, price competition shall be presumed to be "adequate" unless the procurement officer determines that there is not adequate competition.

(3) Acquiring Agency is an agency subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(5) Brand Name Specification means a specification calling for one or more products by manufacturers' names or catalogue numbers.

(6) Chief Procurement Officer means the procurement officer for the State of Utah.

(7) Consultant Services means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advise in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting, planning, and data processing.

(8) Cost Analysis means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, cost to be reimbursed, or costs actually incurred.

(9) Cost Data means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(10) Cost Objective means a function, organizational subdivision, contract, or any other work unit for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, and similar items.

(11) Discussions as used in source selection means negotiation during which the seller or buyer may alter or otherwise change the terms, price or other provisions of the proposed contract. Discussion can be conducted under competitive sealed proposals, sole source, and emergency procurements; such discussion is not permissible under competitive sealed bidding except to the extent in the first phase of multi-step bidding.

(12) Electronic means, in reference to any solicitation process, only those specified electronic forms described in the Invitation for Bids, Request for Proposals or other solicitation document.

(13) Established Market Price means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(14) Lease means a contract for the use of equipment or real property under which title does not pass to the purchasing agency.

(15) New Technology means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of,

existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(16) Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

(17) Price Analysis means the evaluation of price data without analysis of the separate cost components and profit which may assist in arriving at prices to be paid or costs to be reimbursed.

(18) Price Data means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices. The definition refers to data relevant to both prime and subcontract prices.

(19) Professional Services means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, court reporters, X-ray technicians, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarians, and research. The knowledge is founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills.

(20) Property means all real property, personal property, or both, owned by a purchasing agency.

(21) Providers means suppliers of services, which might be termed "personal services", to benefit clients or citizens of the enacting jurisdiction which services otherwise might be performed by its own employees. For example, an enacting jurisdiction might contract with a school to conduct a training program for the handicapped. Similarly, the state might contract with persons to provide foster homes for children. It will be necessary to ascertain on a case-by-case basis whether the services to be rendered will involve extended analysis and significant features of judgment.

(22) Qualified Products List means a list of supplies, services, or construction items described by model or catalogue numbers, which, prior to solicitation, the purchasing agency has determined will meet the applicable specification requirements.

(23) Solicitation means an Invitation for Bids, a Request for Proposals, or any other document, such as a request for quotations, issued by the purchasing agency for the purpose of soliciting offers to perform a contract.

(24) Suppliers means prospective bidders or offerors, as used in section 63G-6-414 of the Utah Procurement Code.

(25) Technology means(e) any type of technology defined in 63F-1-102(8) of the Utah Technology Governance Act.]

R33-1. Utah Procurement Rules, "General Procurement Provisions," Definitions.

R33-1-1. Definitions.

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(7) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(8) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(9) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(10) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(11) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(12) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

(13) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(14) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(15) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of,

existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(16) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(17) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(18) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(19) "Price Data" means factual information concerning prices for procurement items.

(20) "Section and Subsection" refers to the Utah Code.

(21) "Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (owner) will recover its losses via the bond.

(22) "Technology" means any type of technology defined in Section 63F-1-102(8).

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions

Date of Enactment or Last Substantive Amendment: [~~March 30, 2012~~2014]

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services **R33-2** Procurement Organization

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38501

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule states the rules of procedure for the Procurement Policy Board. The procedures in this rule are being updated to comply with the

provisions in the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. There are no new substantive changes in this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The state's budget will not be affected, because the change simply updates the procedures for the meetings of the Procurement Policy Board in this rule to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ LOCAL GOVERNMENTS: Local governments' budgets will be affected, because the change simply updates the procedures for the meetings of the Procurement Policy Board in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ SMALL BUSINESSES: Small businesses' budgets will not be affected, because the change simply updates the procedures for the meetings of the Procurement Policy Board in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because the change simply updates the procedures for the meetings of the Procurement Policy Board in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because the change simply updates the procedures for the meetings of the Procurement Policy Board in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

**R33. Administrative Services, Purchasing and General Services.
[R33-2. Procurement Organization.]**

~~R33-2-101. Delegation of Authority of the Chief Procurement Officer.~~

~~—————The Chief Procurement Officer may delegate in writing any authority Pursuant to Section 63G-6-205 as deemed appropriate to any employees of the office of the Chief Procurement Officer or of a purchasing agency, respectively. These delegations shall remain in effect unless modified or until revoked in writing.~~

~~R33-2-102. Authority to Make Small Purchases.~~

~~—————(1) General. The Chief Procurement Officer may delegate to the head of any using agency the authority to make a purchase expected to be less than \$50,000 for supplies and services. This delegation shall be in writing and may be limited as the Chief Procurement Officer directs.~~

~~—————(2) Purchasing Agencies Shall Make Small Purchases Pursuant to Rules. Purchasing agencies shall exercise authority as may be delegated, and such small purchases shall be made pursuant to subpart 3-3 of part 3 of these rules.~~

~~R33-2-103. Authority of Procurement Officers.~~

~~—————Procurement officers may take any action of a procurement nature to advance economic well-being and efficient operation of the state or agency so long as that action is not in conflict with the Utah Procurement Code or the Utah Procurement Rules.]~~

R33-2. Rules of Procedure for Procurement Policy Board.

R33-2-1. Purpose.

The purpose of this Rule R33-2 is to establish procedures for the meetings of the Procurement Policy Board. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-2-2. Authority.

This Rule R33-2 is authorized under Subsection 63G-6a-202(5) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6a-203 et. seq.

R33-2-3. Definitions.

All definitions in the Utah Procurement Code, Title 63G, Chapter 6a, Utah Code, shall apply to this Rule R33-2. In addition the following definitions shall apply to this Rule R33-2:

- (1) "Attendance" means a person attending a Board meeting, either in person or through electronic means as authorized by this Rule.
- (2) "Board" means the Procurement Policy Board established under Section 63G-6a-202.
- (3) "Chair" means the person elected as Chair of the Board pursuant to Subsection 63G-6a-202(5)(a)(ii).
- (4) "Chief Procurement Officer" means the Chief Procurement Officer as defined in the Utah Procurement Code.
- (5) "Director" means the Director of the Division of Purchasing and General Services or a duly authorized designee.
- (6) "Division" means the Division of Purchasing and General Services.
- (7) "Electronic meeting" is as defined in Section 52-4-103.
- (8) "Open and Public Meetings Act" means those laws provided by Title 52, Chapter 4, Utah Code.
- (9) "Presiding Officer" means the Chair or designee.

R33-2-4. Composition of Board.

- (1) The Board consists of fifteen voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.
- (2) The secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.

R33-2-5. Calling Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services or Director may also call a meeting.

R33-2-6. Chair, Presiding Officer and Basic Responsibilities.

- (1) The Chair shall be the Presiding Officer at all Board meetings.
- (2) The Chair may designate, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.
- (3) The Presiding Officer may make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.
- (4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director or any three voting members may also place items on the Board agenda.
- (5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

R33-2-7. Secretary to the Board.

- (1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public

Meetings Act. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings Act.

- (2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R33-2-8. Meetings.

Meetings are generally held in the conference room of the Division of Purchasing and General Services, 3rd floor, State Office Building, Capitol Hill, in Salt Lake City, Utah. The date, time and location may be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R33-2-9. Compliance with Open and Public Meetings Act.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Act. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meetings Act.

R33-2-10. Notice and Agenda.

- (1) Notice shall be given of all meetings in accordance with the Open and Public Meetings Act.
- (2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. Board members may also contact the Chair or Director to request that an item be placed on the agenda.
- (3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.
- (4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer or Director.
- (5) Each agenda shall include an agenda item that allows board members to request that an item be placed on a future agenda.

R33-2-11. Attendance, Quorum and Voting.

- (1) Eight members of the Board are required for a quorum to transact business.
- (2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least five members.
- (3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.
- (4) Members must be in attendance, either in person or by electronic means in accordance with this Rule, in order to vote.

R33-2-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

- (1) Any voting member may make or second a motion.
- (2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those who request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions.

R33-2-13. Committees and Appeals Panel.

The Board Chair may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-17.

R33-2-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to leave the meeting.

R33-2-15. Rules of Order.

All matters not covered by this Rule R33-2 shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

R33-2-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R33-2 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director or Secretary. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer or Director shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be present and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Act. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where

the Board would normally meet if the Board was not holding an electronic meeting.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member participating electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R33-2-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R33-2-1 through R33-2-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

KEY: government purchasing, Procurement Policy Board, rules of procedure

Date of Enactment or Last Substantive Amendment: [May 27, 2003]2014

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-3
Source Selection and Contract
Formation**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38502

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes procurement organization, and the delegation of authority of the Chief Procurement Officer. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that the standard procurement processes have been removed and placed into Rules R33-6, R33-7, and R33-8. (DAR NOTE: The proposed repeal and reenactments of Rule R33-6 is under DAR No. 38505, Rule 33-7 is under DAR No. 38506, and Rule R33-8 is under DAR No. 38507 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state's budget will not be affected, because the change simply updates the procurement organization, and the delegation of authority of the Chief Procurement Officer in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because the change simply updates the procurement organization, and the delegation of authority of the Chief Procurement Officer in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because the change simply updates the procurement organization, and the delegation of authority of the Chief Procurement Officer in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons budget will be affected, because the change simply updates the procurement organization, and the delegation of authority of the Chief Procurement Officer in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because the change simply updates the procurement organization, and the delegation of authority of the Chief Procurement Officer in this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

~~[R33-3. Source Selection and Contract Formation.~~

~~R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.~~

~~3-101. Content of the Invitation For Bids.~~

- ~~(1) Use. The Invitation for Bids is used to initiate a competitive sealed bid procurement.~~
- ~~(2) Content. The Invitation for Bids include the following:~~
 - ~~(a) Instructions and information to bidders concerning the bid submission requirements, including the time and closing date for submission of bids, the address of the office to which bids are to be delivered, and any other special information;~~
 - ~~(b) The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description;~~
 - ~~(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.~~
- ~~(3) Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where the documents can be obtained.~~
- ~~(4) Acknowledgement of Amendments. The Invitation for Bids shall require the acknowledgement of the receipt of all amendments issued.~~
- ~~(5) Technology Acquisitions. The Invitation for Bids may state that at any time during the term of a contract, the acquiring~~

agency may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

3-102 Bidding Time. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer.

3-103 Bidder Submissions:

(1) **Bid Form.** The Invitation for Bids shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions.

(2) **Electronic Bids.** The Invitation for Bids may state that electronic bids will be considered whenever they are received at the designated office by the time specified for bid opening.

(3) **Bid Samples and Descriptive Literature.**

(a) **Descriptive literature** means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item and assists the purchasing agency in considering whether the item meets requirements or criteria set forth in the invitation.

(b) **Bid sample** means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

(c) **Bid samples or descriptive literature** may be required when it is necessary to evaluate required characteristics of the items bid.

(d) **Samples of items**, when called for in the Invitation for Bids, must be furnished free of expense, and if not destroyed by testing, will upon request, be returned at the bidder's expense. Samples submitted by the successful bidder may be held for comparison with merchandise furnished and will not necessarily be returned. Samples must be labeled or otherwise identified as called for by the purchasing agency.

(4) **Bid Security.** Bid and performance bonds or other security may be required for supply contracts or service contracts as the procurement officer deems advisable to protect the interests of the purchasing agency. Any requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility.

(5) **Bid Price.** Bid prices submitted in response to an invitation for bids must stand alone and may not be dependent upon a bid submitted by any other bidder. A bid reliant upon the submission of another bidder will not be considered for award.

3-104 Public Notice.

(1) **Distribution.** Invitation for Bids or notices of the availability of Invitation for Bids shall be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing reasonable competition. Notices of availability shall indicate where, when, and for how long Invitation for Bids may be obtained; generally describe the supply, service, or construction desired; and may contain other appropriate information. Where appropriate, the procurement officer may require payment of a fee or a deposit for the supplying of the Invitation for Bids.

(2) **Publication.** Every procurement in excess of \$50,000 shall be publicized in any or all of the following:

(a) in a newspaper of general circulation;

(b) in a newspaper of local circulation in the area pertinent to the procurement;

(c) in industry media; or

(d) in a government internet website or publication designed for giving public notice.

(3) **Public Availability.** A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

3-105 Bidder List; Prequalification:

(1) **Purpose.** Lists of qualified prospective bidders may be compiled and maintained by purchasing agencies for the purpose of soliciting competition on various types of supplies, services, and construction. Qualifications for inclusion on the lists may include legal competence to contract and capabilities for production and distribution as considerations. However, solicitations shall not be restricted to prequalified suppliers, and unless otherwise provided inclusion or exclusion on the name of a business does not determine whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(2) **Public Availability.** Subject to procedures established by the procurement officer, names and addresses on bidder lists shall be available for public inspection.

3-106 Pre-Bid Conferences:

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written amendment as provided in section 3-107 and the Invitation for Bids and the notice of the pre-bid conference shall so provide. If a written summary of the conference is deemed advisable by the procurement officer, a copy shall be supplied to all those prospective bidders known to have received an Invitation for Bids and shall be available as a public record.

3-107 Amendments to Invitation for Bids.

(1) **Application.** Amendments should be used to:

(a) make any changes in the Invitation for Bids including changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(b) correct defects or ambiguities; or

~~(c) furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of information would be inequitable to other bidders.~~

~~(2) Form. Amendments to Invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued.~~

~~(3) Distribution. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids.~~

~~(4) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit proper preparation, to the extent possible the time shall be increased in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.~~

~~3-108 Pre-Opening Modification of Withdrawal of Bids:~~

~~(1) Procedure. Bids may be modified or withdrawn by written or electronic notice received in the office designated in the Invitation for Bids prior to the time set for bid opening.~~

~~(2) Disposition of Bid Security. Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.~~

~~(3) Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.~~

~~3-109 Late Bids, Late Withdrawals, and Late Modifications:~~

~~(1) Definition. Any bid, withdrawal, or modification received at the address designated in the Invitation for Bids after the time and date set for opening of bids at the place designated for opening is late.~~

~~(2) Treatment. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of personnel directly serving the procurement activity.~~

~~(3) Records. Records equivalent to those required in section 3-108 (3) shall be made and kept for each late bid, late modification, or late withdrawal.~~

~~3-110 Receipt, Opening, and Recording of Bids:~~

~~(1) Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening. They shall be stored in a secure place until bid opening time.~~

~~(2) Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection (3) of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bids submitted through electronic means shall be received in such a manner that the requirements of this section can be readily met.~~

~~(3) Confidential Data. The procurement officer shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidders in writing what portions of the bids will be disclosed.~~

~~3-111 Mistakes in Bids:~~

~~(1) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders.~~

~~(2) Mistakes Discovered Before Opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in section 3-108.~~

~~(3) Confirmation of Bid. When it appears from a review of the bid that a mistake has been made, the bidder should be requested to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection (1), (4) and (6) of this section are met.~~

~~(4) Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three situations described in paragraphs (a), (b) and (c) below in which mistakes in bids are discovered after opening but before award.~~

~~(a) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The procurement officer may waive these informalities. Examples include the failure of a bidder to:~~

~~(i) return the number of signed bids required by the Invitation for Bids;~~

~~(ii) sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;~~

~~(iii) acknowledge receipt of an amendment to the Invitation for Bids, but only if:~~

~~(A) it is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or~~

~~(B) the amendment involved had a negligible effect on price, quantity, quality, or delivery.~~

~~(C) Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.~~

~~(D) Mistakes Where Intended Bid is Not Evident. A bidder may be permitted to withdraw a low bid if:~~

~~(i) a mistake is clearly evident on the face of the bid document but the intended bid is not similarly evident; or~~

~~(ii) the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.~~

~~(5) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.~~

~~_____ (6) Written Approval or Denial Required. The procurement officer shall approve or deny, in writing, a bidder's request to correct or withdraw a bid. Approval or denial may be so indicated on the bidder's written request for correction or withdrawal.~~

~~_____ 3-112 Bid Evaluation and Award.~~

~~_____ (1) General. The contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive and responsible bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected, in whole or in part, when it is the best interests of the purchasing agency as determined by the purchasing agency. In the event of cancellation of the solicitation or rejection of all bids or proposals received in response to a solicitation, the reasons for cancellation or rejection shall be made a part of the bid file and shall be available for public inspection and the purchasing agency shall (a) re-solicit new bids using the same or revised specifications; or (b) withdraw the requisition for supplies or services.~~

~~_____ (2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63G-6-103(24) and responsive bidder is defined in Subsection 63G-6-103(25).~~

~~_____ (3) Product Acceptability. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:~~

~~_____ (a) inspection or testing of a product prior to award for such characteristics as quality or workmanship;~~

~~_____ (b) examination of such elements as appearance, finish, taste, or feel; or~~

~~_____ (c) other examinations to determine whether it conforms with any other purchase description requirements. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.~~

~~_____ (4) Determination of Lowest Bidder. Bids will be evaluated to determine overall economy for the intended use, in accordance with the evaluation criteria set forth in the Invitation for Bids. Examples of criteria include transportation cost, energy cost, ownership and other identifiable costs or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall:~~

~~_____ (a) be reasonable estimates based upon information the purchasing agency has available concerning future use; and~~

~~_____ (b) treat all bids equitably.~~

~~_____ (5) Extension of Time for Bid or Proposal Acceptance. After opening bids or proposals, the procurement officer may request bidders or offerors to extend the time during which their bids or proposals may be accepted, provided that, with regard to bids, no other change is permitted. The reasons for requesting an extension shall be documented.~~

~~_____ (6) Only One Bid or Proposal Received. If only one responsive bid is received in response to an Invitation for Bids,~~

~~including multi-step bidding, an award may be made to the single bidder if the procurement officer finds that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise, the bid may be rejected and:~~

~~_____ (a) new bids or offers may be solicited;~~

~~_____ (b) the proposed procurement may be canceled; or~~

~~_____ (c) if the procurement officer determines in writing that the need for the supply of service continues but that the price of the one bid is not fair and reasonable and there is no time for resolicitation or resolicitation would likely be futile, the procurement may then be conducted under subpart 3-4 or subpart 3-5, as appropriate.~~

~~_____ (7) Multiple or Alternate Bids or Proposals. Unless multiple or alternate bids or offers are specifically provided for, the solicitation shall state they will not be accepted. When prohibited, the multiple or alternate bids or offers shall be rejected although a clearly indicated base bid shall be considered for award as though it were the only bid or offer submitted by the bidder or offeror. The provisions of this subsection shall be set forth in the solicitation, and if multiple or alternate bids are allowed, it shall specify their treatment.~~

~~_____ 3-113 Tie Bids.~~

~~_____ (1) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.~~

~~_____ (2) Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical bidders. In the discretion of the procurement officer, award shall be made in any permissible manner that will discourage tie bids. Procedures which may be used to discourage tie bids include:~~

~~_____ (a) where identical low bids include the cost of delivery; award the contract to the bidder closest to the point of delivery;~~

~~_____ (b) award the contract to the identical bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical;~~

~~_____ (c) award to the identical bidder with the earliest delivery date;~~

~~_____ (d) award to a Utah resident bidder or for a Utah produced product where other tie bids are from out of state;~~

~~_____ (e) if price is considered excessive or for other reason the bids are unsatisfactory, reject all bids and negotiate a more favorable contract in the open market; or~~

~~_____ (f) if no permissible method will be effective in discouraging tie bids and a written determination is made so stating, award may be made by drawing lots.~~

~~_____ (3) Record. Records shall be made of all Invitations for Bids on which tie bids are received showing at least the following information:~~

~~_____ (a) the Invitation for Bids;~~

~~_____ (b) the supply, service, or construction item;~~

~~_____ (c) all the bidders and the prices submitted; and~~

~~_____ (d) procedure for resolving tie bids. A copy of each record shall be sent to the Attorney General if the tie bids are in excess of \$50,000.~~

~~_____ 3-114 Multi-Step Sealed Bidding.~~

~~_____ (1) Definition. Multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the~~

benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the purchasing agency and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method will be used when the procurement officer deems it to the advantage of the purchasing agency. Multi-step sealed bidding will thus be used when it is considered desirable:

(a) to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information; permit amendments of technical offers, or amend the purchase description;

(c) to accomplish subsections (a) and (b) of this section prior to soliciting priced bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

3-115 Pre-Bid Conferences in Multi-Step Sealed Bidding.

Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers.

3-116 Procedure for Phase One of Multi-Step Sealed Bidding.

(1) Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the multi-step Invitation for Bids shall state:

(a) that unpriced technical offers are requested;

(b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, the price bids shall be submitted in a separate sealed envelope;

(c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) the criteria to be used in the evaluation of the unpriced technical offers;

(e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and

(g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the

procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction item offered. Prior to the award of the selection of the lowest responsive and responsible bidder following phase two, technical offerors shall be shown only to purchasing agency personnel having a legitimate interest in them. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

(4) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (5) of this section.

(5) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.

(6) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. The bidders shall not be afforded an additional opportunity to supplement technical offers.

3-117 Mistakes During Multi-Step Sealed Bidding.

Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi-Step Sealed Bidding; Discussion of Unpriced Technical Offers); or

~~(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.~~

~~3-118 Carrying Out Phase Two.~~

~~(1) Initiation. Upon the completion of phase one, the procurement officer shall either:~~

~~(a) open price bids submitted in phase one from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or~~

~~(b) invite each acceptable bidder to submit a price bid.~~

~~(2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:~~

~~(a) as specifically set forth in section 3-114 through section 3-120 of these rules; and~~

~~(b) no public notice need be given of this invitation to submit.~~

~~3-119 Procuring Governmental Produced Supplies or Services.~~

~~Purchasing agency requirements may be fulfilled by procuring supplies produced or services performed incident to programs such as industries of correctional or other governmental institutions. The procurement officer shall determine whether the supplies or services meet the purchasing agency's requirements and whether the price represents a fair market value for the supplies or services. If it is determined that the requirements cannot thus be met or the price is not fair and reasonable, the procurement may be made from the private sector in accordance with the Utah Procurement Code. When procurements are made from other governmental agencies, the private sector need not be solicited to compete against them.~~

~~3-120 Purchase of Items Separately from Construction Contract.~~

~~The procurement officer is authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.~~

~~3-121 Exceptions to Competitive Sealed Bid Process.~~

~~(1) The Chief Procurement Officer, head of a purchasing agency or designee may utilize alternative procurement methods to purchase items such as the following when determined to be more practicable or advantageous to the state:~~

~~(a) Used vehicles~~

~~(b) Livestock~~

~~(2) Alternative procurement methods including informal price quotations and direct negotiations may be used by the Chief Procurement Officer, head of the purchasing agency or designee for the following:~~

~~(a) Hotel conference facilities and services~~

~~(b) Speaker honorariums~~

~~(3) Subject to the provisions of Section 63F-1-205, testing of new technology for a duration not to exceed the maximum time necessary to evaluate the technology may be permitted. Public notice of the test and testing period shall be conducted under R33-3-4. Unless otherwise approved by the chief procurement officer or head of a purchasing agency, in no event shall a contract entered into under this part or any testing period exceed twelve consecutive months. Upon conclusion of the test period:~~

~~(a) a determination has been made by the acquiring agency that the new technology is not advantageous to the acquiring agency; or~~

~~(b) an open procurement shall be conducted under these rules.~~

~~(4) Documentation of the alternative procurement method utilized shall be part of the contract file.~~

~~3-130 Reverse Auctions.~~

~~(1) Definition. In accordance with Utah Code Annotated Section 63G-6-402 a "reverse auction" means a process where:~~

~~(a) contracts are awarded in a open and interactive environment, which may include the use of electronic media; and~~

~~(b) bids are opened and made public immediately, and bidders given opportunity to submit revised, lower bids, until the bidding process is complete.~~

~~(2) Reverse auction is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated against the established criteria by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase submit their price bids through a reverse auction.~~

~~(3) Use. The reverse auction method will be used when the procurement officer deems it to the advantage of the purchasing agency.~~

~~3-131 Pre-Bid Conferences in Reverse Auctions.~~

~~Prior to the submission of unpriced technical offers, a pre-bid conference as contemplated by section 3-106 may be conducted by the procurement officer. The procurement officer may also hold a conference of all bidders in accordance with section 3-106 at any time during the evaluation of the unpriced technical offers, or to explain the reverse auction process.~~

~~3-132 Procedure for Phase One of Reverse Auctions.~~

~~(1) Form. A reverse auction shall be initiated by the issuance of an Invitation for Bids in the form required by section 3-101. In addition to the requirements set forth in section 3-101, the reverse auction Invitation for Bids shall state:~~

~~(a) that unpriced technical offers are requested;~~

~~(b) that it is a reverse auction procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;~~

~~(c) the criteria to be used in the evaluation of the unpriced technical offers;~~

~~(d) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;~~

~~(e) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and~~

~~(f) the manner which the second phase reverse auction will be conducted.~~

~~(2) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R33-3-112(1) of these rules and a new Invitation for Bids issued.~~

~~(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, technical offers shall remain confidential and shall be available only to purchasing agency personnel and those involved in the selection process having a legitimate interest in them.~~

~~(4) Non-Disclosure of Proprietary Data. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing. If a bidder has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the procurement officer shall examine the request in the proposal to determine its validity prior to the beginning of phase two. If the parties do not agree as to the disclosure of data, the procurement officer shall inform the bidder in writing what portion of the bid will be disclosed and that, unless the bidder withdraws the bid it will be disclosed.~~

~~(5) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids. The unpriced technical offers shall be categorized as:~~

~~(a) acceptable;~~

~~(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or~~

~~(c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.~~

~~The procurement officer may initiate phase two of the procedure if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that this is not the case, the procurement officer shall issue an amendment to the Invitation for Bids or engage in technical discussions as set forth in subsection (6) of this section.~~

~~(6) Discussion of Unpriced Technical Offers. Discussion of its technical offer may be conducted by the procurement officer with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. This submission may be made at the request of the procurement officer or upon the bidder's own initiative.~~

~~(7) Notice of Unacceptable Unpriced Technical Offer. When the procurement officer determines a bidder's unpriced technical offer is unacceptable, the officer shall notify the bidder. After this notification the bidder shall not be afforded an additional opportunity to modify their technical offer.~~

~~3-133 Carrying Out Phase Two of Reverse Auctions.~~

~~(1) Upon the completion of phase one, the procurement officer shall invite those technically qualified bidders to participate in~~

~~phase two of the reverse auction which is an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.~~

~~(2) The invitation for bids shall:~~

~~(a) establish a date and time for the beginning of phase two;~~

~~(b) establish a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependent on a variable specified in the invitation for bids.~~

~~(3) Following receipt of the first bid after the beginning of phase two, the lowest bid price shall be posted, either manually or electronically, and updated as other bidders submit their bids.~~

~~(a) At any time before the closing date and time a bidder may submit a lower bid, provided that the price is below the then lowest bid.~~

~~(b) Bid prices may not be increased after the beginning of phase two.~~

~~3-134 Mistakes During Reverse Auctions.~~

~~(1) Mistakes may be corrected or bids may be withdrawn during phase one:~~

~~(a) before unpriced technical offers are considered;~~

~~(b) after any discussions have commenced under section 3-132(5) (procedure for Phase One of Reverse Auctions, Discussion of Unpriced Technical Offers); or~~

~~(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.~~

~~(2) A phase two bid may be withdrawn only in accordance with 3-111. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the closing date and time, the procurement officer may cancel the solicitation or reopen phase two bidding to all bidders deemed technically qualified through phase one by giving notice to those bidders of the new date and time for the beginning of phase two and the new closing date and time.~~

R33-3-2. Competitive Sealed Proposals.

~~3-201 Use of Competitive Sealed Proposals:~~

~~(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:~~

~~(a) whether there may be a need for price and service negotiation;~~

~~(b) whether there may be a need for negotiation during performance of the contract;~~

~~(c) whether the relative skills or expertise of the offerors will have to be evaluated;~~

~~(d) whether cost is secondary to the characteristics of the product or service sought, as in a work of art; and~~

~~(e) whether the conditions of the service, product or delivery conditions are unable to be sufficiently described in the Invitation for Bids.~~

~~(2) Determinations.~~

~~(a) Except as provided in Section 63G-6-408 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.~~

(b) The procurement officer may make determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The officer who made the determination may modify or revoke it at any time and the determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, whenever practicable, the competitive sealed proposal process shall be used. Examples of professional services generally best procured through the RFP process are accounting and auditing; court reporters, x-ray technicians, legal, medical, nursing, education; actuarial, veterinarians, and research. The procurement officer will make the determination. Architecture and engineering professional services are to be procured in compliance with R33-5-510.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with section 3-101 provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and

(b) a statement of when and how price should be submitted.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-204.1 Protected Records.

The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.

(a) Trade Secrets. Trade Secrets, as defined in Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(b) Certain commercial information or nonindividual financial information. Commercial information or nonindividual financial information subject to the provisions of Section 63G-2-305(2) will be a protected record and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(c) Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a GRAMA statute provided that the requirements of R33-3-204.2 are met unless GRAMA requires such nondisclosure without any preconditions.

3-204.2 Process For Requesting Non-Disclosure. Any person (firm) who believes that a record should be protected under R33-3-204.1 shall include with their proposal or submitted document:

(a) a written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA); and

(b) a concise statement of reasons supporting each claimed provision of business confidentiality.

3-204.3 Notification. The person who complies with R33-3-204.2 shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.

3-204.4 Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under R33-3-204.1 but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This R33-3-204-4 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3-204.5 Timing of Public Disclosure. Any allowed public disclosure of records submitted in the competitive sealed proposal process will only be made after the selection of the successful offeror(s) has been made public.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under section 3-104.

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with section 3-106. Any conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with section 3-107 prior to submission of proposals. After submission of proposals, amendments to the Request for Proposals shall be distributed only to offerors who submitted proposals and they shall be allowed to submit new proposals or to amend those submitted. An amendment to the Request for Proposals may be issued through a request for submission of Best and Final Offers. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Request for Proposals shall be canceled and a new Request for Proposals issued.

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with section 3-108. For the purposes of this section and section 3-209, the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals, and Late Modifications.

(1) Definition. Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after

the established due date and time at the place designated for receipt of proposals is late.

(2) Treatment. No late proposal, late modification, or late withdrawal will be considered unless received before contract award, and the late proposal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. All documents shall be kept relating to the acceptance of any late proposal, modification or withdrawal.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such proposals shall be securely stored until the time and date set for opening. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

3-211 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

(3) Classifying Proposals. For the purpose of conducting discussions under section 3-212, proposals shall be initially classified as:

- (a) acceptable;
- (b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The procurement officer should establish procedures and schedules for conducting discussions. If before, or during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended in compliance with R33-3-2(3-207) to incorporate this clarification or change. Auction techniques and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(4) Best and Final Offers. The procurement officer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the

procurement officer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

3-213 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in section 3-208.

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection (3) of this section are met.

(3) Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(a) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.

(c) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(i) the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

(ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and the correction would not be contrary to the fair and equal treatment of other offerors.

(d) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis that the proof would be contrary to the fair and equal treatment of other offerors.

(4) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

3-214 Award.

(1) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was

found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals:

_____ (2) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the procurement officer may, as the officer deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals:

_____ 3-215 Publicizing Awards:

_____ (1) After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.

_____ (2) The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

_____ (a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;

_____ (b) the unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3-204;

_____ (c) the rankings of the proposals;

_____ (d) the names of the members of any selection committee (reviewing authority);

_____ (e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings;

_____ (f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under R33-3-204.

_____ (3) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

_____ (a) the names of individual scorers in relation to their individual scores or rankings;

_____ (b) non-public financial statements; and

_____ (c) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

_____ 3-216 Exceptions to Competitive Sealed Proposal Process:

_____ (1) As authorized by Section 63G-6-408(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

_____ (2) Subject to the provisions of Section 63F-1-205, testing of new technology for a duration not to exceed the maximum time necessary to evaluate the technology may be permitted. Public notice of the test and testing period shall be conducted under R33-3-4. Unless otherwise approved by the chief procurement officer or head of a purchasing agency, in no event shall a contract entered into under this part or any testing period exceed twelve consecutive months. Upon conclusion of the test period:

_____ (a) a determination has been made by the acquiring agency that the technology is not advantageous to the acquiring agency; or

_____ (b) an open procurement shall be conducted under these rules.

_____ (3) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

_____ 3-217 Multiple Award Contracts for Human Service Provider Services:

The Chief Procurement Officer, head of a purchasing agency or designee may elect to award multiple contracts for Human Service Provider Services through a competitive sealed proposal process by first determining the appropriate fee to be paid to providers and then contracting with all providers meeting the criteria established in the RFP. However this specialized system of contracting for human service provider services may only be used when:

_____ (1) The agency has performed an appropriate analysis to determine appropriate rates to be paid;

_____ (2) The agency files contain adequate documentation of the reasons the contractor was awarded the contract and the reasons for selecting a particular contractor to provide the service to each client; and

_____ (3) The agency has a formal written complaint and appeal process, notice of which is provided to the contractors, and an internal audit function to insure that selection of the contractor from the list of awarded contractors was fair, equitable and appropriate.

R33-3-3. Small Purchases.

_____ 3-301 General Provisions:

_____ (1) All small purchases must comply with this rule unless another method of source selection provided in Title 63G-6a, the Utah Procurement Code and Administrative Rule R33 is used.

_____ (a) Sole source procurements must follow the process outlined in the Utah Procurement Code and Administrative Rule R33-3-4.

_____ (2) Use of State Cooperative Contracts. An executive branch procurement unit may not obtain a procurement item through this Small Purchasing Rule if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Utah Code 63G-6a-2105(1) unless either (a) or (b) below is met:

_____ (a) The procurement item is obtained for an urgent or unanticipated, emergency condition, including:

_____ (i) an item needed to avoid stopping a public construction project;

_____ (ii) an immediate repair to a facility or equipment; or

_____ (iii) another emergency condition.

_____ (b) The chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority determines in writing:

~~(i) that it is in the best interest of the state to obtain a procurement item outside of the state contract after reviewing a cost/benefit analysis comparing, as applicable, the following:~~

~~(A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;~~

~~(B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;~~

~~(C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;~~

~~(D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract;~~

~~(E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract; and~~

~~(i) that for a procurement item which if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage; the terms and conditions including insurance, indemnifications and warranties, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract.~~

~~(3) Prohibition Against Artificial Division of Procurements and Invoices. The Utah Procurement Code provides the following prohibitions: It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement:~~

~~(a) qualify as a small purchase if, before dividing the procurement, it would not have qualified as a small purchase; or~~

~~(b) meet a threshold established by rule made by the applicable rulemaking authority if, before dividing the procurement, it would not have met the threshold.~~

~~(4) A division of a procurement that is prohibited includes doing any of the following with the intent or knowledge described in (3)(a) or (3)(b):~~

~~(a) making two or more separate purchases;~~

~~(b) dividing an invoice or purchase order into two or more invoices or purchase orders; or~~

~~(c) making smaller purchases over a period of time.~~

~~(5) A procurement unit subject to these rules may implement more, but not less, restrictive thresholds or require threshold limits to be consolidated at the highest administrative level within the organization.~~

~~3-302 Small Purchase Thresholds for Individual Procurement Item(s) under \$1,000:~~

~~(1) Thresholds for Individual Procurement Item(s) under \$1,000:~~

~~(a) "Individual Procurement Threshold" means the maximum amount for which a procurement unit subject to these rules may purchase an individual procurement item under this Rule R33-3-302.~~

~~(b) "Single Procurement Aggregate Threshold" means the maximum total amount that a procurement unit subject to these rules~~

~~may expend to obtain multiple individual procurement items from one source at one time under this Rule R33-3-302.~~

~~(c) "Annual Cumulative Threshold" means the maximum total amount that a procurement unit subject to these rules may expend to obtain individual procurement items from the same source under this Rule R33-3-302.~~

~~(i) For the purpose of this rule, "annual" is defined as the applicable fiscal year of each entity subject to these rules.~~

~~(d) The individual procurement threshold \$1,000 for a procurement item;~~

~~(e) The single procurement aggregate threshold is \$5,000 for multiple procurement item(s) purchased from one source at one time; and~~

~~(f) The annual cumulative threshold from the same source is \$50,000.~~

~~(2) For individual procurement item(s) costing up to \$1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.~~

~~(3) Competition. Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation system or other system designed to allow for competition when using the small purchases process.~~

~~(4) A procurement unit may not use the small purchase process described in this rule for ongoing, continuous, and regularly scheduled individual procurement items that exceed the annual cumulative threshold and shall make its ongoing, continuous, and regularly scheduled procurements for individual procurement items that exceed the annual cumulative threshold through a contract awarded in accordance with the Utah Procurement Code.~~

~~(5) Small purchase expenditures may not exceed the thresholds established under this rule unless the chief procurement officer or the head of a procurement unit with independent procurement authority provides written justification for exceeding a threshold.~~

~~3-303 Professional Services, Including Architectural and Engineering Services Threshold.~~

~~(1) "Professional Services, Including Architectural and Engineering" means the total cost to be paid to a professional services provider in conjunction with a small project or purchase under this Rule R33-3-3.~~

~~(a) The small purchase threshold for professional services, including architectural and engineering services, is \$100,000;~~

~~(b) Procurement units subject to these rules shall follow the process outlined in Utah Procurement Code 63G-6a-403 (Prequalification of Potential Vendors) and 63G-6a-404 (Approved Vendor List) or other applicable selection methods outlined in the Utah Procurement Code for the procurement of professional services that include minimum specifications. Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of professional services;~~

~~(c) A contract may not be awarded through a sole source, except as provided in the Utah Procurement Code or Administrative Rule R33-3-4.~~

~~3-304 Small Construction Project Threshold.~~

~~(1) "Small Construction Project" means the total amount of the construction project including programming, design, and all associated construction costs for a purchase under this Rule 33-3-3.~~

~~(a) The small construction project threshold is \$2,500,000;~~

~~(b) Procurement units subject to these rules shall follow the process outlined in the Utah Procurement Code 63G-6a-403 (Prequalification of Potential Vendors) and 63G-6a-404 (Approved Vendor List) or other applicable selection methods outlined in the Utah Procurement Code for construction services.~~

~~(c) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of all construction services.~~

~~(d) The Division of Purchasing and General Services may procure small construction projects costing less than \$25,001 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.~~

~~(e) Procurement units, with independent procurement authority and subject to these rules, may procure small construction projects costing less than \$25,001 by direct award without seeking competitive bids or quotes after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.~~

~~(f) The Division of Purchasing and General Services may procure small construction projects costing between \$25,001 and \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specification after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.~~

~~(g) Procurement units, with independent procurement authority and subject to these rules, may procure small construction projects costing between \$25,001 and \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specification after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.~~

~~(h) Procurement units with independent procurement authority and subject to these rules, shall procure small construction projects over \$100,000 using an invitation to bid or other approved source selection method outlined in the Utah Procurement Code that include minimum specifications and shall award to the contractor meeting the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.~~

~~(i) A contract may not be awarded through a sole source, except as provided in the Utah Procurement Code or Administrative Rule R33-3-4.~~

~~3-305 Small Purchases from \$1,001 to \$50,000 Requiring Quotes:~~

~~(1) Procedures:~~

~~(a) For procurement item(s) costing between \$1,001 and \$5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.~~

~~(b) For procurement item(s) costing between \$5,001 and \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specification.~~

~~(c) For procurement item(s) costing over \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.~~

~~(2) Limited Purchasing Delegation for Small Purchases: The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing between \$5,001 and \$50,000, provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.~~

~~(3) Records: The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.~~

~~3-306 Small Purchases of Services of Professionals, Providers, and Consultants:~~

~~If it is expected that the services of professionals, providers, and consultants can be procured for less than \$50,000, the procedures specified in this subpart may be used.~~

~~R33-3-4. Sole Source Procurement.~~

~~3-401 Conditions For Use of Sole Source Procurement:~~

~~Sole source procurement shall be used only if a requirement is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.~~

~~Examples of circumstances which could necessitate sole source procurement are:~~

~~(1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;~~

~~(2) where a sole supplier's item is needed for trial use or testing;~~

~~(3) a test or pilot is being conducted under R33-3-121(3);~~

~~(4) procurement of items for resale;~~

~~(5) procurement of public utility services.~~

~~The determination as to whether a procurement shall be made as a sole source shall be made by the procurement officer. Each request shall be submitted in writing by the using agency. The officer may specify the application of the determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.~~

~~3-401.5 Notice of Proposed Sole Source Procurement:~~

~~Public notice for sole source procurements exceeding \$50,000 shall be given by the Procurement Officer as provided in R33-~~

3-104 (2). The notice shall be published at least 5 working days in advance of when responses must be received in order that firms have an adequate opportunity to respond to the notice. The notice shall contain a brief statement of the proposed procurement, the proposed sole source supplier and the sole source justification. The notice shall invite comments regarding the proposed sole source and provide for a closing date for comments. The Procurement Officer shall consider the comments received before proceeding with the Sole Source procurement.

~~3-402 Negotiation in Sole Source Procurement.~~

~~The procurement officer shall conduct negotiations, as appropriate, as to price, delivery, and terms.~~

~~3-403 Unsolicited Offers.~~

~~(1) Definition. An unsolicited offer is any offer other than one submitted in response to a solicitation.~~

~~(2) Processing of Unsolicited Offers. If a purchasing agency that receives an unsolicited offer is not authorized to enter into a contract for the supplies or services offered, the head of the agency shall forward the offer to the procurement officer who has authority with respect to evaluation, acceptance, and rejection of the unsolicited offers.~~

~~(3) Conditions for Consideration. To be considered for evaluation an unsolicited offer:~~

~~(a) must be sufficiently detailed to allow a judgment to be made concerning the potential utility of the offer to the purchasing agency; and~~

~~(b) may be subject to testing under terms and conditions specified by the agency.~~

R33-3-5. Emergency Procurements.

~~3-501 Definition of Emergency Conditions.~~

~~An emergency condition is a situation which creates a threat to public health, welfare, or safety as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be determined by the Chief Procurement Officer or designee. The existence of this condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods.~~

~~3-502 Scope of Emergency Procurements.~~

~~Emergency procurement shall be limited to only those supplies, services, or construction items necessary to meet the emergency.~~

~~3-503 Authority to Make Emergency Procurements.~~

~~The Chief Procurement Officer may delegate in writing to any purchasing agency authority to make emergency procurements of up to an amount set forth in the delegation.~~

~~3-504 Source Selection Methods.~~

~~(1) General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, competition that is practicable shall be obtained.~~

~~(2) After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions~~

~~exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.~~

~~3-505 Determination of Emergency Procurement.~~

~~The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular supplier. The determination shall be sent promptly to the Chief Procurement Officer.~~

R33-3-6. Responsibility.

~~3-601 Standards of Responsibility.~~

~~(1) Standards. Among factors to be considered in determining whether the standard of responsibility has been met are whether a prospective contractor has:~~

~~(a) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;~~

~~(b) a satisfactory record of integrity;~~

~~(c) qualified legally to contract with the purchasing agency; and~~

~~(d) unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.~~

~~Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation.~~

~~(2) Information Pertaining To Responsibility. A prospective contractor shall supply information requested by the procurement officer concerning the responsibility of the contractor. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if the failure is unreasonable.~~

~~3-602 Ability to Meet Standards.~~

~~The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:~~

~~(1) evidence that the contractor possesses the necessary items;~~

~~(2) acceptable plans to subcontract for the necessary items; or~~

~~(3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.~~

~~3-603 Written Determination of Nonresponsibility Required.~~

~~If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the procurement officer. The determination shall be made part of the procurement file.~~

R33-3-7. Types of Contracts.

~~3-701 Policy Regarding Selection of Contract Types.~~

~~(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing~~

agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

- (a) the type and complexity of the supply, service, or construction item being procured;
- (b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
- (c) the administrative costs to both parties;
- (d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;
- (e) the effect of the choice of the type of contract on the amount of competition to be expected;
- (f) the stability of material or commodity market prices or wage levels;
- (g) the urgency of the requirement;
- (h) the length of contract performance; and
- (i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

(3) Prepayments.

(a) In general, it is the policy of the state that payments to contractors and vendors cannot be made until after services are actually rendered or goods are actually received. It may be necessary or beneficial to the state in certain instances to pay for goods or services before delivery.

(b) Prepayments are allowable in any of the following circumstances when approved by the Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, and the using agency has policies and procedures that ensure that prepaid goods or services are actually received in the condition as required by the contract or purchase order:

(i) When it is the customary practice for the type of goods or services involved, including insurance, rent, certain maintenance contracts, seminars, or subscriptions.

(ii) When the using agency will receive additional benefit for prepayment, including price breaks on prepaid maintenance contracts, or registrations which would not be available if the charge was paid after delivery, and other benefits which are identifiable.

(c) All prepaid expenditures must be supported by documentation, which states the goods or services to be furnished, the date of delivery, the payment terms, and remedies for non-compliance.

(d) The Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, may:

(i) Authorize the use of prepayments upon receipt of a written request from the using agency. The request must acknowledge

that the using agency understands the liability and risk associated with the failure of a vendor or contractor to perform the prepaid services or provide the prepaid goods.

(ii) Require a performance bond in an amount up to 100% of the prepayment amount. The performance bond must be delivered to the state prior to the time the contract is executed or a purchase order is issued. Performance bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and be on forms acceptable to the state. If a contractor or vendor fails to deliver a required performance bond, the original award may be cancelled and the award may thereafter be made in accordance with the applicable provision of Rule R33-3.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The

contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

— This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

— (2) **Determination Prior to Use.** A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

— (a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

— (b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

— (c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

— (3) **Cost Contract.** A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

— (4) **Cost-Plus-Fixed-Fee Contract.** This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

— (1) **General.** Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

— (2) Fixed-Price Cost Incentive Contract.

— (a) **Description.** In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance

of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

— (b) **Objective.** The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

— (3) **Cost-Plus Contract with Cost Incentive Fee.** In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

— (4) **Determinations Required.** Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

3-705 Performance Incentive Contracts.

— In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

— (1) **Time and Materials Contracts.** Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

— (a) personnel have been assigned to closely monitor the performance of the work; and

— (b) no other type of contract will suitably serve the purchasing agency's purpose.

— (2) **Labor Hour Contracts.** A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinite Quantity Contracts.

~~(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.~~

~~(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.~~

~~(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.~~

~~3-708 Progressive and Multiple Awards.~~

~~(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.~~

~~(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:~~

~~(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or~~

~~(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the agency.~~

~~(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.~~

~~3-709 Leases.~~

~~(1) Use. A lease may be entered into provided:~~

~~(a) it is in the best interest of the purchasing agency;~~

~~(b) all conditions for renewal and costs of termination are set forth in the lease; and~~

~~(c) the lease is not used to avoid a competitive procurement.~~

~~(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.~~

~~(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the procurement officer. Before exercising this option, the procurement officer shall:~~

~~(a) investigate alternative means of procuring comparable supplies or facilities; and~~

~~(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state-of-the-art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.~~

~~3-710 Multi-Year Contracts; Installment Payments.~~

~~(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.~~

~~(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.~~

~~(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.~~

~~3-711 Contract Option.~~

~~(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision to that effect included in the solicitation. When a contract is awarded by competitive sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.~~

~~(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.~~

~~3-712 Technology Modification~~

~~(1) Technology Upgrade. Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. Any modification to a contract for upgraded technology must be substantially within the scope of the~~

original procurement or contract, and if both parties agree to the modification, then the contract may be modified.

2) New Technology. Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. No contract modification for new technology requested by an acquiring agency shall be exercised without the approval required under Section 63F-1-205, the new technology modification has been subject to the review as described in R33-3-101(5) and the contracting parties agree to the modification.

3) No contract may be extended beyond the term of the contract included in the solicitation except as provided in the Utah Procurement Code.

R33-3-8. Cost or Pricing Data and Analysis; Audits.

3-801 Scope.

This subpart sets forth the pricing policies which are applicable to contracts of any type and any included price adjustments when cost or pricing data are required to be submitted.

3-802 Requirements for Cost or Pricing Data.

(1) Submission of Cost or Pricing Data – Required. Cost or pricing data shall be required in support of a proposal leading to:

(a) the pricing of any contract expected to exceed \$100,000 to be awarded by competitive sealed proposals or sole source procurement; or

(b) the pricing of any adjustment to any contract, including a contract, awarded by competitive sealed bidding, whether or not cost pricing data was required in connection with the initial pricing of the contract, as requested by the procurement officer. However, this requirement shall not apply when unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience.

(2) Submission of Cost or Pricing Data – Permissive. After making determination that circumstances warrant action, the procurement officer may require the offeror or contractor to submit cost or pricing data in any other situation except where the contract award is made pursuant to competitive sealed bidding. Generally, cost or pricing data should not be required where the contract or modification is less than \$2,000. Moreover, when less than complete cost analysis will provide a reasonable pricing result on awards or for change orders without the submission of complete cost or pricing data, the procurement officer shall request only that data considered adequate to support the limited extent of the cost analysis needed and need not require certification.

(3) Exceptions. Cost or pricing data need not be submitted and certified:

(a) where the contract price is based on:

(i) adequate price competition;

(ii) established catalog prices or market prices, if trade discounts are reflected in the prices; or

(iii) prices set by law or rule; or

(b) when the procurement officer determines in writing that the requirements for submitting cost or pricing data may be waived and the reasons for the waiver are stated in the determination. A copy of the determination shall be kept in the contract file and made available to the public upon request. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified.

If, despite the existence of an established catalog price or market price, the procurement officer considers that a price appears

unreasonable, cost or pricing data may be requested. Where the reasonableness of the price can be assured by limited data pertaining to the differences in the item or services, requests should be so limited.

3-803 Submission of Cost or Pricing Data and Certification.

Cost or pricing data shall be submitted to the procurement officer at the time and in the manner prescribed in these rules or as otherwise from time to time prescribed by the procurement officer. When the procurement officer requires the offeror or contractor to submit cost or pricing data in support of any proposal, the data shall either be actually submitted or specifically identified in writing. When cost or pricing data is required, the data is to be submitted prior to beginning price negotiation and the offeror or contractor is required to keep the submission current throughout the negotiations. The offeror or contractor shall certify, as soon as practicable after agreement is reached on price, that the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date prior to reaching agreement. Certification shall be made using the certificate set forth in section 3-804 of this subpart. A refusal by the offeror to supply the required data shall be referred to the procurement officer whose duty shall be to determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. A refusal by a contractor to submit the required data to support a price adjustment shall be referred to the procurement officer who shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment.

3-804 Certificate of Current Cost or Pricing Data.

(1) Form of Certificate. When cost or pricing data must be certified, the certificate set forth below shall be included in the contract file along with any award documentation required under these rules. The offeror or contractor shall be required to submit the certificate as soon as practicable after agreement is reached on the contract price or adjustment:

"CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in the Utah Procurement Rules submitted, either actually or by specific identification in writing, to the procurement officer in support of . . . , are accurate, complete, and current as of date, month and year. . . The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the offeror or contractor is not limited by the personal knowledge of the offeror's or contractor's negotiator if the offeror or contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete, and current data.

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the purchasing agency which are part of the proposal.

____ Firm

____ Name

____ Title

____ Date of Execution . . . (This date should be as close as practical to the date when the price negotiations were concluded and the contract price was agreed to.)"

____ (End of Certificate)

(2) Limitation of Representation. Because the certificate pertains to cost or pricing data, it is not to be construed as a representation as to the accuracy of the offeror's or contractor's

judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the offeror's or contractor's judgment is based. A certificate of current cost or pricing data is not a substitute for examination and analysis of the offeror's or contractor's proposal.

(3) ~~Inclusion of Notice and Contract Clause.~~ Whenever it is anticipated that a certificate of current cost or pricing data may be required, a clause giving notice of this requirement shall be included in the solicitation. If a certificate is required, the contract shall include a clause giving the purchasing agency a contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete, and current data.

(4) ~~Exercise of Option.~~ The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

~~3-805 Defective Cost or Pricing Data.~~

(1) ~~Overstated Cost or Pricing Data.~~ If certified cost or pricing data is subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the purchasing agency shall be entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in this amount. In establishing that the defective data caused an increase in the contract price, the procurement officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(2) ~~Understated Cost or Pricing Data.~~ In determining the amount of an adjustment, the contractor shall be entitled to an adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the purchasing agency's claim for over stated cost or pricing data arising out of the same pricing action.

(3) ~~Dispute as to Amount.~~ If the contractor and the procurement officer cannot agree as to the amount of adjustment due to defective cost or pricing data, the procurement officer shall set an amount in accordance with subsections 3-805(1) and 3-805(2) of this subpart.

~~3-806 Price Analysis Techniques.~~

Price analysis is used to determine if a price is reasonable and acceptable. It involves a comparison of the prices for the same or similar items or services. Examples of price analysis criteria include:

(1) price submissions of other prospective bidders or offerors;

(2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;

(3) prices published in catalogs or price lists; and

(4) prices available on the open market.

In making an analysis, consideration must be given to any differing delivery factors and contractual provisions, terms and conditions.

~~3-807 Cost Analysis Techniques.~~

(1) ~~General.~~ Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data to evaluate:

(a) specific elements of costs;

(b) the necessity for certain costs;

(c) the reasonableness of amounts estimated for the necessary costs;

(d) the reasonableness of allowances for contingencies;

(e) the basis used for allocation of indirect costs;

(f) the appropriateness of allocations of particular indirect costs to the proposed contract; and

(g) the reasonableness of the total cost or price.

(2) ~~Evaluations.~~ Evaluations of cost or pricing data should include comparisons of costs and prices of an offeror's cost estimates with those of other offerors and any independent price and cost estimates. They shall also include consideration of whether the costs are reasonable and allocable under these rules.

~~3-808 Audit.~~

(1) The procurement officer may, at reasonable times and places, audit or cause to be audited, the books and records of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to:

(a) the cost or pricing data submitted;

(b) a contract, including subcontracts, other than a firm-fixed-price contract, awarded pursuant to these rules and the Utah Procurement Code.

(2) An audit performed by an auditor selected or approved by the procurement officer shall be submitted containing at least the following information:

(a) for cost and pricing data audits:

(i) a description of the original proposal and all submissions of cost or pricing data;

(ii) an explanation of the basis and the method used in preparing the proposal;

(iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;

(iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;

(v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and

(vi) a statement identifying any information obtained from other sources;

(b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;

(c) the use of federal assistance funds; or

(d) the fluctuation of market prices affecting the contract.

The scope of the audit may be limited by the procurement officer.

(3) For contract audits, the scope of the report will depend on the scope of the audit ordered. However, the report should contain specific reference to the terms of the contract to which the audited data relates and a statement of the degree to which the auditor believes the audited data evidence compliance with those terms.

~~3-809 Retention of Books and Records.~~

(1) ~~Relating to Cost and Pricing Data.~~ Any contractor who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract.

~~(2) Relating to Other than Firm Fixed-Price Contracts. Books and records that relate to a contract in excess of \$25,000, including subcontracts, other than a firm fixed-price contract, shall be maintained:~~

~~(a) by a contractor, for three years from the date of final payment under the contract; and~~

~~(b) by a subcontractor, for three years from the date of final payment under the subcontract.~~

~~**R33-3-9. Plant or Site Inspection; Inspection of Supplies or Services.**~~

~~3-901 Inspection of Plant or Site.~~

~~Circumstances under which the purchasing agency may perform inspections include inspections of the contractor's plant or site in order to determine:~~

~~(1) whether the standards set forth in section 3-601 have been met or are capable of being met; and~~

~~(2) if the contract is being performed in accordance with its terms.~~

~~3-902 Access to Plant or Place of Business.~~

~~The purchasing agency may enter a contractor's or subcontractor's plant or place of business to:~~

~~(1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;~~

~~(2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63G-6-415-subsection (5) of the Utah Procurement Code; and~~

~~(3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63G-6-804 of the Utah Procurement Code.~~

~~3-903 Inspection of Supplies and Services.~~

~~(1) Provisions for Inspection. Contracts may provide that the purchasing agency may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements or, after award, to contract requirements, and are acceptable. These inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.~~

~~(2) Trial Use and Testing. The procurement officer is authorized to establish operational procedures governing the testing and trial use of various equipment, materials, and supplies by any using agency, and the relevance and use of resulting information to specifications and procurements.~~

~~3-904 Conduct of Inspections.~~

~~(1) Inspectors. Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.~~

~~(2) Location. When an inspection is made in the plant or place of business of a contractor or subcontractor, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.~~

~~(3) Time. Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.~~

~~3-905 Inspection of Construction Projects.~~

~~On-site inspection of construction shall be performed in accordance with the terms of the contract.]~~

~~**R33-3. Procurement Organization.**~~

~~**R33-3-101. Delegation of Authority of the Chief Procurement Officer.**~~

~~In addition to the other requirements of Part 3 of the Utah Procurement Code, the Chief Procurement Officer may delegate in writing any authority pursuant to Section 63G-6a-304 as deemed appropriate to any employees of the office of the chief procurement officer or of an executive branch procurement unit, respectively. These delegations shall remain in effect unless modified or revoked in writing. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.~~

~~**KEY:** government purchasing, chief procurement officer, delegation of authority~~

~~**Date of Enactment or Last Substantive Amendment:** [October 24, 2013]2014~~

~~**Notice of Continuation:** July 2, 2012~~

~~**Authorizing, and Implemented or Interpreted Law:** 63G-6a~~

**Administrative Services, Purchasing
and General Services**

R33-4

Specifications

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38503

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes general procurement provisions, prequalifications, specifications, and small purchases. This rule also provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes are that this rule establishes the thresholds for approved vendor lists and small purchases.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The state's budget will not be affected, because this rule simply establishes general procurement provisions, prequalifications, specifications, and small purchases. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this rule simply establishes general procurement provisions, prequalifications, specifications, and small purchases. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this rule simply establishes general procurement provisions, prequalifications, specifications, and small purchases. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this rule simply establishes general procurement provisions, prequalifications, specifications, and small purchases. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for any person, because this rule simply establishes general procurement provisions, prequalifications, specifications, and small purchases. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

[R33-4. Specifications.

R33-4-1. General Provisions.

- ~~4-101 General Purpose and Policies.~~
 - (1) Purpose. Specifications shall be drafted with the objective of clearly describing the purchasing agency's requirements and of encouraging competition. The purpose of a specification is to serve as a basis for obtaining a supply, service, or construction item, or technology adequate and suitable for the purchasing agency's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.
 - (2) Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the purchasing agency. To facilitate the use of the criteria, using agencies shall endeavor to include as a part of their purchase requisitions the principal functional or performance needs to be met. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. This preference is often not practicable in construction, apart from the procurement of supply-type items for a construction project.
 - (3) Preference for Commercially Available Products. It is the general policy that requirements be satisfied by standard commercial products whenever practicable.
- ~~4-102 Availability of Documents.~~
 - Except for testing and confidential data, specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.
- ~~4-103 Emergency Authority.~~
 - In the event of an emergency, as determined by the procurement officer, the purchasing agency may procure by any reasonable means, with any available specifications, without regard to the provision of these rules.
- ~~4-104 Procedures for the Development of Specifications.~~
 - (1) Provisions of General Application.
 - (a) Application of Section. This section applies to all persons who may prepare a specification.
 - (b) Specification of Alternates May Be Included. A specification may provide alternate descriptions of supplies, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the purchasing agency's requirements.
 - (c) Contractual Requirements Not to Be Included. To the extent feasible, a specification shall not include any solicitation or contract term or condition as a requirement for time or place of bid opening, time of delivery, payment, liquidated damages, or qualification of bidders.

~~(d) Use of Existing Specifications. If a specification for a common or general use item has been developed in accordance with subsection (2) (a) of this section or a qualified products list has been developed in accordance with subsection (2) (d) of this section for a particular supply, service, or construction item, or need, it shall be used unless the procurement officer makes a written determination that its use is not in the purchasing agency's best interest and that another specification shall be used.~~

~~(e) The procurement officer should provide for the periodic review of specifications to determine whether any existing specification needs revision, or a new specification is needed to reflect changes in:~~

~~(i) the state of the art;~~

~~(ii) the characteristics of the available supplies, services, or construction items, or technology;~~

~~(iii) needs of the using agency;~~

~~(iv) a new technology that the acquiring agency does not currently possess; or~~

~~(v) technology that is new or subject to future advancements during the course of any contract term.~~

~~(f) The procurement officer may allow others to prepare specifications for the purchasing agency's use in making procurements when there will be no substantial conflict of interest involved and it is otherwise in the best interests of the purchasing agency as determined by the procurement officer.~~

~~(2) Special Additional Procedures:~~

~~(a) Specifications for Common or General Use Items:~~

~~(i) Preparation and Utilization. A standard specification for common or general use shall, to the extent practicable, be prepared and utilized when a supply, service, or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or construction item as commercially produced or provided remain relatively stable while the frequency or volume of procurements is significant, or where the purchasing agency's recurring needs require uniquely designed or specially produced items.~~

~~(ii) Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the procurement officer.~~

~~(iii) Revisions and Cancellations. All revisions to or cancellations of specifications for common or general use items may be made upon approval of the procurement officer.~~

~~(b) Brand Name or Equal Specification:~~

~~(i) Brand name or equal specifications may be used when the procurement officer determines that a specification is in the purchasing agency's best interest.~~

~~(ii) Designation of Several Brands. Brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" references and shall state that products substantially equivalent to those designated will be considered for award.~~

~~(iii) Required Characteristics. Unless the procurement officer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required.~~

~~(iv) Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.~~

~~(e) Brand Name Specification:~~

~~(i) Use. Since use of a brand name specification is restrictive, a specification may be used when the procurement officer or designee makes a written determination. The determination may be in any form deemed acceptable to the chief procurement officer, as a purchase evaluation, or a statement of single source justification. The written statement must state specific reasons for use of the brand name specification.~~

~~(ii) Competition. The procurement officer shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 63G-6-410 of the Utah Procurement Code.~~

~~(d) Qualified Products List:~~

~~(i) Use. A qualified products list may be developed with the approval of the Chief Procurement Officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to satisfy purchasing agency requirements.~~

~~(ii) Solicitation. When developing a qualified products list, a representative group of potential suppliers shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration in accordance with any schedule or procedure established for this purpose.~~

~~(iii) Testing and Confidential Data. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior established requirements. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential when requested in writing by the supplier. However, qualified products lists' test results shall be made public, but in a manner so as to protect the confidentiality of the identity of the competitors by, for example, using numerical designations.]~~

R33-4. General Procurement Provisions, Prequalifications, Specifications, and Small Purchases.

R33-4-101. Prequalification of Potential Vendors.

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-4-102. Thresholds for Approved Vendor Lists.

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: \$2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: \$100,000; and

(iii) Information Technology: \$500,000

(b) Thresholds for other approved vendor lists may be established by the Chief Procurement Officer or head of a procurement unit with independent procurement authority.

R33-4-103. Specifications.

(1) Public entities shall include in solicitation documents specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) Rule R33-4-104(3) does not apply to the following:

(i) a design build construction project; and

(ii) other procurements determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.

(b) Violations of this Rule R33-4-104(3) may result in:

(i) the bidder or offeror being declared ineligible for award of the contract;

(ii) the solicitation being canceled;

(iii) termination of an awarded contract; or

(iv) any other action determined to be appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:

(i) "or equivalent" reference is included in the specification; and,

(ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable

requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.

(5) Brand Name Sole Source Requirements.

(a) If only one brand can meet the requirement, the procurement unit shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and.

(b) If there is only one provider that can meet the requirement, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802.

R33-4-104. Small Purchases.

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.

(2) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of \$1,000 for a procurement item;

(i) For individual procurement item(s) costing up to \$1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.

(a) The single procurement aggregate threshold is a maximum amount of \$5,000 for multiple procurement item(s) purchased from one source at one time; and

(b) The annual cumulative threshold from the same source is a maximum amount of \$50,000.

(3) Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-4-105. Small Purchases Threshold for Architectural and Engineering Services.

(1) The small purchase threshold for architectural or engineering services is a maximum amount of \$100,000.

(2) Architectural or engineering services may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three architectural or engineering firms.

(3) Procurement units subject to these rules shall follow the process described in Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 of the to develop an approved vendor list or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.

(4) Procurement units that are subject to these rules shall include minimum specifications when using the small purchase threshold for architectural and engineering services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division in the procurement of architectural or engineering services.

R33-4-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) Procurement units subject to these rules shall follow the process described in the Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 to develop an Approved Vendor List or other applicable selection methods described in the Utah Procurement Code for construction services.

(3) Procurement units subject to these rules shall include minimum specifications when using the small purchases threshold for construction projects.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing and General Services in the procurement of small construction projects.

(5) The chief procurement officer or head of a procurement unit with independent procurement authority may procure small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

(6) The chief procurement officer or head of a procurement unit with independent procurement authority may procure small construction projects costing more than \$25,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(7) If an approved vendor list is not established under Sections 63G-6a-403 and 404, procurement units shall procure construction projects over \$100,000 using an invitation to bid or other approved source selection method outlined in the Utah Procurement Code.

R33-4-107. Quotes for Small Purchases from \$1,001 to \$50,000.

(1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than \$5,000 up to a maximum of \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited

purchasing authority for small purchases costing more than \$5,000 up to a maximum of \$50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

R33-4-108. Small Purchases of Services of Professionals, Providers, and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000.

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer or head of a procurement unit with independent procurement authority may obtain professional services or consulting services:

(a) up to a maximum of \$50,000 by direct negotiation; or
(b) over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division in the procurement of professional services or consulting services.

KEY: government purchasing, general procurement provisions, specifications, small purchases

Date of Enactment or Last Substantive Amendment: [March 30, 2012]2014

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-5
Construction and Architect-Engineer
Selection**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38504

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the requirements for a request for information. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that the construction provisions have been moved to Rule R33-13. (DAR NOTE: The proposed new Rule R33-13 is under DAR No. 38511 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the requirements for a request for information. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the requirements for a request for information. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the requirements for a request for information. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the requirements for a request for information. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the requirements for a request for information. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgloed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

[R33-5. Construction and Architect-Engineer Selection.

R33-5-101. Purpose and Authority.

As required by Sections 63G-6-501, 63G-6-504(2), 63G-6-506 and 63G-6-601, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.
- (2) establishing appropriate bid, performance, and payment bond requirements including criteria allowing for waiver of these requirements.
- (3) governing appropriate contract provisions.

R33-5-102. Application.

The provisions of this chapter shall apply to all procurements of construction which are estimated to be greater than \$50,000. Procurement of construction expected to be less than \$50,000 shall be made in accordance with Section R33-3-3 (Small Purchases) except bid, performance and payment bonds shall be required unless waived in accordance with Section R33-5-355 (Waiver of Bonding Requirements on Small Projects).

R33-5-201. Methods of Construction Contract Management.

- (1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.
- (2) Flexibility. It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance, consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
- (3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Procurement Officer should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate

and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill the needs of the procuring agencies:

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, a careful assessment must be made by the Procurement Officer of requirements the project must satisfy and those other characteristics that would be desirable. Some of the factors to consider are:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;

(h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered.

(5) General Descriptions:

(a) Use of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project. However, the Procurement Officer should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties.

(b) Single Prime Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the state to timely complete an entire construction project in accordance with drawings and specifications provided by the state. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under the multiple prime contractor method, the State or the State's agent contracts directly with a number of specialty contractors to complete portions of the project in accordance with the State's drawings and specifications. The State or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

(d) Design-Build. In a design-build project, a business contracts directly with the State to meet the State's requirements as described in a set of performance specifications. Design responsibility and construction responsibility both rest with the design-build

contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(f) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

(g) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction.

R33-5-220. Selection Documentation.

The Procurement Officer shall include in the contract file a written statement, describing the construction contracting method chosen and the facts and conclusions which led to the selection of that method. The statement shall demonstrate that the State's requirements and resources, and the various groups of potential contractors were appropriately considered in making the selection.

R33-5-230. Single Prime Contractor: Use with Sequential Design and Construction.

When a single prime contractor is used with the sequential design and construction method, comprehensive plans and specifications that are precise enough shall be prepared to allow prospective prime (general) contractors to submit a competitive sealed bid. The prime contractor awarded the contract shall be responsible for the coordination of the specialty subcontractors and for the timely completion of the project at the price specified in the contract. The architect-engineer, the State project manager, and, if used, the construction manager shall monitor the progress of the project and otherwise represent the State's interest as required by contract.

R33-5-231. Single Prime Contractor: Use with Phased Design and Construction.

A single prime contractor may be used with the phased design and construction method. Under this approach, the State will

let contracts for early construction phases to specialty contractors and when the plans and specifications are sufficiently complete to allow bids to be made will let the major project contract to a prime contractor. If the State finds it administratively and economically advantageous, the State may transfer or assign to the prime contractor the administration of the specialty contracts it let earlier.

R33-5-232. Single Prime Contractor: Contractual Provisions.

The rights, duties, and responsibilities of the State representatives, the architect-engineer, prime contractor(s), and, if applicable, the construction manager and any specialty contractors awarded projects with the State shall be carefully detailed in contracts. If phased design and construction is used, administration of ongoing specialty contracts let before the prime contract will have to be transferred or assigned to the prime contractor. The terms of this assignment or transfer (including the duties of the State to ensure that the specialty contractors are at a certain point of completion at the time of assignment), what liability to the specialty contractors remains with the State after assignment, if any, and what duties and responsibilities the prime contractor has with respect to the assigned specialty contractors shall all be set forth in the specialty contracts and the contract with the prime contractor.

R33-5-240. Multiple Prime Contractors: Use with Sequential Design and Construction, and with Phased Design and Construction.

(1) Multiple prime contractors may be used with sequential design and construction by splitting the plans and specifications into packages pertinent to recognized trade specialties. The State may undertake to manage and coordinate the project's work or contracts with a construction manager. The contracts may provide that responsibility for successful completion of the entire project rests with the State, the State's agent, or one of the multiple prime contractors. The contracts shall specify where this responsibility shall rest.

(2) Multiple prime contractors may be used with phased design and construction only when the architect-engineer's work is closely coordinated with the specialty contractors' work. Under this method, the specialty contractors shall contract directly with the State or with its construction manager.

R33-5-241. Multiple Prime Contractors: Contractual Provisions.

Whenever multiple prime contractors are used, the contract between the State and each prime contractor shall:

- (1) state the scope of each contractor's responsibility.
- (2) identify when the portions of its work are to be complete.
- (3) provide for a system of timely reports on progress of the contractor's work and problems encountered.
- (4) specify that each contractor is liable for damages caused other contractors and the State whether because of delay or otherwise.
- (5) clearly delineate in all the parties' contracts the duties and authority of the State representative, the architect-engineer and, if one is employed, the construction manager with respect to the specialty contractors.

These contract clauses may not relieve the State of liability if it fails to properly coordinate and manage the project.

R33-5-251. Design-Build or Turnkey: Contractual Provisions.

The contract documents shall:

(1) delineate clearly the State's rights to inspect plans and specifications, and the construction work in progress.

(2) indicate precisely what constitutes completion of the project by the contractor.

R33-5-260. Construction Manager: Use.

(1) The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(2) When entering into any subcontract that was not specifically included in the construction manager's cost proposal submitted at the time the contract manager was selected, the construction manager shall procure that subcontractor by using one of the source selection methods authorized by these rules in the same manner as if the subcontract work was procured directly by the state.

R33-5-262. Construction Manager: Contractual Provisions.

The construction manager's contract shall clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract shall also define the liability of the State and the construction manager for failure to properly coordinate specialty contractors' work.

R33-5-270. Sequential Design and Construction: Use.

When the state selects the sequential design and construction method, it shall gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. When this team uses a construction manager he may, in addition to reviewing the drawings and specifications, assist in separating them into packets when multiple prime contractors are used. Except for redesign necessitated by changes in State requirements or problems encountered during construction, design is complete at the time construction has begun.

R33-5-280. Phased Design and Construction: Use.

When the phased design and construction method is used, the architect-engineer, and construction manager, (if one is used) shall resolve major design decisions, and shall prepare the detail design work in the sequence necessary to construct the project. Thus, construction can begin before design is complete for the entire project. Construction shall only begin after the State's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. The construction manager may also assist in packaging the various specialty contracts and to manage the work under those contracts.

R33-5-281. ~~Phased Design and Construction: Contractual Provisions:~~

~~Contracts shall clearly establish:~~

- ~~(1) architect-engineer's obligation to design the project in a manner that allows for phased construction to allow phasing of project design.~~
- ~~(2) specialty contractor's scope of work and duties to other contractors and the State.~~
- ~~(3) the management rights of the State and its construction manager when used.~~

R33-5-311. Bid Security: General.

~~Invitations for Bids on State construction contracts estimated to exceed \$50,000 shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness) except as provided by Section R33-5-313 (Nonsubstantial Failure to Comply).~~

R33-5-312. Bid Security: Acceptable Bid Security.

~~Acceptable bid security shall be limited to:~~

- ~~(a) a bid bond in a form satisfactory to the State underwritten by a company licensed to issue bid bonds in this State;~~
- ~~(b) a cashier's, certified, or official check drawn by a federally insured financial institution; or~~
- ~~(c) cash.~~

R33-5-313. Bid Security: Nonsubstantial Failure to Comply.

~~If a bid does not comply with the security requirements of this Rule, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Chief Procurement Officer, the head of a Purchasing Agency, or the designee of such officer to be nonsubstantial where:~~

- ~~(a) only one bid is received, and there is not sufficient time to rebid the contract;~~
- ~~(b) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or~~
- ~~(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section R33-3-111 (Mistakes in Bids), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.~~

R33-5-321. Performance Bonds: General.

~~A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected; its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).~~

R33-5-331. Payment Bonds: General.

~~A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).~~

R33-5-341. Bond Forms.

~~(a) Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and must be on the exact bond forms most recently adopted by the Board and on file with the Chief Procurement Officer, except bid bonds for projects under \$1,000,000 as provided by subparagraph (c).~~

~~(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A cosurety may be utilized to satisfy this requirement.~~

~~(c) For projects estimated to cost less than \$1,000,000, the State may accept bid bonds on forms provided by appropriately licensed sureties. For projects estimated to exceed \$1,000,000, the bid bond shall be on the exact bid bond forms adopted by the board as required by Subsection R33-5-341(a).~~

R33-5-350. Waiver of Bonding Requirements on Any Project.

~~The Chief Procurement Officer, or head of the purchasing agency, may waive the bonding requirement if he finds, in writing, that bonds cannot reasonably be obtained for the work involved. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.~~

R33-5-355. Waiver of Bonding Requirements on Small Projects.

~~The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63G-6-504 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed \$50,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.~~

R33-5-401. Construction Contract Clauses: Introduction.

~~The contract clauses presented in this rule are promulgated for use in construction contracts in accordance with Section 63G-6-601 (Contract Clauses) of the Utah Procurement Code. Alternative~~

clauses are provided in one instance to permit accommodation of differing contract situations:

R33-5-402. Mandatory Construction Contract Clauses:

The following construction contract clauses shall be included in all construction contracts: Section R33-5-420 Changes Clause; Section R33-5-440 Suspension of Work Clause; Section R33-5-460 Price Adjustment Clause; Section R33-5-470 Claims Based on a Procurement Officer's Actions or Omissions Clause; Section R33-5-480 Default Delay Time Extension Clause; Section R33-5-495 Termination for Convenience Clause; Section R33-5-497 Remedies Clause.

R33-5-403. Optional Construction Contract Clauses:

The following construction contract clauses may optionally be used in appropriate contracting situations: Section R33-5-430 Variations in Estimated Quantities Clause; Section R33-5-450 Differing Site Conditions Clause; Section R33-5-490 Liquidated Damages Clause.

R33-5-410. Construction Contract Clauses: Revisions to Contract Clauses:

The clauses set forth in this rule may be varied for use in a particular contract when, pursuant to the provisions of Section 63G-6-601 (Contract Clauses) of the Utah Procurement Code, the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations:

Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. _____, entitled _____, is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. _____, entitled _____. Your attention is specifically directed to this clause."

R33-5-420. Construction Contract Clauses: Changes Clause:

"CHANGES

(1) Change Order. The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(a) changes in the work within the scope of the contract; and

(b) changes in the time for performance of the contract that do not alter the scope of the contract.

(2) Adjustment of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Written Certification. The contractor shall not perform any change order which increases the contract amount unless it bears, or the contractor has separately received, a written certification, signed by the fiscal officer of the entity responsible for funding the project or the contract or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget that funds are available therefor; and, if acting in good faith, the contractor may rely upon the validity of such certification.

(4) Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

(5) Claim Barred after Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

(6) Claims Not Barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract, if pursued in accordance with the clause entitled 'Claims Based on a Procurement Officer's Actions or Omissions Clause' or for breach of contract."

R33-5-430. Construction Contract Clauses: Variations in Estimated Quantities Clause:

The following clause shall be inserted only in those construction contracts which contain estimated quantity items:

"VARIATIONS IN ESTIMATED QUANTITIES

(1) Variations Requiring Adjustments. Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than 15% above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above 15% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

(2) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-440. Construction Contract Clauses: Suspension of Work Clause:

"SUSPENSION OF WORK

(1) Suspension for Convenience. The Procurement Officer may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

(2) Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this contract, or by the failure of the Procurement Officer to act within the time specified in this contract (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused

by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

(b) for which an adjustment is provided for or excluded under any other provision of this contract.

(3) Time Restriction on Claim. No claim under this clause shall be allowed:

(a) for any costs incurred more than 20 days before the contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(b) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(4) Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-450. Construction Contract Clauses: Differing Site Conditions Clause.

Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

(1) Notice. The contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

(a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Adjustments of Price or Time for Performance. After receipt of such notice, the Procurement Officer shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract; whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

(3) Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the Procurement Officer in writing.

(4) No Claim After Final Payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

(5) Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids."

(END OF ALTERNATIVE A)

(ALTERNATIVE B)

"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding."

(END OF ALTERNATIVE B)

R33-5-460. Construction Contract Clauses: Price Adjustment Clause.

"PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree;

or (e) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the rules promulgated under Section 63G-6-415 (Cost Principles) and subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code.

(2) Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 63G-6-415 (Cost Principles) of the Utah Procurement Code."

R33-5-470. Construction Contract Clauses: Claims Based on a Procurement Officer's Actions or Omissions Clause.

"CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(1) Notice of Claim. If any action or omission on the part of a Procurement Officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the contractor shall have given written notice to the Procurement Officer or designee of such officer.

_____ (i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

_____ (ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

_____ (iii) within such further time as may be allowed by the Procurement Officer in writing.

_____ This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer;

_____ (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

_____ (c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

_____ (2) Limitation of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any State officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

_____ (3) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-480. Construction Contract Clauses: Default-Delay-Time Extensions Clause.

_____ "TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY DAMAGES FOR DELAY-TIME EXTENSIONS

_____ (1) Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within (14) days after receipt of written notice from the Procurement Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event, the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the State resulting from the contractor's refusal or failure to complete the work within the specified time.

_____ (2) Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

_____ (3) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

_____ (4) Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

_____ (a) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Procurement Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

_____ (b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

_____ (5) Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

_____ (6) Additional Rights and Remedies. The rights and remedies of the (State) provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

R33-5-490. Construction Contract Clauses: Liquidated Damages Clause.

_____ The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy damage to

the State due to delays caused by late contractor performance or nonperformance.

~~"LIQUIDATED DAMAGES~~

~~When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, the contractor shall pay to the State (\$) per calendar day of delay pursuant to the clause of this contract entitled, "Termination for Default for Nonperformance or Delay Damages for Delay Time Extensions."~~

~~**R33-5-495. Construction Contract Clauses: Termination for Convenience Clause.**~~

~~"TERMINATION FOR CONVENIENCE~~

~~(1) Termination. The Procurement Officer may, when the interests of this State so require, terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective;~~

~~(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor shall still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.~~

~~(3) Right to Construction and Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer:~~

~~(a) any completed construction; and~~

~~(b) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.~~

~~The contractor shall protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of Uniform Commercial Code Section 2-706. (U.C.C. SS2-706 is quoted in the Editorial Note at the end of this Section.) This in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.~~

~~(4) Compensation:~~

~~(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 63G-6-415 (Cost or Pricing Data) of the Utah Procurement Code, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.~~

~~(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 63G-6-601(Cost or Pricing Data) of the Utah Procurement Code and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State; the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.~~

~~(c) Absent complete agreement under Subparagraph (b) of this paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this paragraph:~~

~~(i) with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:~~

~~(A) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;~~

~~(B) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs shall not include costs paid in accordance with subparagraph (e)(i)(A) of this paragraph;~~

~~(C) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.~~

~~The total sum to be paid the contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under paragraph (3) of this clause, and the contract price of work not terminated.~~

~~(d) Cost claimed, agreed to, or established under subparagraphs (b) and (c) of this paragraph shall be in accordance with Section R33-3-8."~~

~~**R33-5-497. Construction Contract Clauses: Remedies Clause.**~~

~~"REMEDIES~~

~~Any dispute arising under or out of this contract is subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code."~~

~~**R33-5-498. Small Purchases Related to Construction.**~~

~~This Section R33-5-498 shall supersede any small purchase provision(s) within Title R33, in regard to construction.~~

~~(1) Procurements of \$100,000 or Less.~~

~~(a) The Procurement Officer may make procurements of construction estimated to cost \$100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.~~

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Procurement Officer.

(c) If the Procurement Officer determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost \$100,000 or less, the Procurement Officer shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R33-3-2 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of \$25,000 or Less. The Procurement Officer may make small purchases of construction of \$25,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable.

(3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Section R33-5-530. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities; the Procurement Officer may make small purchases of such professional services if the cost of such professional service is \$100,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable.

(4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R33-5-510. Application.

The provisions of this section apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-3-4 and Section R33-3-5.

R33-5-520. Policy.

It is the policy of this State to:

(a) give public notice of all requirements for architect-engineer services except as noted in Sections R33-5-510 and R33-5-530; and

(b) negotiate contracts for these services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R33-5-525. Annual Statement of Qualifications and Performance Data.

The Chief Procurement Officer, the head of a Purchasing Agency, or a designee of either officer shall request firms engaged in providing architect-engineer services to annually submit a statement of qualifications and performance data which should include the following:

(a) the name of the firm and the location of all of its offices, specifically indicating the principal place of business;

(b) the age of the firm and its average number of employees over the past five years;

(c) the education, training, and qualifications of members of the firm and key employees;

(d) the experience of the firm reflecting technical capabilities and project experience;

(e) the names of five clients who may be contacted, including at least two for whom services were rendered in the last year;

(f) any other pertinent information regarding qualifications and performance data requested by the Procurement Officer.

A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R33-5-527. Billing Rate Survey.

The Consulting Engineers Council of Utah and the local chapter of the American Institute of Architects will provide the results of an annual survey on billing rates within their respective disciplines to the Chief Procurement Officer prior to April 1 each year. This information will then be made available to all public procurement units.

R33-5-530. Small Purchases of Architect-Engineer Services.

When the procurement of Architect-Engineer Services is estimated to be less than \$100,000 for the Architect-Engineer's fee, the Procurement Officer may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to be \$100,000 or more for the Architect-Engineer's fee, then the selection method prescribed by the following sections apply.

R33-5-540. Architect-Engineer Selection Committee.

The Chief Procurement Officer, or designee, shall designate members of the Architect-Engineer Selection Committee. The selection committee must consist of at least three members, where possible at least one of which is well qualified in the professions of architecture or engineering, as appropriate.

The Chief Procurement Officer, or designee, shall designate one member of the committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm in accordance with Section 63G-6-704 of the Utah Procurement Code.

R33-5-550. Public Notice.

Public notice for architect-engineer services shall be given by the Procurement Officer as provided in Section R33-3-104. The notice shall be published sufficiently in advance of when responses must be received in order that firms have an adequate opportunity to respond to the solicitation, but not less than the time required by Section R33-3-102. The notice shall contain a brief statement of the services required which adequately describes the project, the closing date for submissions and how specific information on the project may be obtained.

R33-5-560. Request for Statements of Interest.

A request for statements of interest (SOI) shall be prepared which describes the state's requirements and sets forth the evaluation criteria. It shall be distributed upon request and payment of a fee.

The request for statements of interest (SOI) shall include notice of any conference to be held and the criteria to be used in evaluating the statements of interest, qualifications and performance data and selecting firms, including:

~~_____ (a) competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services;~~

~~_____ (b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and~~

~~_____ (c) past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to factors such as control of costs, quality of work, and an ability to meet deadlines.~~

R33-5-570. Definition of Scope of Work.

~~_____ Prior to initiating a request for SOI for architect-engineer services, the using agency shall define the scope of the services. The scope definition shall be sufficient to define the work expected, as detailed as possible and the scope definition shall be the basis for the negotiation process. However, the scope may be modified if necessary during final negotiations.~~

R33-5-580. Evaluation of Statements of Interest, Qualifications and Performance Data.

~~_____ The selection committee shall evaluate:~~

~~_____ (a) annual statement of qualifications and performance data submitted under Section R33-5-525;~~

~~_____ (b) statements that may be submitted in response to the request for SOI for architect-engineer services, including proposals for joint ventures; and~~

~~_____ (c) supplemental statements of qualifications and performance data, if their submission was required.~~

~~_____ All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the request for SOI for architect-engineering services.~~

R33-5-590. Selection of Firms for Discussions.

~~_____ The selection committee shall select for discussions no fewer than three firms evaluated as being professionally and technically qualified unless fewer than three firms responded to the request for SOI. The Procurement Officer shall notify each firm in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of interest, qualifications and performance data indicate that one firm is clearly most qualified and if the scope and nature of the services are clearly defined.~~

R33-5-600. Discussions.

~~_____ Following evaluation of the statements of interest, qualifications and performance data, the selection committee shall hold discussions with the firms selected pursuant to Section R33-45-590 regarding the proposed contract. The purposes of these discussions shall be to:~~

~~_____ (a) determine each firm's general capabilities and qualifications for performing the contract; and~~

~~_____ (b) explore the scope and nature of the required services and the relative utility of alternative methods of approach.~~

R33-5-610. Selection of the Most Qualified Firms.

~~_____ After discussions, the selection committee shall reevaluate and select, in order of preference, the firms which it deems to be the most highly qualified to provide the required services. The selection committee shall document the selection process indicating how the evaluation criteria were applied to determine the ranking of the most highly qualified firms.~~

R33-5-620. Negotiation and Award of Contract.

~~_____ The Procurement Officer shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the State. Contract negotiations shall be directed toward:~~

~~_____ (a) making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;~~

~~_____ (b) determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and~~

~~_____ (c) agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.~~

R33-5-630. Failure to Negotiate Contract with the Most Qualified Firm.

~~_____ (a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.~~

~~_____ (b) Upon failure to negotiate a contract with the most qualified firm, the Procurement Officer shall enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that firm. If negotiations again fail, negotiations shall be terminated as provided in Subsection R33-5-630(a) of this section and commenced with the next most qualified firm.~~

R33-5-640. Notice of Award.

~~_____ Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of the award shall be made available to the public.~~

R33-5-650. Failure to Negotiate Contract with Firms Initially Selected as Most Qualified.

~~_____ Should the Procurement Officer be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms, additional firms shall be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with Section R33-5-630 until an agreement is reached and the contract awarded.]~~

R33-5. Request for Information.

R33-5-101. Request for Information.

~~_____ In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the~~

procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

KEY: government purchasing, procurement, request for information

Date of Enactment or Last Substantive Amendment: ~~[July 8, 2010]~~2014

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: ~~[63G-6-101 et seq.]~~63G-6a

Administrative Services, Purchasing and General Services

R33-6

Modification and Termination of Contracts for Supplies, Services, Construction, and Technology

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 38505
FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the procedures for bidding, including competitive sealed bidding, multiple stage bidding, and reverse auction. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that the modification and termination of contracts have been moved to Rule R33-12, and methods to resolve tie bids have been added. (DAR NOTE: The proposed new Rule R33-12 is under DAR No. 38510 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the procedures for bidding, including competitive sealed bidding, multiple

stage bidding, and reverse auction. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the procedures for bidding, including competitive sealed bidding, multiple stage bidding, and reverse auction. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the procedures for bidding, including competitive sealed bidding, multiple stage bidding, and reverse auction. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the procedures for bidding, including competitive sealed bidding, multiple stage bidding, and reverse auction. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the procedures for bidding, including competitive sealed bidding, multiple stage bidding, and reverse auction. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
~~[R33-6. Modification and Termination of Contracts for Supplies, Services, Construction, and Technology.~~
R33-6-101. Contract Modifications.

(1) ~~Contracts may be modified when it is determined in writing by the Chief Procurement Officer or head of a purchasing agency that the modification is in the best interest of the acquiring agency. Contract modifications must be in compliance with the Utah Procurement Code.~~

(2) ~~Modifications to existing contracts for supplies, services, construction and new technology or advancements or upgrades in technology are allowed subject to the provisions of R33-3-101(5) provided:~~

(a) ~~The initial solicitation indicated that the procurement was for an entire system, project service or technology;~~

(b) ~~The initial solicitation indicated that the entire system, project, service or technology included: all future modules, components, programs, upgrades and technological advancements related to the system, project, service or technology;~~

(c) ~~The modification is substantially within the scope of the original procurement or contract;~~

(d) ~~An acquiring agency has complied with Section 63F-1-205 for contracts involving technology; and~~

(e) ~~All parties agree to the modification.~~

(3) ~~If the modification is not allowed under subsection (2) of this rule, the acquiring agency may keep the original contract while procuring the additional contract, or may terminate the original contract, whichever is in the best interest of the acquiring agency. If the contract is terminated, then the vendor shall be paid for the services or work properly performed up to the date of termination; all in accordance with the contract provisions.~~

R33-6-102. Changes Clause.

~~Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:~~

~~"Changes"~~

~~Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:~~

(1) ~~drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency;~~

(2) ~~method of shipment or packing; or~~

(3) ~~place of delivery.~~

~~Adjustments of Price or Time or Performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall~~

~~not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.~~

~~Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.~~

~~Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract."~~

R33-6-103. Stop Work Order Clause.

(1) ~~Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes or realignment of programs.~~

(2) ~~Use of Orders:~~

(a) ~~Because stop work orders may result in increased costs by reason of standby costs, these orders will be issued only with prior approval of the procurement officer.~~

(b) ~~Stop work orders shall include, as appropriate:~~

(i) ~~a clear description of the work to be suspended;~~

(ii) ~~instructions as to the issuance of further orders by the contractor for material or services.~~

(c) ~~If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.~~

(3) ~~Clause:~~

~~"Stop Work Order"~~

~~Order to Stop Work. The procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:~~

(a) ~~cancel the stop work order;~~

(b) ~~terminate the work covered by the order; or~~

(c) ~~terminate the contract.~~

~~Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:~~

(a) ~~the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and~~

(b) ~~the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage.~~

~~Termination of Stopped Work. If the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and the adjustment shall be in accordance with the Price Adjustment Clause of this contract."~~

R33-6-104. Variations in Estimated Quantities Clause.

~~_____ (1) Definite Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:~~

~~_____ Variation in Quantity~~

~~_____ Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:~~

~~_____ (a) the unit prices for the increased quantity increment will remain the same; and~~

~~_____ (b) an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."~~

~~_____ (2) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:~~

~~_____ (a) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;~~

~~_____ (b) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;~~

~~_____ (c) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and~~

~~_____ (d) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids will be solicited.~~

R33-6-105. Price Adjustment Clause.

~~_____ The following clause may be used when price adjustments are anticipated:~~

~~_____ Price Adjustment~~

~~_____ Price Adjustment Methods. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:~~

~~_____ (1) by agreement on a fixed price adjustment;~~

~~_____ (2) by unit prices specified in the contract;~~

~~_____ (3) in another manner as the parties may mutually agree; or~~

~~_____ (4) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.~~

~~_____ Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Utah State Procurement Rules."~~

R33-6-106. Termination for Default Clause.~~_____ Termination For Default~~

~~_____ Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with sufficient diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the nonperformance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.~~

~~_____ Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect~~

~~and preserve property in the possession of the contractor in which the purchasing agency has an interest.~~

~~_____ Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.~~

~~_____ Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason or any failure in performance of this contract in accordance with its terms if the failure arises out of acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.~~

~~_____ Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.~~

~~_____ Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provision of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause."~~

R33-6-107. Liquidated Damages Clause.~~_____ Liquidated Damages~~

~~_____ When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for \$..... per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency.~~

R33-6-108. Termination for Convenience Clause.~~_____ Termination For Convenience~~

~~_____ Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.~~

~~_____ Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders~~

and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the notice of termination and may incur obligations to do so.

Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph (e) of this paragraph.

(2) The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufacturing materials made under agreement, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(a) contract prices for supplies or services accepted under the contract;

(b) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on a portion of the work not including anticipatory profit or consequential damages, less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (e) (ii) of this paragraph;

(d) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(4) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Utah State Procurement Rules."

R33-6-109. Novation, Assignment or Change of Name.

(1) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(2) Recognition of a Successor in Interest; Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the agency; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are changed.]

R33-6. Bidding.

R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the description of the procurement item(s) being sought, all criteria, requirements,

factors, and formulas to be used for determining the lowest responsible and responsive bidder.

R33-6-102. Bidder Submissions.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and

(d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Rule R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences/Site Visits.

(1) Pre-bid conferences may be conducted to explain the procurement requirements. If there is to be a pre-bid conference, the time and place of the pre-bid conference/site visit shall be stated in the Invitation for Bids.

(a) Pre-bid site visits may be mandatory if the Invitation for Bids states that the site visit is mandatory and provides the location, date and time of the site visit. The Invitation for Bids must also state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not attend. Procurement units shall maintain the following:

(i) an attendance log including the name of each attendee, the firm the attendee is representing, and the attendee's contact information; and

(ii) minutes of the site visits and any documents distributed to the attendees.

R33-6-104. Addenda to Invitation for Bids.

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement

unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R33-6-105(4).

(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

(3) When submitting a bid or modification to a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid or modification to a bid being late.

(a) All bids or modifications to bids received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.

R33-6-106. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the in the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledging receipt of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;
(v) mathematical errors not affecting the total bid price; or
(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) The chief procurement officer or head of a procurement unit with independent procurement authority shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited;

(b) the procurement canceled; or

(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or

head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609, Utah Procurement Code.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Rule R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

R33-6-114. Technology Acquisitions for Executive Branch Procurement Units.

(1) For executive branch procurement units, the Invitation for Bids may state that at any time during the term of a contract, the acquiring agency may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction

Date of Enactment or Last Substantive Amendment: [~~March 30, 2012~~2014]

Notice of Continuation: January 29, 2009

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-7

Cost Principles

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38506

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the request for proposals standard procurement process. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that cost principals have been moved to Rule R33-12, and the request for proposals standard procurement process has been modified to comply with S.B. 179 from the 2014 General Legislative Session. (DAR NOTE: The proposed new Rule R33-12 is under DAR No. 38510 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the request for proposals standard procurement process. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the request for proposals standard procurement process. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the request for proposals standard procurement process. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the request for proposals standard procurement process. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the request for proposals standard procurement process. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

[R33-7. Cost Principles.

R33-7-101. Applicability of Cost Principles.

— (1) Application. This subpart contains cost principles and procedures to be used as guidance in:

— (a) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services, or architect-engineer services;

(b) establishment of price adjustments for contract changes;
 (c) pricing of termination for convenience settlements; and
 (d) any other situation in which cost analysis is required.
 (2) Limitation. Cost principles in this subpart are not applicable to:

(a) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to contracts;
 (b) prices which are fixed by law or rule;
 (c) prices which are based on established catalog prices as defined in Section 63G-6-103(10) of the Utah Procurement Code, or established market prices; and
 (d) stipulated unit prices.

R33-7-102. Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred or, in the case of forward pricing, the amount estimated to be incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits such as discounts, rebates, refunds, and property disposal income.

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(a) reasonable, as defined in Section 7-103;
 (b) allocable, as defined in Section 7-104;
 (c) not made unlawful under any applicable law;
 (d) not unallowable under Section 7-105 or Section 7-106;
 and

(e) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R33-7-103. Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;
 (2) the restraints inherent in and the requirements imposed by the factors generally accepted sound business practices, arm's-length bargaining, federal and state laws and regulations, and contract terms and specifications;
 (3) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(4) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and
 (5) any other relevant circumstances.

R33-7-104. Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;
 (b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or
 (c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(2) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs shall be treated consistently either as direct costs or indirect costs except as provided by these rules. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs:

(a) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that the treatment produces substantially the same results as treating the cost as a direct cost.

(b) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(c) The contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In these cases, an appropriate period should be agreed to in advance.

R33-7-105. Treatment of Specific Costs.

(1) Advertising. The only allowable advertising costs are those for:

- (a) the recruitment of personnel;
- (b) the procurement of scarce items;
- (c) the disposal of scrap or surplus materials;
- (d) the listing of a business' name and location in a classified directory; and
- (e) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(3) Contingencies:

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided in subsection (3) (b) of this section.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for these risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially-available liability insurance premiums, are allowable as an indirect charge.

(4) Depreciation and Use Allowances:

(a) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements, and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in

the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the affect of any increased maintenance or decreased efficiency.

(5) Entertainment:

(a) Entertainment costs include costs of amusements, social activities, and incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by employer related services, it shall be treated as a credit as provided in Section 7-207. This section shall not make unallowable costs incurred for meetings or conferences, including costs of food, rental facilities, and transportation where the primary purpose of incurring cost is the dissemination of technical information or the stimulation of production.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state, and local laws and rules. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workman's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(8) Interest Costs:

(a) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (8)(b) of this section.

(b) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 63G-6-820 of the Utah Procurement Code.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(10) Material Costs:

(a) Material costs are the costs of all supplies, including raw materials, parts, and components whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor, which are acquired in order to perform the contract. Material costs are allowable, subject to subsection 10(b) and subsection 10(c) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor

reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division including the division performing the contract, subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor determined in accordance with these cost principles rules, except that double charging of indirect costs is unallowable, except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and delivery conditions and:

(i) the price is established either by the established catalog price, as defined in Section 63G-6-103(10) of the Utah Procurement Code; or

(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

(a) Except as limited in subsection 11(b) of this section, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(b) The following costs are unallowable:

(i) federal income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R33-7-106. Costs Requiring Prior Approval to be Allowable.

(1) General. The costs described in subsections (2), (3), (4), and (5) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards.

(2) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in

the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(4) Insurance.

(a) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these rules, except that costs incurred in litigation against the purchasing agency are unallowable.

R33-7-107. Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R33-7-108. Advance Agreements.

(1) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(2) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these rules unless a determination has been made pursuant to Section 7-210.

R33-7-109. Use of Federal Cost Principles.

~~_____ (1) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, 48 CFR 901 (1993), or Federal Procurement Regulations, 48 CFR 901 (1993), the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (2) of this section.~~

~~_____ (2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Part.~~

~~_____ (a) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the rules issued pursuant to Section 63G-6-415(1), the state rules shall control.~~

~~_____ (b) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6-415(1) of the Utah Procurement Code, the cost principles specified in the grant shall control.~~

R33-7-110. Authority to Deviate from Cost Principles.

~~_____ If a procurement officer desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the officer specifying the reasons for the deviation:.]~~

R33-7. Request for Proposals.**R33-7-101. Conducting the Request for Proposals Standard Procurement Process.**

~~_____ Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.~~

R33-7-102. Content of the Request for Proposals.

~~_____ (1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:~~

~~_____ (a) a description of the format that offerors are to use when submitting a proposal including any required forms; and~~

~~_____ (b) instructions for submitting price.~~

~~_____ (2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:~~

~~_____ (a) reviewing all schedules, dates, and timeframes;~~

~~_____ (b) approving content of attachments;~~

~~_____ (c) providing the issuing procurement unit with redacted documents, as applicable;~~

~~_____ (d) assuring that information contained in the solicitation documents is public information; and~~

~~_____ (e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and~~

~~_____ (f) for executive branch procurement units the requirements of Section 63G-6a-402(6).~~

R33-7-103. Multiple Stage RFP Process.

~~_____ (1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:~~

~~_____ (a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and~~

~~_____ (b) the methodology used to determine which proposals shall be disqualified from additional stages.~~

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

~~_____ (1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.~~

~~_____ (2) Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.~~

~~_____ (3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL.~~

~~_____ (4) A procurement unit may refuse to negotiate exceptions and/or additions:~~

~~_____ (a) that are determined to be excessive;~~

~~_____ (b) that are inconsistent with similar contracts of the procurement unit;~~

~~_____ (c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;~~

~~_____ (d) where the solicitation specifically prohibits exceptions and/or additions; or~~

~~_____ (e) that are not in the best interest of the procurement unit.~~

~~_____ (5) If negotiations are permitted, a procurement unit may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.~~

~~_____ (6) If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.~~

R33-7-105. Protected Records.

~~_____ (1) The following are protected records and may be redacted by the vendor subject to the procedures described below in~~

accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code.

(a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R33-7-106. Notification.

(1) A person who complies with Rule R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R33-7-201. Pre-proposal Conferences/Site Visits.

(1) Pre-proposal conferences/site visits may be conducted to explain the procurement requirements. If there is to be a pre-proposal

conference or site visit, the time and place of the pre-proposal conference/site visit shall be stated in the RFP.

(a) Pre-proposal conference/site visits may be mandatory if the RFP states that the pre-proposal conference/site visit is mandatory and provides the location, date and time of the site visit. The RFP must also state that failure to attend a mandatory pre-proposal conference/site visit shall result in the disqualification of any offeror that does not attend. Procurement units shall maintain the following:

(i) an attendance log including the name of each attendee, the firm the attendee is representing, and the attendee's contact information; and

(ii) minutes of the pre-proposal conference/site visit and any documents distributed to the attendees.

R33-7-301. Addenda to Request for Proposals.

Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R33-7-401. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R33-7-402. Proposals and Modifications, Delivery and Time Requirements.

Except as provided in Rule R33-7-402(3), the following shall apply:

(1) proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing

time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.

(3) When submitting a proposal or modification to a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal or modification to a proposal being late.

(a) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R33-7-403. Errors in Proposals.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures;

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total proposed price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

R33-7-501. Evaluation of Proposals.

(1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

(2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted

and answered in writing. The record of questions and answers shall be maintained in the file.

R33-7-502. Correction or Withdrawal of Proposal.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the chief procurement officer or head of a procurement unit with independent procurement authority may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

R33-7-503. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with Section 63G-6a-707.5.

R33-7-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee may:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

KEY: government purchasing, request for proposals, standard procurement process

Date of Enactment or Last Substantive Amendment: [1988]2014

Notice of Continuation: January 29, 2009

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-8
Property Management**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38507

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that property management has been deleted and modifications have been made to the sole source and emergency procurement provisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. If there is any impact, it is

created by the statute. This rule merely implements the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the exceptions to procurement requirements and shall be conducted in accordance with the requirements set forth in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
 ♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

~~[R33-8. Property Management:~~

~~**R33-8-101. Quality Assurance, Inspection, and Testing.**~~

~~_____ The procurement officer shall take steps to ascertain or verify that supplies, services, or construction items conform to specifications. In performing this duty, the procurement officer may establish inspection and testing facilities, employ inspection personnel, enter into arrangements for the joint or cooperative use of laboratories, and contract with others for inspection or testing work as needed. In accordance with section 63G-6-205, the procurement officer may delegate responsibility for inspection and testing to using agencies.~~

~~**R33-8-102. Warehousing and Storage.**~~

~~_____ Purchasing agencies are delegated the authority to exercise supervision of any receiving, storage, and distribution facilities and services within their purview.~~

~~**R33-8-103. Inventory Management.**~~

~~_____ Purchasing agencies are delegated the authority to exercise supervision of all inventories of tangible personal property belonging to them. All property located in warehouses and similar storage areas shall be inventoried annually, and accountability for the property shall reside with the respective agencies.~~

~~**R33-8-201. Surplus Property.**~~

~~_____ For the disposition of surplus property refer to R28.]~~

~~**R33-8. Exceptions to Procurement Requirements.**~~

~~**R33-8-101. Sole Source - Award of Contract Without Competition.**~~

~~(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.~~

~~(2) A sole source procurement may be conducted if:~~

~~(a) there is only one source for the procurement item;~~

~~(b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or~~

~~(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.~~

~~(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.~~

~~(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the chief procurement officer or head of a procurement unit with independent procurement authority for approval.~~

~~(5) The sole source request shall be submitted to the chief procurement officer or the head of a procurement unit with independent procurement authority and shall include:~~

~~(a) a description of the procurement item;~~

~~(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;~~

_____ (c) the duration of the proposed sole source contract;
_____ (d) an authorized signature of the conducting procurement unit;

_____ (e) unless the sole source procurement is conducted under Rule R33-8-101-2(b) or (c), research completed by the conducting procurement unit documenting that there are no other competing sources for the procurement item;

_____ (f) any other information requested by the chief procurement officer or the head of a procurement unit with independent procurement authority; and

_____ (6) a sole source request form containing all of the requirements of Rule R33-8-101(5) shall be available on the division's website.

_____ (7) Except as provided in (b), sole source procurements over \$50,000 shall be published in accordance with Section 63G-6a-406.

_____ (a) Sole source procurements under \$50,000 are not required to be published but may be published at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority.

_____ (b) The requirement for publication of notice for a sole source procurement is waived:

_____ (i) for public utility services;

_____ (ii) if the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

_____ (iii) for other circumstances as determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

_____ (8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:

_____ (a) the name of the contesting person; and

_____ (b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

_____ (9) Upon receipt of information contesting a sole source procurement, the chief procurement officer or head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

_____ The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802, Utah Procurement Code.

R33-8-301. Alternative Procurement Methods.

_____ (1) The chief procurement officer or head of a procurement unit with independent procurement authority, may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, to be more practicable or advantageous to the procurement unit:

_____ (a) used vehicles;

_____ (b) livestock;

_____ (c) hotel conference facilities and services;

_____ (d) speaker honorariums;

_____ (e) hosting out-of-state and international dignitaries;

_____ (f) international promotion of the state; and

_____ (g) any other procurement item for which a standard procurement method is not reasonably practicable.

_____ (2) When making this determination, the chief procurement officer or head of a procurement unit with independent procurement authority may take into consideration whether:

_____ (a) the potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;

_____ (b) the procurement item cannot be acquired through a standard procurement process; and

_____ (c) the price of the procurement item is fair and reasonable.

_____ (3) In the event that it is so determined, the chief procurement officer or head of a procurement unit with independent procurement authority may elect to utilize an alternative procurement method which may include:

_____ (a) informal price quotations;

_____ (b) direct negotiations; and

_____ (c) direct award.

R33-8-401. Emergency Procurement.

_____ (1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

_____ (2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

_____ (3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

_____ (a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

_____ (i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

_____ (ii) failure or eminent failure of a public building, equipment, road, bridge or utility;

_____ (iii) terrorist activity;

_____ (iv) epidemics;

_____ (v) civil unrest;

_____ (vi) events that impair the ability of a public entity to function or perform required services;

_____ (vii) situations that may cause harm or injury to life or property; or

_____ (viii) other conditions as determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

_____ (4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

_____ (5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public

health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-8-501. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

KEY: government purchasing, exceptions to procurement requirements, emergency procurement, alternative procurement methods

Date of Enactment or Last Substantive Amendment: [1991]2014

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-9

Insurance Procurement

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38508

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that insurance procurement has been renumbered to Rule R33-25 and modifications have been made to cancellations, rejections, and debarment sections.

(DAR NOTE: The proposed new Rule R33-25 is under DAR No. 38522 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the procedures for cancellations, rejections, and debarment for bids, requests for proposals, and other solicitations. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

~~R33-9. Insurance Procurement.~~

~~R33-9-101. Standard Bidding Method.~~

~~All new or renewal liability insurance purchases regardless of premium size and all other new or renewal insurance purchases over \$5,000 annual premium will be made after advertisement for public bid, in accordance with these rules, except in cases of emergency for nonliability policies. In awarding the bid, the procurement officer shall consider the following:~~

- ~~(1) financial resources of agent, broker and underwriting company;~~
- ~~(2) quality of prior service rendered to the state;~~
- ~~(3) service facilities available in state;~~
- ~~(4) service reputation;~~
- ~~(5) insurance experience and expertise;~~
- ~~(6) coverages and services to be provided; and~~
- ~~(7) any other reasonable factors which will provide the best possible coverage and service to the purchasing agency.~~

~~R33-9-102. Alternate Bidding Method.~~

~~To avoid oversaturation of limited primary or reinsurance markets, a two-step bidding method may be used at the option of the procurement officer.~~

- ~~(1) All interested agents and brokers would be required to qualify for final bidding according to reasonable selection criteria such as: similar accounts in office; size of firm; background of firm principles; specialized knowledge or expertise; and any other reasonable factors which will provide the best possible coverage for the purchasing agency. At least three unaffiliated brokers or agents must qualify for final bidding.~~
- ~~(2) The prequalified group of final bidders must submit a list of markets to the procurement officer in order of preference. The procurement officer will then, as equitably as possible, assign no more than five and no less than three markets to each final bidder, based upon their preferences.~~

~~Bidders will then submit an official bid for each assigned market, according to bid specifications.]~~

~~R33-9. Cancellations, Rejections, and Debarment.~~

~~R33-9-101. General Provisions.~~

- ~~(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the procurement unit. In the event a solicitation is cancelled, the reasons for~~

~~cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:~~

- ~~(a) re-solicit new bids or proposals using the same or revised specifications; or,~~
- ~~(b) withdraw the requisition for the procurement item(s).~~

~~R33-9-102. Re-solicitation.~~

~~(1) In the event there is no initial response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:~~

- ~~(a) contact the known supplier community to determine why there were no responses to the solicitation;~~
- ~~(b) research the potential vendor community; and,~~
- ~~(c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.~~

~~(2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:~~

- ~~(a) require the conducting procurement unit to further modify the procurement documents; or,~~
- ~~(b) cancel the requisition for the procurement item(s).~~

~~R33-9-103. Cancellation Before Award.~~

~~(1) When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror the solicitation shall be cancelled.~~

~~(2) Solicitations may be cancelled before award but after opening all bids or offers when the procurement unit determines in writing that:~~

- ~~(a) inadequate or ambiguous specifications were cited in the solicitation;~~
- ~~(b) the specifications in the solicitation have been or must be revised;~~
- ~~(c) the procurement item(s) being solicited are no longer required;~~
- ~~(d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;~~

~~(e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;~~

~~(f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;~~

~~(g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,~~

~~(h) no responsive bid or offer has been received from a responsible bidder or offer;~~

~~R33-9-104. Alternative to Cancellation.~~

~~In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay~~

award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-105. Continuation of Need.

If the solicitation has been cancelled for the reasons specified in Rule R33-9-103(1)(f), (g), or (h) and the chief procurement officer or head of a procurement unit with independent procurement authority has made the written determination in Rule R33-9-103(1) and the conducting procurement unit has an existing contract, the division or a procurement unit with independent procurement authority may permit an extension of the existing contract under Section 63G-6a-802(7).

R33-9-201. Rejections and Debarments.

An issuing procurement unit may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

(a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;

(b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;

(c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;

(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or

(e) limits rights of the State under any contract clause.

(3) A bidder or offeror may be requested to delete objectionable conditions from a bid or offer provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go

to the substance, as distinguished from the form, of the bid. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the procurement item(s) offered.

R33-9-203. Unreasonable or Unbalanced Pricing.

(1)(a) Any bid or offer may be rejected if the chief procurement officer or head of a procurement unit with independent procurement authority determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but the prices for individual line items as well.

(b) Any bid or offer may be rejected if the prices for any line items or subtitle items are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:

(i) startup work, mobilization, procurement item sample production or testing are separate line items;

(ii) base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(c) All bids or offers with separately priced line items or subtitle items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the procurement unit shall:

(i) consider the risks to the procurement unit associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(d) A bid or offer may be rejected if the procurement unit and the chief procurement officer or head of a procurement unit with independent procurement authority determine that the lack of balance poses an unacceptable risk to the State.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the chief procurement officer or head of a procurement unit with independent procurement authority shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).

(2) In accordance with Section 63G-6a-604(3) the chief procurement officer or head of a procurement unit with independent procurement authority may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).

(3) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment

Date of Enactment or Last Substantive Amendment: [1988]2014

Notice of Continuation: April 17, 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-10**

**State Construction Contracts and Drug
and Alcohol Testing**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38509

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule outlines the process for award of a contract when there is more than one equally low preferred bidder. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that drug and alcohol testing has been moved to Rule R33-13. (DAR NOTE: The proposed new Rule R33-13 is under DAR No. 38511 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply outlines the process for award of a contract when there is more than one equally low preferred bidder. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply outlines the process for award of a contract when there is more than one equally low preferred bidder. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply outlines the process for award of a contract when there is more than one equally low preferred bidder. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply outlines the process for award of a contract when there is more than one equally low preferred bidder. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply outlines the process for award of a contract when there is more than one equally low preferred bidder. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.**~~[R33-10. State Construction Contracts and Drug and Alcohol Testing:~~****~~R33-10-1. Purpose:~~**

~~———— The purpose of this rule is to comply with the provisions of Section 63G-6-604.~~

~~R33-10-2. Authority:~~

~~———— This rule is authorized under Subsection 63G-6-202 as well as Subsection 63G-6-604(4).~~

~~R33-10-3. Definitions:~~

~~———— (1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R33-10:~~

~~———— (a) "Contractor" means a person who is or may be awarded a state construction contract.~~

~~———— (b) "Covered individual" means an individual who:~~

~~———— (i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and~~

~~———— (ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.~~

~~———— (c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:~~

~~———— (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or~~

~~———— (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.~~

~~———— (d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:~~

~~———— (i) in accordance with a drug and alcohol testing policy; and~~

~~———— (ii) on the basis of a random selection process.~~

~~———— (e) For purposes of Subsection R33-10-4(5), "state" includes any of the following of the state:~~

~~———— (i) a department;~~

~~———— (ii) a division;~~

~~———— (iii) an agency;~~

~~———— (iv) a board including the Procurement Policy Board;~~

~~———— (v) a commission;~~

~~———— (vi) a council;~~

~~———— (vii) a committee; and~~

~~———— (viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.~~

~~———— (f) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-10:~~

~~———— (g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.~~

~~———— (ii) "Subcontractor" includes a trade contractor or specialty contractor.~~

~~———— (iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.~~

~~———— (2) In addition:~~

~~———— (a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.~~

~~———— (b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6-604.~~

~~———— (c) "State" as used throughout this Rule R33-10 means the State of Utah except that it also includes those entities described in Subsection R33-10-3(1)(e) as the term "state" is used in Subsection R33-10-4(5).~~

~~R33-10-4. Applicability:~~

~~———— (1) Except as provided in Section R33-10-5, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:~~

~~———— (a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:~~

~~———— (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;~~

~~———— (ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-10-4(1)(a)(i); and~~

~~———— (iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-10-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.~~

~~———— (b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges this Rule R33-10 and agrees to comply with all aspects of this Rule R33-10, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:~~

~~———— (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;~~

~~———— (ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-10-4(1)(b)(i); and~~

~~———— (iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-10-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.~~

~~———— (2)(a) Except as otherwise provided in this Subsection R33-10-4(2), if a contractor or subcontractor fails to comply with Subsection R33-10-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R33-10.~~

~~———— (b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to this Rule R33-10.~~

~~———— (c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-10-4(1).~~

~~———— (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R33-10-4(1).~~

~~(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-10-4(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-10-4(1), shall comply with all provisions of this Rule R33-10 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of Rule R33-10 and Section 63G-6-604.~~

~~(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.~~

~~(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-10-4(1):~~

~~(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies or the similar rules of the Board; and~~

~~(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.~~

~~(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.~~

~~(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R33-10, including not being liable in relation to:~~

~~(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;~~

~~(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;~~

~~(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;~~

~~(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:~~

~~(A) collection of a sample;~~

~~(B) testing of a sample;~~

~~(C) evaluation of a test; or~~

~~(D) disciplinary or rehabilitative action on the basis of a test result;~~

~~(v) an individual being under the influence of drugs or alcohol; or~~

~~(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.~~

R33-10-5. Non-applicability.

~~(1) This Rule R33-10 and Section 63G-6-604 does not apply if the State Public Procurement Unit determines that the~~

~~application of this Rule R33-10 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:~~

~~(a) jeopardizing the receipt of federal funds;~~

~~(b) the state construction contract being a sole source contract; or~~

~~(c) the state construction contract being an emergency procurement.~~

R33-10-6. Not Limit Other Lawful Policies.

~~(1) If a contractor or subcontractor meets the requirements of Section 63G-6-604 and this Rule R33-10, this Rule R33-10 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.]~~

R33-10. Preferences.

R33-10-101. Providers of State Products.

~~(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.~~

~~(2) In the event there is more than one equally low preferred bidder, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.~~

R33-10-102. Preference for Resident Contractors.

~~(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.~~

~~(2) In the event there is more than one equally low preferred resident contractor, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.~~

KEY: ~~[drug and alcohol testing; contractors; contracts]preferences for resident contractors, reciprocal preferences, state products~~

Date of Enactment or Last Substantive Amendment: ~~[July 8, 2010]2014~~

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-11
Surplus Property**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
 DAR FILE NO.: 38524
 FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides the bid security requirements for projects. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that state surplus property has been renumbered to Rule R33-26. (DAR NOTE: The proposed new Rule R33-26 is under DAR No. 38523 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides the bid security requirements for projects. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **LOCAL GOVERNMENTS:** The local government's budget will not be affected, because this rule simply provides the bid security requirements for projects. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **SMALL BUSINESSES:** Small businesses budget will not be affected, because this rule simply provides the bid security requirements for projects. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons budget will be affected, because this rule simply provides the bid security requirements for projects. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons, because this rule simply provides the bid security requirements for projects. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any

impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
 ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

[R33-11. Surplus Property.

R33-11-1. State Surplus Property - General.

- ~~11-101. Purpose.~~
~~This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property and the state surplus property contractor.~~
- ~~11-102. Authority.~~
~~Under the provisions of Title 63A, Chapter 2, Section 103, the division shall:~~
 - ~~(1) except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;~~
 - ~~(2) when a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program;~~
 - ~~(3) Manage the federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102.37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.~~
 - ~~(4) Manage the disposition of state owned vehicles.~~
 - ~~(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Utah Code Title 63A, Chapter 2, Section 4.~~

_____ (6) Handheld devices/technology (not transferred from state agencies to public schools):

_____ 11-103. Definitions:

_____ (A) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

_____ (B) In addition:

_____ (1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

_____ (2) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

_____ (3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

_____ (4) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

_____ (5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

_____ (6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

_____ (7) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared by surplus property by a local subdivision.

_____ (8) "Handgun" means any pistol or revolver.

_____ (9) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

_____ (10) "Licensed firearm dealer" means a firearms dealer licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

_____ (11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

_____ (12) "Motoreycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

_____ (13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

_____ (14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motoreycle.

_____ (15) As used in this section "Personal handheld electronic device":

_____ (a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and

_____ (b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

_____ (16) "Personal Watercraft" means a motorboat that is:

_____ (a) less than 16 feet in length;

_____ (b) propelled by a water jet pump; and

_____ (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

_____ (17)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

_____ (b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

_____ (18) "Reconstructed vehicle" means every vehicle type of a type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

_____ (19)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

_____ (b) "Recreational vehicle" includes:

_____ (i) a travel trailer;

_____ (ii) a camping trailer;

_____ (iii) a motor home;

_____ (iv) a fifth wheel trailer; and

_____ (v) a van.

_____ (20) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

_____ (21) "Sailboat" means any vessel having one or more sails and propelled by wind.

_____ (22) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

_____ (23)(a) "Special mobile equipment" means every vehicle:

_____ (i) not designed or used primarily for the transportation of persons or property;

_____ (ii) not designed to operate in traffic; and

_____ (iii) only incidentally operated or moved over the highways.

_____ (b) "special mobile equipment" includes:

_____ (i) farm tractors;

_____ (ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers; and

_____ (iii) ditch-digging apparatus;

_____ (iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

_____ (24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

_____ (25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

_____ (26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

~~(27) "USASP" means Utah State Agency for Surplus Property.~~

~~(28) "Vehicle" means the items identified and defined in R33-11-103, except items (5), (7), (8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.~~

~~(29) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.~~

R33-11-2. Non-vehicle Disposition Procedures.

~~11-201. General Provision:~~

~~(1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this rule are followed. State-owned non-vehicle personal property shall not be processed by the division.~~

~~(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.~~

~~(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, they will:~~

~~(a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or~~

~~(b) notify the state surplus property contractor that the department or agency has surplus property.~~

~~11-202. Information Technology Equipment:~~

~~(1) State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency.~~

~~(2) Pursuant to the provisions of section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.~~

~~(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to the public institutions or non-profit entities, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.~~

~~(4) Except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.~~

~~11-203. Federal Surplus Property:~~

~~(1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.~~

~~(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate.~~

~~Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.~~

~~11-205. Related Party Transactions:~~

~~(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.~~

~~(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:~~

~~(a) Has purchasing authority.~~

~~(b) Has maintenance authority.~~

~~(c) Has disposition or signature authority.~~

~~(d) Has authority regarding the disposal price.~~

~~(e) Has access to restricted information.~~

~~(f) Is perceived to be a related party using other criteria which may prohibit independence.~~

~~11-206. Priorities:~~

~~(1) Public agencies are given priority for the purchase of state-owned surplus property:~~

~~(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public through the state surplus property contractor.~~

~~(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:~~

~~(a) State Agencies~~

~~(b) State Universities, Colleges, and Community Colleges~~

~~(c) Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies~~

~~(d) Other tax supported educational entities~~

~~(e) Non-profit health and educational institutions~~

~~(4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.~~

~~(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:~~

~~(a) The cost to the state;~~

~~(b) The potential liability to the state;~~

~~(c) The overall best interest of the state.~~

R33-11-3. Accounting and Reimbursement Procedures.

~~11-301. Accounting:~~

~~(1) The Division will record and maintain records of all transactions related to the acquisition and sale of all federal surplus property.~~

~~(2) The division will require regular and detailed accounting by the state surplus property contractor of:~~

~~(a) the receipt and sale of state surplus property; and~~

~~(b) the receipt and payment of any and all funds; and~~

~~(c) ensure public transparency regarding the sale of state surplus property.~~

~~(3) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds~~

in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

~~11-302. Reimbursement.~~

~~(1) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.~~

~~(2) Vehicles.~~

~~(a) Reimbursements to state agencies from the sale of their vehicles will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.~~

~~(3) Payment for vehicles, information technology equipment, federal surplus property, personal handheld devices, and firearms shall be as follows:~~

~~(a) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$200. Two-party checks shall not be accepted, or~~

~~(b) Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card, or~~

~~(c) Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased.~~

~~(d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:~~

~~(i) The cost to the state;~~

~~(ii) The potential liability to the state;~~

~~(iii) The overall best interest of the state.~~

~~(4) Bad Debt Collection.~~

~~(a) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds".~~

~~(b) In the event that a check is returned to the division is returned for "insufficient fund," the division may:~~

~~(i) Prohibit the debtor from making any future purchases from the division until the debt is paid in full;~~

~~(ii) Have division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings;~~

~~(c) Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.~~

~~(5) Division Rate Schedule.~~

R33-11-4. Public Sale of State-owned Vehicles.

~~11-401. Procedures.~~

~~(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.~~

~~(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.~~

~~(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.~~

~~(5) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.~~

~~(6) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:~~

~~(a) The state agency intends on using the ancillary or component parts or equipment on other agency vehicles; or~~

~~(b) The state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or~~

~~(c) The state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.~~

R33-11-5. Surplus Firearms.

~~11-501. Purpose and Authority.~~

~~This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.~~

~~11-502. Procedures.~~

~~(1) All state owned firearms shall be disposed of under the general provisions of Subsection R33-11-1-11-101.~~

~~(a) The sale of firearms directly to the general public by the division is prohibited.~~

~~(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.~~

~~(c) Except as provided in this Subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.~~

~~(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.~~

~~(ii) The division may authorize the sale of a handgun to a legally constituted law enforcement agency.~~

~~(iii) The division may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:~~

~~(A) the individual's name;~~

~~(B) the serial number of the handgun to be sold; and~~

~~(C) the signature of an authorized agent of the owning agency.~~

~~(2) All firearms retained by the division shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.~~

~~(a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.~~

~~(3) All firearms retained by the division shall be in good working condition.~~

~~(a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.~~

~~R33-11-6. Utah State Agency for Surplus Property Adjudicative Proceedings:~~

~~11-601. Purpose:~~

~~As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.~~

~~11-602. Proceedings to be Informal:~~

~~All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.~~

~~11-603. Procedures Governing Informal Adjudicatory Proceedings:~~

~~(1) No response need be filed to the notice of agency action or request for agency action.~~

~~(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.~~

~~(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.~~

~~(4) A hearing will be held only after timely notice of the hearing has been given.~~

~~(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.~~

~~(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.~~

~~(7) Any hearing held under this rule is open to all parties.~~

~~(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.~~

~~(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.~~

~~(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.~~

~~(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.~~

~~R33-11-7. State Surplus Property Contractor:~~

~~11-701. General Requirements:~~

~~(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.~~

~~(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.~~

~~(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.~~

~~(4) The contractor must submit regular and detailed accounting to the division of:~~

~~(a) the receipt and sale of state surplus property; and,~~

~~(b) the receipt and payment of funds by the contractor.~~

~~(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:~~

~~(a) post online information related to a sale or attempted sale of state surplus property that includes:~~

~~(i) a detailed description of the item or items;~~

~~(ii) the name of the state agency that requested the sale;~~

~~(iii) the price at which the state surplus property was sold;~~

~~and,~~

~~(iv) post the information within a period of time established by the division.~~

~~(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:~~

~~(a) to store the state surplus property; or,~~

~~(b) charge for the storage of state surplus property.~~

~~R33-11-8. Donation, Disposal, or Destruction of State Surplus Property:~~

~~11-801. A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than \$30.00 without involvement of the division or state surplus property contractor if:~~

~~(a) the state surplus property fails to sell at auction; or~~

~~(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property; or~~

~~(c) the state surplus property is no longer usable; or~~

~~(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or~~

~~(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.]~~

~~R33-11. Form of Bonds.~~

~~R33-11-101. Definitions.~~

~~(1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.~~

~~(b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.~~

R33-11-201. Bid Security Requirements for Projects.

(1) Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.

(2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the chief procurement officer or the head of a procurement unit with independent procurement authority determines it is in the best interest of the procurement unit

(3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Rule R33-6-108, Rule R33-6-109 or Rule R33-11-202(2).

(4) The chief procurement officer or head of a procurement unit with independent procurement authority may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Rule R33-11-201(1).

R33-11-202. Acceptable Bid Security Not Furnished.

(1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer or head of a procurement unit with independent procurement authority to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(a) the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Rule R33-11-304(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security; or

(b) only one bid is received, and there is not sufficient time to re-solicit; or

(c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Rule R33-6-108 (Mistakes in Bids) or Rule R33-7-401 (Mistakes in Proposals) Rule R33-7-402 (Correction of Mistakes), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

(2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Rule R33-11-2, then the bidder's bid security may be forfeited.

R33-11-301. Performance Bonds for Construction Contracts.

A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract

may be made to the next lowest responsive and responsible bidder or highest ranked offeror.

R33-11-302. Surety or Performance Bonds for Non-construction Procurement Items.

(1) A surety or performance bond may be required on any non-construction contract by the chief procurement officer or head of a procurement unit with independent procurement authority deems necessary to guarantee the satisfactory completion of a contract, provided:

(a) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond is required in an amount:

(i) equal to the amount of the bid or offer;

(ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

(iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

(iv) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and

(b) The Invitation for Bids or Request for Proposals contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

R33-11-303. Payment Bonds.

A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or highest ranked offeror.

For executive branch procurement units:

(a) Bid Bonds, Payment Bonds and Performance Bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Rule R33-11-304 (b) and must be on the required bond forms;

(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued.

(1) The chief procurement officer, or head of a procurement unit with independent procurement authority, may waive any bonding requirement if it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority that:

(a) bonds cannot reasonably be obtained for the work involved;

(b) the cost of the bond exceeds the risk to the procurement unit; or

(c) bonds are not necessary to protect the interests of the procurement unit.

(2) If the conducting procurement unit fails to obtain a payment bond it may subject Title 14, Chapter 1.

KEY: ~~[state surplus property]~~ **bid security, performance bonds, payment bonds, procurement procedures**

Date of Enactment or Last Substantive Amendment: ~~[October 24, 2013]~~ **2014**

Authorizing, and Implemented or Interpreted Law: ~~[63A-2-401; 63A-2-405; 63A-2-407; 63G-4]~~ **[63G-6a]**

**Administrative Services, Purchasing
and General Services
R33-12
Rules of Procedure for Procurement
Policy Board and Procurement Appeals
Panel**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 38510

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the repeal and reenactment is because the Division of Purchasing and General Services is updating this rule to comply with the provisions of the Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes the terms and conditions, contracts, change orders, and costs for procurements. This rule is being updated to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation. The substantive changes in this rule are that the Procurement Policy Board has been renumbered to Rule R33-2 and Rule R33-18. (DAR NOTE: The proposed repeal and reenact of Rule R33-2 is under DAR No. 38501 and the proposed new Rule R33-18 is under DAR No. 38516 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes the terms and conditions, contracts, change orders, and costs for procurements. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes the terms and conditions, contracts, change orders, and costs for procurements. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes the terms and conditions, contracts, change orders, and costs for procurements. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes the terms and conditions, contracts, change orders, and costs for procurements. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes the terms and conditions, contracts, change orders, and costs for procurements. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgheed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Division of Purchasing and General Services.**[R33-12. Rules of Procedure for Procurement Policy Board and Procurement Appeals Panel.****R33-12-1. Purpose.**

The purpose of this Rule R33-12 is to establish procedures for the meetings of the Procurement Policy Board as well as the procedures for an appeal before the Procurement Appeals Panel.

R33-12-2. Authority.

This Rule R33-12 is authorized under Subsection 63G-6-201(3)(a)(i) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6-807 et. seq.

R33-12-3. Definitions.

All definitions in the Utah Procurement Code, Title 63G, Chapter 6, shall apply to this Rule R33-12. In addition the following definitions shall apply to this Rule R33-12:

- (1) "Attendance" means a person attending a Board meeting, either in person or through electronic means as authorized by this Rule.
- (2) "Board" means the Procurement Policy Board established under Section 63G-6-201.
- (3) "Chair" means the person elected as Chair of the Board pursuant to Subsection 63G-6-201(3)(a)(ii).
- (4) "Chief Procurement Officer" means the Chief Procurement Officer as defined in the Utah Procurement Code.
- (5) "Director" means the Director of the Division of Purchasing and General Services or a duly authorized designee.
- (6) "Division" means the Division of Purchasing and General Services.
- (7) "Electronic meeting" is as defined in Section 52-4-103.
- (8) "Open and Public Meetings Laws" means those laws provided by Title 52, Chapter 4, Utah Code.
- (9) "Parties of Record" means the person(s) that have appealed the protest decision to the Procurement Policy Board, the entity or entities that made the subject procurement, the entity or entities who are the intended beneficiaries of the procurement, as well as those that have approved to intervene in accordance with this Rule R33-12.
- (10) "Presiding Officer" means the Chair. The Chair may choose, either because of unavailability or any other reason, an alternate Presiding Officer.
- (11) "Protest Officer" means:
 - (a) as it relates to a purchasing agency, the head of the purchasing agency or a designee of the head of the purchasing agency;
 - (b) as it relates to a local public procurement unit, the purchasing officer or the governing body of the local public procurement unit, or a designee of either;
 - (c) as it relates to a public procurement unit other than a public procurement unit described in Subsection (11)(a) or (b) of this Rule R33-12-3, the chief procurement officer or the chief procurement officer's designee.

R33-12-4. Composition of Board.

(1) The Board consists of fifteen voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.

(2) The secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.

R33-12-5. Calling Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services or Director may also call a meeting.

R33-12-6. Chair, Presiding Officer and Basic Responsibilities.

(1) The Chair shall be the Presiding Officer at all Board meetings.

(2) The Chair may choose, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.

(3) The Presiding Officer shall be able to make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director may also place items on the Board agenda.

(5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

R33-12-7. Secretary to the Board.

(1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings laws. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings laws.

(2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R33-12-8. Meetings.

Meetings are generally held in the conference room of the Division of Purchasing and General Services, 3rd floor, State Office Building, Capitol Hill, in Salt Lake City, Utah. The date, time and location may also be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R33-12-9. Compliance with Open and Public Meeting Laws.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings laws. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meetings laws.

R33-12-10. Notice and Agenda.

(1) Notice shall be given of all meetings in accordance with the Open and Public Meetings laws.

(2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. Board members may also contact the Chair or Director about any request for agenda items.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer or Director.

(5) Each agenda shall include an agenda item regarding whether there are any matters to be placed on a future agenda.

R33-12-11. Attendance, Quorum and Voting.

(1) Eight members of the Board are required for a quorum to transact business.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least five members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.

(4) Members must be in attendance, including by electronic means in accordance with this Rule, in order to vote.

R33-12-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

(1) Any voting member may make or second a motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those that request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions.

R33-12-13. Committees and Appeals Panel.

The Board may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-12-19.

R33-12-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to leave the meeting.

R33-12-15. Rules of Order.

All matters not covered by this Rule R33-12 shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

R33-12-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R33-12-16 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) if one or more members of the Board desire to participate electronically, such member(s) shall contact the Director or Secretary. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer or Director shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be present and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings laws. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member participating electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R33-12-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R33-12-1 through R33-12-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

R33-12-18. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule R33-12-18 will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (i) consumer;
- (ii) customer;
- (iii) competitor;
- (iv) security holder of a party; or
- (v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven-day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule R33-12-18, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-12-19. Procurement Appeals Panel.

(1) In General and Grounds for Appeal. This Rule R33-12-19 shall apply for any appeal of a protest decision to the Procurement Policy Board where such appeal is made in accordance with the Utah Procurement Code. The grounds for an appeal are limited to those

specified in the protest letter as required by the Utah Procurement Code.

(2) Creation of Procurement Appeals Panel. Within seven days after the day on which the Chair receives a timely written notice of appeal in accordance with the Utah Procurement Code, the Chair or a designee of the Chair who is a member of the Board shall appoint a procurement appeals panel to hear and decide the appeal, consisting of at least three individuals, each of whom shall be:

(a) a member of the Procurement Policy Board; or

(b) a designee of a member appointed as indicated below, if the designee is approved by the Chair.

(3) Designee of Chair to make Appointment in Special Circumstances. When the Chair is employed by the public entity responsible for the solicitation, contract award or other action complained of, the Chair shall have a designee who is a member of the Board and not so employed make the appointments.

(4) Panel to have a Chair. The appointments made under this Rule shall include the designation of a Chair for the Panel.

(5) Conflicts of Interest. A person may not be appointed to the panel if the person is employed by the public entity responsible for the solicitation, contract award or other action complained of.

(6) Odd number of members. The Panel shall consist of an odd number of members.

(7) Informal Proceeding, Rules of Evidence Not Applicable. The Panel shall conduct an informal proceeding on the appeal within 60 days after the day on which the procurement appeals panel is appointed unless all parties stipulate to a later date or the panel continues the proceeding beyond the 60-day period if the panel determines the continuance is in the interests of justice. The Rules of Evidence do not apply to an appeal proceeding.

(8) Notice of Proceeding. At least seven days before the proceeding, the Panel shall mail, email, or hand deliver a written notice of the proceeding to the parties to the appeal.

(9) Written Decision. Within seven days after the day on which the proceeding ends, the Chair of the Panel shall issue a written decision on the appeal to the parties to the appeal and to the protest officer. The written decision must be supported by at least two panel members.

(10) Record for Decision. The Panel shall consider the appeal based solely on the following without taking any additional evidence:

(a) the protest decision;

(b) the record considered by the person who issued the protest decision; and

(c) if a protest hearing was held, the record of the protest hearing.

(11) Standard for Review. The Panel shall uphold the decision of the protest officer, unless the decision is arbitrary and capricious or clearly erroneous.

(12) Parameters if Decision not Upheld on Appeal. If the Panel determines that the decision of the Protest Officer is arbitrary and capricious or clearly erroneous, the panel:

(a) shall remand the matter to the Protest Officer to cure the problem or render a new decision;

(b) may recommend action that the Protest Officer should take; and

(c) may not order that a contract be awarded to a certain person, a contract or solicitation be cancelled, or any other action to be taken other than the action described in (12)(a) above.

~~(13) Expedited Proceedings. A proceeding may be expedited as described in Rule R33-12-19(27).~~

~~(14) Electronic Participation. Electronic Participation by Panel Members and Participants. Any panel member or participant may participate electronically by:~~

~~(a) notifying the Chair of the Panel at least 24 hours in advance of the proceeding;~~

~~(b) the Chair of the Panel will allow such electronic participation provided that the electronic means for such participation, by phone, computer or otherwise, is available at the location; and~~

~~(c) the electronic means allows other members of the Panel and other participants to hear the person or persons participating electronically.~~

~~(15) Security Deposit.~~

~~(a) A person who files an appeal shall, at the time the appeal is filed, pay a security deposit or post a bond with the protest officer in an amount that is the greater of:~~

~~(i) for the appeal of a debarment or suspension, \$1000;~~

~~(ii) for any type of procurement, \$1000;~~

~~(iii) for an invitation for bids, 5% of the lowest bid amount, if the bid opening has occurred, or 5% of the estimated contract cost, which shall be the amount of the budget allocated by the public entity for the subject procurement, if the bid opening has not yet occurred;~~

~~(iv) for a request for proposals, 5% of the lowest cost proposed in a response to the request for proposals, if the opening of proposals has occurred, or 5% of the estimated contract cost, which shall be the amount of the budget allocated by the public entity for the subject procurement, if the opening of proposals has not yet occurred;~~

~~(v) for a type of procurement other than an invitation for bids or request for proposals, 5% of the amount of the budget allocated by the public entity for the subject procurement.~~

~~(b) For purposes of this Security Deposit, when the amount of the budget allocated by the public entity for the subject procurement is to be used, the following shall apply:~~

~~(i) the security deposit or bond posting does not need to be filed along with the appeal, but must be filed within 7 days of the appellant being notified of the budget allocated by the public entity for the subject procurement.~~

~~(c) The security deposit or bond posting may be waived or reduced under the following circumstances:~~

~~(i) where the Appellant in the notice of appeal has indicated that the Appellant is impecunious or otherwise faces an economic hardship in the ability to pay a security deposit or bond posting, and the Chair of the Panel determines that such condition exists;~~

~~(ii) where the Appellant in the notice of appeal has indicated other grounds acceptable to the Division of Purchasing and General Services to be appropriate; or~~

~~(iii) where the subject procurement involves a small purchase or any procurement below \$10,000.~~

~~(d) If a waiver is denied under this Rule, the Appellant must post the appropriate security deposit or bond within seven days of date of receipt of the notice of denial or the appeal will be dismissed.~~

~~(e) The Chair of the Board shall dismiss an appeal filed under the matter if the Appellant fails to timely pay the security deposit or post the bond required by the Utah Procurement Code and this Rule.~~

~~(f) The Chair of the Board shall retain the security deposit or bond until the protest and any appeal of the protest decision is final.~~

~~(g) The Chair of the Board shall deposit the security deposit into an interest-bearing account.~~

~~(h) The Chair of the Board shall, after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the General Fund under this Rule.~~

~~(i) The Chair of the Board shall retain the bond until the protest and any appeal of the protest decision becomes final and thereafter either return the bond to the person who posted the bond or have the bond forfeited to the General Fund under this Rule.~~

~~(j) A security deposit that is paid, or a bond that is posted, under this Rule shall forfeit to the General Fund if:~~

~~(i) the person who paid the security deposit or posted the bond failed to ultimately prevail on appeal; and~~

~~(ii) the panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.~~

~~(16) Discontinuance of Appeal. After notice of an appeal to the Board is filed in accordance with the Utah Procurement Code, no party may discontinue the appeal without prejudice, except as authorized by the Panel.~~

~~(17) Dismissal for Lack of Compliance. A Panel may dismiss an appeal that is assigned to the Panel if the appeal is not filed in accordance with the requirements of the Utah Procurement Code and this Rule enacted pursuant to the Utah Procurement Code.~~

~~(18) Appearance and Representation, Electronic Participation. A person may represent him or herself before the Panel. Any person or party may be represented by an attorney at law. Parties shall enter their appearances at the beginning of the proceeding or at such time as may be designated by the Panel by giving their names and addresses and stating their positions or interests in the proceeding.~~

~~(19) Intervention on Appeal:~~

~~(a) Only those persons who have intervened in the protest that is being appealed may intervene in the appeal process unless the grounds for intervention did not exist until the time of appeal. A Motion to Intervene must be received by the Protest Officer or Chair of the Board within seven days of being notified of the Appeal by the Protest Officer. A copy of the Motion to Intervene shall also be mailed or emailed to the Appellant.~~

~~(b) The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.~~

~~(c) Contents of a Motion to Intervene. Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A Motion to Intervene must also state the person's interest in sufficient factual detail to demonstrate that:~~

~~(i) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;~~

~~(ii) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:~~

~~(A) consumer;~~

~~(B) customer;~~

~~(C) competitor;~~

~~(D) security holder of a party; or~~

~~(E) the person's participation is in the public interest.~~

~~(d) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Chair of the Panel within seven calendar days after the Motion to Intervene is received by the Party of~~

Record desiring to object, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Appeals Panel based on a determination that a reason for intervention exists as stated in this Rule.

(c) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Appeals Panel.

(20) Form of Pleadings and Documents. All documents and pleadings submitted to the Chair and the Panel shall indicate the name, mailing address, any email address and phone number of the submitting person as well as indicate by a certificate of service that it was provided to all other persons known to be a party in the proceeding.

(21) Signature. Pleadings shall be signed by the party or the participant, or by the party's attorney or other authorized representative, and shall reflect the address of the signer to whom any further notices should be sent. The signature shall be deemed to be a certification by the signer that he/she has read the pleading and that to the best of his/her knowledge and belief there is good ground to support it.

(22) Response. A Party of Record against whom a pleading is directed may file an answer or other response thereto. Answers or other responses shall contain a clear and concise statement of the matter relied upon as a basis for the answer or response, together with an appropriate prayer for relief.

(23) Motions. Motions may be submitted for the Panel's determination by either written or oral argument, and may be supported by affidavits. However, no new evidence is allowed in the appeal as prescribed by the Utah Procurement Code.

(24) Original and Copies. One original of all pleadings and documents submitted to the Panel, with attachments, shall be filed with the Panel. Filings in electronic form by email are encouraged. The Panel may thereafter direct that a copy of all pleadings and other documents be made available by the party filing same to any person whom the Panel determines may be affected by the proceedings, and who desires copies thereof.

(25) Service on Other Parties. All Parties of Record shall serve one copy of all pleadings and other documents on each of the other Parties of Record either by personal service, hand delivery, or by mailing/emailing a copy to the party's physical address or email address as shown in the filings of the Panel or the subject Purchasing Agency. In the event service is made by mail to a physical address, the party serving same shall attach to the original of the pleading a certificate that a true copy thereof was, on the appropriate date, mailed to the designated address by first class United States mail, properly addressed with postage prepaid. When any party has appeared by an attorney or other authorized representative, service upon such attorney or representative constitutes service upon the party.

(26) Answers or Responses. Answers or responses shall be filed with the Panel and served upon Parties of Record within ten days after service of the original pleading unless for good cause the Panel extends the time within which such answer or response may be made. All motions must be filed, and served upon all Parties of Record, not later than three days prior to any date set for the proceeding before the Panel.

(27) Pre-Proceeding Conference and Expedited Proceedings.

(a) The Panel may, upon written notice to all parties, hold a pre-proceeding conference for the purpose of formulating and

simplifying the issues or any other matter that assists with the proceeding. A person participating in a pre-proceeding conference on behalf of each party shall have authority to negotiate and agree to settlement of the dispute.

(b) Any party may request a pre-proceeding conference in an effort to expedite the proceeding. Upon such a request to expedite the proceeding, the Panel shall consider any expedited process that considers the needs to expedite the proceeding while assuring that the due process rights of all parties are protected.

(28) The Proceeding. The Panel shall set the time and place for the proceeding at the earliest practical date and written notice by mail or email shall be provided to each Party of Record and, at the discretion of the Panel, to any other interested persons. The Chair of the Panel shall establish the order of the proceeding, including the sequence and time limit for presentations. The proceeding shall be recorded or have a court reporter.

(29) Determination. After the Panel has reached a final decision by a majority vote, the Chair of the Panel shall prepare a written determination. A copy of the determination shall be served upon the Parties of Record as herein provided.]

R33-12. Terms and Conditions, Contracts, Change Orders and Costs.

R33-12-101. Required Contract Clauses.

Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. Executive branch procurement units shall also comply with the requirements of Section 63G-6a-402(6). All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-12-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the Standard Terms and Conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the Chief Procurement Officer after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

(a) a category of procurement items;

(b) a specific procurement item;

(c) general use in all procurements;

(d) the special needs of a conducting procurement unit; or

(e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

(a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:

(i) the terms and conditions are unduly restrictive;

(ii) will unreasonably increase the cost of the procurement item; or

(iii) places the state at increased risk.

(b) the chief procurement officer may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-12-301. Multiple Award Contracts -- Indefinite Quantity Contracts.

(1) A multiple award is an award of an indefinite quantity contract for one or more similar procurement items to more than one bidder or offeror, and the procurement unit is obligated to order all of its actual, normal requirements for the specified procurement items from those contractors. A multiple award may be in the procurement unit's best interest when an award to two or more bidders or offerors for similar procurement items is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the procurement unit shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the procurement unit shall reserve the right to take bids separately if the chief procurement officer or head of a procurement unit with independent procurement authority approves a finding that the procurement item available under the contract will not meet a nonrecurring special need of the procurement unit.

(2) As permitted by Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts. In addition to the content requirements contained in Section 63G-6a-603 and Section 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include:

(a) statement that award may be made to more than one bidder or offeror; and,

(b) the maximum number of awards anticipated; or

(c) the methodology used to determine the number of contract awards.

(3) Use of Multiple Award Contracts.

(a) Whenever practicable, a solicitation for a multiple award contract shall include requirements that procurement units shall:

(i) obtain a minimum of two quotes for the procurement item(s) sought from the multiple award contractors;

(ii) use a rotational system of selecting the multiple awarded contractor for the procurement item(s) needed;

(iii) based on geographical area of assignment or area of expertise; or

(iv) use other methods to ensure each awarded contractor a fair opportunity to be considered for each order of a procurement item(s) from the procurement unit.

(4) No method, such as allocation or designation of a preferred awarded contractor, which would not result in fair consideration being given to all multiple award contractors shall be used.

(5) Multiple award contracts may be awarded by geographical regions, by line items, or any manner that serves the best interest of the procurement units, as determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-12-302. Primary and Secondary Contracts.

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the chief procurement officer or head of a procurement unit with independent procurement authority determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made, initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability, and so on.

R33-12-303. Intent to Use.

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

R33-12-401. Contracts and Change Orders -- Contract Types.

A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

R33-12-402. Prepayments.

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

R33-12-403. Leases of Personal Property.

Leases of personal property are subject to the following:

(1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(a) it is in the best interest of the procurement unit;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(3) Lease contracts shall be conducted with as much competition as practicable.

(4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(a) investigate alternative means of procuring comparable procurement items; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-12-404. Multi-Year Contracts.

(1) Procurement units may issue multi-year contracts in accordance with Section 63G-6a-1204.

R33-12-405. Installment Payments.

(1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

R33-12-501. Change Orders.

(1) In addition to the requirements contained in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the chief procurement officer prior to the commencement of any work to be performed under a contract change order unless:

(a) The procurement unit has authority, as may be granted under Section 63G-6a-304(1) and Rule R33-3-101, to authorize contract change orders up to the amount delegated; or

(b) The change order is requisite to:

(i) avert an emergency; or

(ii) is required as an emergency.

(c) For purposes of this subsection "emergency" is described in Rule R33-8-401(3) and is subject to Section 63G-6a-803.

(2) Any contract change order authorized by a procurement unit under Rule R33-12-501(1)(c) shall, as soon as practicable, be submitted to the chief procurement officer and included in the division's contract file.

R33-12-502. Technology Modifications.

(1) Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. Any modification to a contract for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified.

(2) Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. No contract modification for new technology requested by an acquiring agency shall be exercised without the approval required under Section 63F-1-205, the new technology modification has been subject to the review as described in Rule R33-6-113 and the contracting parties agree to the modification.

(3) No contract may be extended beyond the term of the contract included in the solicitation except as provided in the Utah Procurement Code.

R33-12-601. Requirements for Cost or Pricing Data.

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the chief procurement officer or head of a procurement unit with independent procurement authority may request additional cost or pricing data; or

(c) the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R33-12-602. Defective Cost or Pricing Data.

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.

(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

R33-12-603. Price Analysis.

(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:

(a) there are a limited number of bidders or offerors;

(b) awarding a sole source contract; or

(c) identifying price outliers in bids and offers.

(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.

(3) Examples of a price analysis include:

(a) prices submitted by other prospective bidders or offerors;

(b) price quotations;

(c) previous contract prices;

(d) comparisons to the existing contracts of other public entities; and

(e) prices published in catalogs or price lists.

R33-12-604. Cost Analysis.

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

(a) specific elements of costs;

(b) total cost of ownership and life-cycle cost;

(c) supplemental cost schedules;

(d) market basket cost of similar items;

(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;

(g) the basis used for allocation of indirect costs; and

(h) the reasonableness of the total cost or price.

R33-12-605. Audit.

A procurement unit may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

R33-12-606. Retention of Books and Records.

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law.

All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted

in accordance with generally accepted accounting principles for government.

R33-12-607. Applicable Credits.

Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

R33-12-608. Use of Federal Cost Principles.

(1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in

(2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.

(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

R33-12-609. Authority to Deviate from Cost Principles.

If a procurement unit desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the chief procurement officer or head of a procurement unit with independent authority specifying the reasons for the deviation and the written determination shall be made part of the contract file.

R33-12-701. Inspections.

Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

(1) whether the definition of "responsible", as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and

(2) if the contract is being performed in accordance with its terms.

R33-12-702. Access to Contractor's Manufacturing/Production Facilities.

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Rule R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R33-12-703. Inspection of Supplies and Services.

(1) Contracts may provide that the procurement unit or chief procurement officer or head of a procurement unit with independent procurement authority may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R33-12-704. Conduct of Inspections.

(1) Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the chief procurement officer or head of a procurement unit with independent procurement authority. The presence or absence of an inspector or an inspection shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

KEY: [~~procurement, procedures, appeals, Procurement Policy Board~~] **terms and conditions, contracts, change orders, costs**

Date of Enactment or Last Substantive Amendment: [~~October 8, 2012~~] **2014**

Authorizing, and Implemented or Interpreted Law: [~~63G-6-807; 63G-6-201(3)(a)(i)~~] **63G-6a**

**Administrative Services, Purchasing
and General Services**

R33-13

General Construction Provisions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38511

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide general construction provisions, and to comply with the Utah Procurement Code, Title 63G, Chapter 6a. The reason for the establishment of this rule is because the Division of Purchasing and General Services is updating their rules to comply with the provisions of the Utah Procurement Code

and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides general construction provisions, and is in compliance with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being established to comply with the provisions of the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides general construction provisions that are in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides general construction provisions that are in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides general construction provisions that are in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides general construction provisions that are in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any persons, because this rule simply provides general construction provisions that are in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-13. General Construction Provisions.

R33-13-101. Purpose.

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-13-201. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts;
- (2) documenting the selection of a particular method of construction contract management; and
- (3) the selection of a construction manager/general contractor.

R33-13-202. Application.

The provisions of Rules R33-13-201 through R33-13-205 shall apply to all procurements of construction. Rule R33-4-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security and bonding requirements are contained in Part 11 of the Utah Procurement Code and Rule R33-11.

R33-13-203. Methods of Construction Contract Management.

- (1) This section contains provisions applicable to the selection of the appropriate type of construction contract management.
- (2) It is intended that the chief procurement officer or head of a procurement unit with independent procurement authority have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
- (3) Before choosing the construction contracting method to use, a careful assessment must be made by the chief procurement officer or head of a procurement unit with independent procurement authority of requirements the project shall consider, at a minimum, the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
- (c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;
- (g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;
- (h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;
- (i) the results achieved on similar projects in the past and the methods used; and
- (j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.
- (5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.
- (a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
- (b) Multiple Price Contractors. Under the multiple prime contractor method, the procurement unit contracts directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the procurement unit's drawings and specifications. The procurement unit may have primary responsibility for successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
- (d) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
- (e) Construction Manager Not at Risk. A construction manager is a person experienced in construction that has the ability to

evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.

(f) Construction Manager/General Contractor (Construction Manager at Risk). The procurement unit may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R33-13-204. Selection of Construction Method Documentation.

The chief procurement officer or head of a procurement unit with independent procurement authority shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R33-13-205. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

(3)(a) As used in this Rule R33-13-205 (6), "management fee" includes only the following fees of the CM/GC:

- (i) preconstruction phase services;
- (ii) monthly supervision fees for the construction phase; and
- (iii) overhead and profit for the construction phase.

(b) When selecting a CM/GC for a construction project, the evaluation committee:

(i) may score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Section 63G-6a-707, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

R33-13-301. Drug and Alcohol Testing Required for State Contracts: Definitions.

(1) The following definitions shall apply to any term used in Rules R-13-301 through R33-13-304:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R33-13-302(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Procurement Policy Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-13-302 through R33-13-304.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.

(b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6a-1303.

(c) "State" as used throughout this Rule R33-13-302 through R33-13-304 means the State of Utah except that it also includes those entities described in Subsection R33-13-302(1)(e) as the term "state" is used in Subsection R33-13-302(5).

R33-13-302. Drug and Alcohol Testing.

(1) Except as provided in Section R33-13-303, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges these Rules R-33-13-302 through 304 and agrees to comply with all aspects of these Rules R-33-13-302 through 304, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R33-13-302(2), if a contractor or subcontractor fails to comply with Subsection R33-13-302(1), the contractor or subcontractor may be suspended or debarred in accordance with these Rules R33-13-302 through R33-13-304.

(b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to these Rules R33-13-302 through R33-13-304.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-13-302(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R33-13-302(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-13-302(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that

are subject to Subsection R33-13-302(1), shall comply with all provisions of these Rules R33-13-302 through R33-13-304 as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of these Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Sections 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-13-302(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under the Utah Procurement Code; and

(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.

(b) The state is not liable in any action related to Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R33-13-303. Non-applicability.

(1) These Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303 does not apply if the State Public Procurement Unit determines that the application of these Rules R33-13-302 through R33-13-304 or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R33-13-304. Not Limit Other Lawful Policies.

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, this Rule R33-13 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: construction management, general construction provisions, drug and alcohol testing, state contracts

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services **R33-14** Procurement of Design-Build Transportation Project Contracts

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38512

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. This reason for the new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 from the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. This rule is being established to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will not be affected, because this rule simply provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides that the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects, in accordance with Section 63G-6a-1402, in the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.**R33-14. Procurement of Design-Build Transportation Project Contracts.****R33-14-1. Procurement of Design-Build Transportation Project Contracts.**

In accordance with Section 63G-6a-1402(3)(a)(ii), the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects. Rule R916-3 provides guidance under which the Utah Department of Transportation may use the design-build approach for transportation projects.

KEY: design-build transportation projects, contracts, procurement

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-15

Architect-Engineer Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38513

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide the requirements for architect-engineer procurements in accordance with the Utah Procurement Code, Title 63G, Chapter 6a. The reason for this new rule is because the Division of Purchasing and General Services is establishing this rule to comply with the provisions of the Utah Procurement Code, and to match recent legislation (S.B. 179 from the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides the requirements for architect-engineer procurements in

accordance with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being established to comply with the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state's budget will not be affected because this rule simply provides the requirements for architect-engineer procurements in accordance with the Utah Procurement Code.

◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected because this rule simply provides the requirements for architect-engineer procurements in accordance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ SMALL BUSINESSES: Small businesses' budgets will not be affected because this rule simply provides the requirements for architect-engineer procurements in accordance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected because this rule simply provides the requirements for architect-engineer procurements in accordance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person because this rule simply provides the requirements for architect-engineer procurements in accordance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-15. Architect-Engineer Services.

R33-15-101. Application.

The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Rule R33-4-105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-15-201. Architect-Engineer Evaluation Committee.

The chief procurement officer or head of a procurement unit with independent procurement authority shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707, at least one of which is well qualified in the profession of architecture or engineering.

R33-15-301. Request for Statement of Qualifications.

(1) A procurement unit shall issue a public notice for a request for statement of qualifications to rank architects or engineers.

(2) A procurement unit that issues a request for statement of qualifications shall:

(a) state in the request for statement of qualifications:

(i) the type of procurement item to which the request for statement of qualifications relates;

(ii) the scope of work to be performed;

(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

(iv) criteria used to evaluate statements of qualifications including:

(A) basic information about the person or firm;

(B) experience and work history;

(C) management and staff;

(D) qualifications and certification;

(E) licenses and certifications;

(F) applicable performance ratings;

(G) financial statements; and

(H) other pertinent information.

(b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.

(3) Architects and engineers shall not include cost in a response to a request for statement of qualifications

R33-15-302. Evaluation of Statement of Qualifications

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers.

R33-15-303. Negotiation and Award of Contract.

The chief procurement officer or head of a procurement unit with independent procurement authority shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

R33-15-304. Failure to Negotiate Contract With the Highest Ranked Firm.

(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall advise the firm in writing of the termination of negotiations.

(2) Upon failure to negotiate a contract with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

R33-15-305. Notice of Award.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(2) Notice of the award shall be made available to the public.

R33-15-401. Written Justification Statements.

Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

KEY: architects, engineers, government purchasing
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-16

Controversies and Protests

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38514

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This purpose of this rule is to provide additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code, Title 63G, Chapter 6a. The reason for

the new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being established to comply with the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state's budget will not be affected, because this rule simply provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this rule simply provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this rule simply provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this rule simply provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides additional requirements and procedures for procurement controversies and protests to be used in conjunction with the Utah Procurement Code. If there is any impact it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Division of Purchasing and General Services.

R33-16. Controversies and Protests.

R33-16-101. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

KEY: conduct, controversies, government purchasing, protests

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services**

R33-17

Procurement Appeals Board

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38515

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This purpose of this rule is to provide requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code, Title 63G,

Chapter 6a. The reason for the new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being established to comply with the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides additional statutory requirements and procedures for protest decision appeals to be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides requirements and procedures for protest decision appeals to the Procurement Appeals Board, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-17. Procurement Appeals Board.

R33-17-101. Statutory Requirements.

Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Section 63G-6a-1701 through 63G-6a-1706, Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-17-102. Verification of Legal Authority.

A person filing an appeal to a protest decision may be asked to verify that the person has legal authority to file an appeal on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R33-17-103. Conduct of the Hearing.

The Chair of the panel shall conduct the hearing, including:

- (a) establishing time limits;
- (b) determining who may address the panel and who may ask a question;
- (c) requiring legal memorandum or points and authorities; and
- (d) determining other procedural matters.

R33-17-104. Expedited Proceedings.

A proceeding before the panel may be expedited as follows:

(a) The panel may, upon written notice to all parties, hold a pre-proceeding conference for the purpose of formulating and simplifying the issues or any other matter that assists with the proceeding. A person participating in a pre-proceeding conference on behalf of each party shall have authority to negotiate and agree to settlement of the dispute.

(b) Any party may request a pre-proceeding conference in an effort to expedite the proceeding. Upon such a request to expedite the proceeding, the Panel shall consider any expedited process that considers the needs to expedite the proceeding while assuring that the due process rights of all parties are protected.

R33-17-105. Electronic Participation.

Any panel member or participant may participate electronically by:

(a) notifying the Chair of the Panel at least 24 hours in advance of the proceeding;

(b) the Chair of the Panel will allow such electronic participation provided that the electronic means for such participation, by phone, computer or otherwise, is available at the location; and

(c) the electronic means allows other members of the Panel and other participants to hear the person or persons participating electronically.

KEY: hearings, Procurement Appeals Board, verification of legal authority

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services**

R33-18

Appeal to the Utah Court of Appeals

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38516

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This purpose of this rule is to provide the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. The reason for the new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This purpose of this rule is to provide the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. This rule is being established to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state budget will not be affected, because this rule simply provides the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this rule simply provides the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this rule simply provides the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this rule simply provides the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides the protest appeal procedures when a person or procurement unit is appealing a decision issued by a procurement appeals panel. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG

450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-18. Appeal to the Utah Court of Appeals.

R33-18-101. Process.

(1) A person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1801 through 63G-6a-1803. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-18-201. Appeals by Procurement Units -- Limitations.

A procurement unit may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

KEY: appeals, protests, Utah Court of Appeals

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services**

R33-19

**General Provisions Related to Protest
or Appeal**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38518

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code, Title 63G, Chapter 6a. The reason for this new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to provide additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being established to comply with the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides additional general provisions related to protests and appeals, and shall be used in conjunction with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-19. General Provisions Related to Protest or Appeal.

R33-19-101. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Part 19 of the Utah Procurement Code, Sections 63G-6a-901 through 63G-6a-1911 contain provisions regarding:

- (a) limitations on challenges of:
 - (i) a procurement;
 - (ii) a procurement process;
 - (iii) the award of a contract relating to a procurement;
 - (iv) a debarment; or
 - (v) a suspension; and
- (b) the effect of a timely protest or appeal;
- (c) the costs to or against a protester;
- (d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;
- (e) the effect of a violation found after award of a contract;
- (f) the effect of a violation found prior to the award of a contract;
- (g) interest rates; and
- (h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

KEY: appeals, protests, general provisions, procurement code

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services **R33-20** Records

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38519

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide the general provisions relating to records, which is Part 20 of the Utah Procurement Code, Title 63G, Chapter 6a, and Rule R33-12. The reason for this new rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, Title 63G, Chapter 6a, and Rule R33-12. This rule is being established to comply with the Utah Procurement Code, and to match recent legislation. (DAR NOTE: The proposed new Rule R33-12 is under DAR No. 38510 in this issue, June 1, 2014, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state's budget will not be affected, because this rule simply provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, and Rule R33-12. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this rule simply provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, Title 63G, Chapter 6a, and Rule R33-12. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, and Rule R33-12. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, and Rule R33-12. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides the general provisions relating to records, which is Part 20 of the Utah Procurement Code, Title 63G, Chapter 6a, and Rule R33-12. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-20. Records.

R33-20-101. General Provisions Related to Records.

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R33-12.

KEY: records, general provisions, procurement code
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services **R33-21** Interaction Between Procurement Units

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38520

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish requirements for interaction between procurement units, including cooperative purchasing and state contracts. The reason for establishing this rule is because the Division of Purchasing and General Services is updating their rules to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 of the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes interaction between procurement units requirements, including cooperative purchasing and state contracts. This rule is being established to comply with the provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides interaction between procurement units requirements, including cooperative purchasing and state contracts. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides interaction between procurement units requirements, including cooperative purchasing and state contracts. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides interaction between procurement units requirements, including cooperative purchasing and state contracts. If there is any

impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides interaction between procurement units requirements, including cooperative purchasing and state contracts. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides interaction between procurement units requirements, including cooperative purchasing and state contracts. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-21. Interaction Between Procurement Units.

R33-21-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule, unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-21-201. State Cooperative Contracts.

(a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-408(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with Rule R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-22
Reserved**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38526

FILED: 05/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being established as a reserved rule because Rules R33-1 through R33-24 are designed to follow Parts 1 through 24 of the Utah Procurement Code. Currently, Parts 22 and 23 of the Utah Procurement Code are reserved. When Parts 22 and 23 of the Utah Procurement Code have statutory language, then rules implementing those statutes may be enacted.

SUMMARY OF THE RULE OR CHANGE: This rule reserves a rule number to be used at some future date.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The state's budget will not be affected, because this rule does not impose any substantive requirement on any agency.

◆ LOCAL GOVERNMENTS: Local governments' budgets will not be affected, because this rule does not impose any substantive requirement on any local government.

◆ SMALL BUSINESSES: Small businesses' budgets will not be affected, because this rule does not impose any substantive requirement on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other person's budget will be affected, because this rule does not impose any substantive requirement on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule imposes no substantive requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-22. Reserved.

R33-22-101. Reserved.

Part 22 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 22 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

KEY: government purchasing, reserved

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-23 Reserved

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38527

FILED: 05/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being established as a reserved rule because Rules R33-1 through R33-24 are designed to follow Parts 1 through 24 of the Utah Procurement Code. Currently, Parts 22 and 23 of the Utah Procurement Code are reserved. When Parts 22 and 23 of the Utah Procurement Code have statutory language, then rules implementing those statutes may be enacted.

SUMMARY OF THE RULE OR CHANGE: This rule reserves a rule number to be used at some future date.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule does not impose any substantive requirement on any agency.
- ◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule does not impose any substantive requirement on any local government.
- ◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule does not impose any substantive requirement on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule does not impose any substantive requirement on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule imposes no substantive requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-23. Reserved.

R33-23-101. Reserved.

Part 23 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 23 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

KEY: government purchasing, reserved

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-24

Unlawful Conduct

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38521

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code, Title 63G, Chapter 6a. The reason for the new rule is because the Division of Purchasing and General Services is updating their rules to comply with the provisions of the Utah Procurement Code, and to match recent legislation (S.B. 179 from the 2014 General Legislative Session, including S.B. 190 from the 2013 General

Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code, Title 63G, Chapter 6a. The rule is being established to comply with the Utah Procurement Code, and to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply provides additional requirements of unlawful conduct for procurement professionals, and is in compliance with the Utah Procurement Code. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG

450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cglead@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-24. Unlawful Conduct.

R33-24-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties".

(b) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm>);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act";

(d) Section 76-8-103, "Bribery or Offering a Bribe"; and

(e) any other applicable law.

R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm>);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act";

(d) Section 76-8-103, "Bribery or Offering a Bribe"; and

(e) any other applicable law.

R33-24-104. Socialization With Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that may interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that may lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct
Date of Enactment or Last Substantive Amendment: 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing and General Services

R33-25

Executive Branch Insurance Procurement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38522

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes additional executive branch insurance procurement requirements, and is in compliance with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being renumbered and includes house keeping changes. The reason for the renumbering of this rule is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, and to match recent legislation (S.B. 179 from the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule establishes additional executive branch insurance procurement requirements, and is in compliance with the Utah Procurement Code, Title 63G, Chapter 6a. This rule is being renumbered and includes house keeping changes to match recent legislation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply establishes additional

executive branch insurance procurement requirements. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply establishes additional executive branch insurance procurement requirements. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply establishes additional executive branch insurance procurement requirements. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply establishes additional executive branch insurance procurement requirements. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply establishes additional insurance procurement requirements. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
 ♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.**R33-25. Executive Branch Insurance Procurement.****R33-25-101. Applicability and Standard Procurement Method.**

(1) This rule only applies to executive branch procurement units.

(2) All new or renewal insurance purchases will be made in accordance with this Rule and the Utah Procurement Code. In addition, the following shall be considered:

(a) financial resources of agent, broker and underwriting company;

(b) quality of prior service rendered to the state;

(c) service facilities available in-state;

(d) service reputation;

(e) experience and expertise in providing similar types of insurance;

(f) coverages and services to be provided;

(g) qualifications of key personnel; and

(h) any other reasonable factor which will provide the best possible coverage and service to the purchasing agency.

R33-25-102. Alternate Multiple Stage Bid Process.

(1) To avoid oversaturation of limited primary or reinsurance markets, a multiple stage bid process may be used at the option of the procurement unit.

(2) All interested agents and brokers must be qualified according to the evaluation criteria described in R33-25-101.

(3) No more than the three highest ranked brokers or agents, as determined by the evaluation committee, will be eligible to proceed to the final stage.

(4) Those who are eligible to proceed to the final stage must submit a list of markets in order of preference to the procurement unit. The procurement unit will, as equitably as practicable, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

(5) Eligible brokers or agents must then submit a responsive and responsible bid for each assigned market.

(6) Upon receipt of the bids, the procurement and contract award shall be conducted in accordance with Part 6 of the Utah Procurement Code.

KEY: alternate multiple stage bid process, executive branch insurance procurement, procurement methods, government purchasing

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

Administrative Services, Purchasing
and General Services

R33-26

State Surplus Property

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38523

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule set forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. This rule is being renumbered and includes house keeping changes. The reason for the renumbering is because the Division of Purchasing and General Services is updating their rules to comply with the Utah Procurement Code, Title 63G, Chapter 6a, and to match recent legislation (S.B. 179 from the 2014 General Legislative Session, including S.B. 190 from the 2013 General Legislative Session, and S.B. 153 from the 2012 General Legislative Session).

SUMMARY OF THE RULE OR CHANGE: This rule set forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. This rule is being renumbered and includes house keeping changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state's budget will not be affected, because this rule simply sets forth the policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **LOCAL GOVERNMENTS:** Local governments' budgets will not be affected, because this rule simply sets forth the policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **SMALL BUSINESSES:** Small businesses' budgets will not be affected, because this rule simply sets forth the policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. If there is any impact, it is created by the statute. This rule merely implements the statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other person's budget will be affected, because this rule simply sets forth the policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any person, because this rule simply sets forth the policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. If there is any impact, it is created by the statute. This rule merely implements the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. If there is any impact, it is created by the statute. This rule merely implements the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-26. State Surplus Property.

R33-26-101. State Surplus Property - General.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property and the state surplus property contractor.

R33-26-102. Requirements.

Under the provisions of Section 63A, Chapter 2, Section 103, the division shall:

- (1) Except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;
- (2) When a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program.
- (3) Manage the federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.
- (4) Manage the disposition of state owned vehicles.

(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Section 63A, Chapter 2, Section 4.

(6) Handheld devices/technology (not transferred from state agencies to public schools).

R33-26-103. Definitions.

(1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(2) In addition:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(7) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared to be surplus property by a local subdivision.

(8) "Handgun" means any pistol or revolver.

(9) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

(10) "Licensed firearm dealer" means a firearms dealer licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

(11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(12) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(15) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and

_____ (b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

_____ (16) "Personal Watercraft" means a motorboat that is:

_____ (a) less than 16 feet in length;

_____ (b) propelled by a water jet pump; and

_____ (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

_____ (17)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

_____ (b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

_____ (18) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

_____ (19)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

_____ (b) "Recreational vehicle" includes:

_____ (i) a travel trailer;

_____ (ii) a camping trailer;

_____ (iii) a motor home;

_____ (iv) a fifth wheel trailer; and

_____ (v) a van.

_____ (20) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

_____ (21) "Sailboat" means any vessel having one or more sails and propelled by wind.

_____ (22) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

_____ (23)(a) "Special mobile equipment" means every vehicle:

_____ (i) not designed or used primarily for the transportation of persons or property;

_____ (ii) not designed to operate in traffic; and

_____ (iii) only incidentally operated or moved over the highways.

_____ (b) "special mobile equipment" includes:

_____ (i) farm tractors;

_____ (ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

_____ (iii) ditch-digging apparatus; and

_____ (iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

_____ (24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

_____ (25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does

not require a special highway movement permit when drawn by a self-propelled motor vehicle.

_____ (26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

_____ (27) "USASP" means Utah State Agency for Surplus Property.

_____ (28) "Vehicle" means the items identified and defined in Rule R33-26-103, except items (5), (7), (8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.

_____ (29) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-201. Non-vehicle Disposition Procedures.

_____ (1) State-owned non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed. State-owned non-vehicle personal property shall not be processed by the division.

_____ (2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

_____ (3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, it will:

_____ (a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or

_____ (b) notify the state surplus property contractor that the department or agency has surplus property.

R33-26-202. Information Technology Equipment.

_____ (1) State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency.

_____ (2) Pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.

_____ (3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

_____ (4) Except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

R33-26-203. Federal Surplus Property.

(1) Federal Surplus Property is not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-204. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

- (a) has purchasing authority;
- (b) has maintenance authority;
- (c) has disposition or signature authority;
- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) has perceived to be a related party using other criteria which may prohibit independence.

R33-26-205. Priorities.

(1) Public agencies are given priority for the purchase of state-owned surplus property.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public through the state surplus property contractor.

(3) For this Rule, the entities listed below, in priority order, are considered to be public agencies:

- (a) state Agencies;
- (b) state Universities, Colleges, and Community Colleges;
- (c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;
- (d) other tax supported educational entities; then
- (e) non-profit health and educational institutions.

(4) State-owned personal property that is not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

- (a) the cost to the state;
- (b) the potential liability to the state;
- (c) the overall best interest of the state.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all federal surplus property.

(2) The division will require regular and detailed accounting by the state surplus property contractor of:

- (a) the receipt and sale of state surplus property;
- (b) the receipt and payment of any and all funds; and
- (c) ensure public transparency regarding the sale of state surplus property.

(3) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

(1) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.

(2) Vehicle reimbursements to state agencies from the sale of their vehicles will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(3) Payment for vehicles, information technology equipment, federal surplus property, personal handheld devices, and firearms shall be as follows:

(a) payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$200. Two-party checks shall not be accepted;

(b) payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) the division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

- (i) the cost to the state;
- (ii) the potential liability to the state; and
- (iii) the overall best interest of the state.

(4) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds";

(a) in the event that a check is returned to the division is returned for "insufficient fund," the division may:

- (i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and
- (ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees, associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-26-501. Surplus Firearms.

This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in Section 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R33-26-502. Procedures.

(1) All state owned firearms shall be disposed of under the general provisions of this Rule.

(a) The sale of firearms directly to the general public by the division is prohibited.

(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

(c) Except as provided in this subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.

(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.

(ii) The division may authorize the sale of a handgun to a legally constituted law enforcement agency.

(iii) The division may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:

(A) the individual's name;

(B) the serial number of the handgun to be sold; and

(C) the signature of an authorized agent of the owning agency.

(2) All firearms retained by the division shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.

(a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.

(3) All firearms retained by the division shall be in good working condition.

(a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Section 63G-4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response need be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the

facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-701. State Surplus Property Contractor:

(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.

(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.

(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.

(4) The contractor must submit regular and detailed accounting to the division of:

(a) the receipt and sale of state surplus property; and,

(b) the receipt and payment of funds by the contractor.

(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:

(a) post online information related to a sale or attempted sale of state surplus property that includes:

(i) a detailed description of the item or items;

(ii) the name of the state agency that requested the sale;

(iii) the price at which the state surplus property was sold; and,

(iv) post the information within a period of time established by the division.

(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:

(a) to store the state surplus property; or,

(b) charge for the storage of state surplus property.

R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.

(1) A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than \$30.00 without involvement of the division or state surplus property contractor if:

(a) the state surplus property fails to sell at auction;

(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property;

(c) the state surplus property is no longer usable;

(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or

(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.

KEY: state surplus property, federal surplus property, procurement procedures, public sales

Date of Enactment or Last Substantive Amendment: 2014 Authorizing, and Implemented or Interpreted Law: 63G-2

**Capitol Preservation Board (state),
Administration
R131-13
Health Reform - Health Insurance
Coverage in State Contracts -
Implementation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38479

FILED: 05/02/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for these amendments is to match recent legislation (H.B. 141 from the 2014 General Legislative Session) and to comply with the provisions of Section 63C-9-403, and to update some statutory references.

SUMMARY OF THE RULE OR CHANGE: The reason for these amendments is to match recent legislation to change the employee eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire. It is being changed from 90 to 60 days. There are also some statutory references that need to be updated as well.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-403

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will not be affected since this amendment simply clarifies the rule to match recent legislation for Section 63C-9-403, and updates some statutory references.

◆ **LOCAL GOVERNMENTS:** Local governments' budget will not be affected since this amendment simply clarifies the rule to match recent legislation for Section 63C-9-403, and updates some statutory references.

◆ **SMALL BUSINESSES:** Small businesses budgets will not be affected since this amendment simply clarifies the rule to match recent legislation for Section 63C-9-403, and updates some statutory references.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will be affected since this amendment simply clarifies the rule to match recent legislation for Section 63C-9-403, and updates some statutory references.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for anyone since this amendment simply clarifies the rule to match recent legislation for Section 63C-9-403, and updates some statutory references.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
◆ Chiarina Bautista by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Allyson Gamble, Executive Director

R131. Capitol Preservation Board (State), Administration.

R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.

R131-13-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63C-9-403.

R131-13-2. Authority.

This rule is authorized under Subsection 63C-9-301(3)(a) whereby the Capitol Preservation Board may make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as well as Section 63C-9-403 that requires this rule related to health insurance provisions in certain design and construction contracts.

R131-13-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63C-9-403.

(2) In addition:

(a) "Board" means the Capitol Preservation Board established pursuant to Section 63C-9-201.

(b) "Executive Director" means the executive director of the Capitol Preservation Board including, unless otherwise stated, the executive director's duly authorized designee.

(c) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following [90]60 days from the date of hire.

(d) "State" means the state of Utah.

R131-13-4. Applicability of Rule.

(1) Except as provided in Subsection R131-13-4(2) below, R131-13 applies to all design or construction contracts entered into by the Board or the executive director, or on behalf of the Board, on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract, at any tier, is in the amount of \$750,000 or greater.

(2) Rule R131-13 does not apply if:

(a) the application of this Rule R131-13 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R131-13 does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R131-13-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection R131-13-4(1) is guilty of an infraction.

R131-13-5. Contractor to Comply with Section 63C-9-403.

All contractors and subcontractors that are subject to the requirements of Section 63C-9-403 shall comply with all the requirements, penalties and liabilities of Section 63C-9-403.

R131-13-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this Rule R131-13 or Section 63C-9-403:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-801 or any other provision in Title 63G, Chapter 6a, [~~Part 8, Legal and Contractual Remedies~~]Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R131-13-7. Requirements and Procedures a Contractor Must Follow.

A contractor, including consultants and designers, must comply with the following requirements and procedures in order to demonstrate compliance with Section 63C-9-403.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, including consultants, designers and others under contract with the Board or the executive director that is subject to the requirements of Rule R131-13 no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the executive director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents; and

(b) the contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors, including subconsultants, at any tier that are subject to the requirements of Rule R131-13.

(2) Recertification. The executive director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63C-9-403(1)(c) and defined in Section 26-40-115 is met by the contractor if the contractor provides the executive director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor; or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R131-13-7(3), actuarially equivalency is achieved by meeting or exceeding the requirements of Section 26-40-115 which are also delineated on the DFCM website at [<http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>]; [http://dfcm.utah.gov/downloads/1const/Health_Insurance_Benchmark.pdf].

(4) The health insurance must be available upon the first day of the calendar month following [~~ninety~~] sixty days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 in any annual submittal. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to Rule R131-13 must demonstrate compliance with Rule R131-13 for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of Rule R131-13.

(7) Notwithstanding any prequalification process, any contract subject to Rule R131-13 shall contain a provision requiring compliance with Rule R131-13 from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under Rule R131-13 conducted by the Board or executive director shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by the Board or Executive Director. The penalties that may be imposed by the Board or executive director if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of Rule R131-13 may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-[8]204 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this Rule R131-13 shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R131-13-7(8)(c)(i) as provided in Subsection 63C-9-403(7)(a)(ii).

R131-13-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in Rule R131-13 shall be construed as to create any contractual relationship whatsoever between the State, the Board, or the executive director with any subcontractor or subconsultant at any tier.

KEY: health insurance, contractors, contracts

Date of Enactment or Last Substantive Amendment: [~~February 21, 2012~~]2014

Authorizing, and Implemented or Interpreted Law: 63C-9-403; 63C-9-301(3)(a)

**Commerce, Occupational and
Professional Licensing
R156-40
Recreational Therapy Practice Act Rule**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38517

FILED: 05/13/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Recreational Therapy Licensing Board are proposing amendments to update and further clarify the existing rule.

SUMMARY OF THE RULE OR CHANGE: Various technical corrections are made throughout the rule. In Section R156-40-102, the current rule requires less education and experience for a bachelor's degree versus a graduate degree. The proposed amendments in this section defines "approved graduate degree" coursework to be the same as the coursework for a bachelor's level practitioner. Experience and educational standards are updated to meet the national requirements, which is updated to the 2013 edition. The approved practicum requires field placement experience that satisfies the requirements as defined in the National Council for Therapeutic Recreation Certification (NCTRC) standards. A definition for "consultation" is added. In Section R156-40-302c, the Therapeutic Recreation Technician Laws and Rules Exam is being deleted. In Section R156-40-302e, supervision is defined to be the standard set in Subsection R156-1-102(4)(c) and the proposed amendments define the responsibilities of a therapeutic recreation specialist (TRS) or master therapeutic recreation specialist (MTRS) when supervising a therapeutic recreation technician (TRT) when employed on site at an agency. A new Section R156-40-302f is added to clarify qualifications for consultation and the old Section R156-40-302f is changed to Section R156-40-302g.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-40-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates NCTRC Certification Standards, Part I, published by National Council for Therapeutic Recreation Certification (NCTRC), January 2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed TRT, TRS, and MTRS, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed TRT, TRS, and MTRS, and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed TRT, TRS, and MTRS, and applicants for licensure in those classifications. The proposed amendments do not affect educational programs or persons enrolled in programs because the programs meet the national standard which exceeds the standard established by the rule. Additionally employers will not be affected as the proposed amendments are clarification of terms already in the current statute.

Hence, the Division has determined there should be no additional costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed TRT, TRS, and MTRS, and applicants for licensure in those classifications. The proposed amendments do not affect educational programs or persons enrolled in programs because the programs meet the national standard which exceeds the standard established by the rule. Additionally employers will not be affected as the proposed amendments are clarification of terms already in the current statute. Hence, the Division has determined there should be no additional costs or savings. No fee was associated with the TRT Laws and Rules examination as it was only a take home examination included in an application packet.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

This rule filing reduces the number of prelicensing education hours required for licensure in the recreational therapy profession. Educational institutions might consider it necessary to reduce tuition or fees accordingly, but they are not required to do so. In addition, this filing clarifies the qualifications that must be met by any individual who supervises an education program and its participants. A business that is required to provide supervision will need to modify any program that is not in compliance. Any associated costs will vary and cannot be estimated. However, it is anticipated that such costs will be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at aprilellis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 06/24/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-40. Recreational Therapy Practice Act Rule.****R156-40-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or this rule:

(1) "Approved graduate degree", as used in Subsection 58-40-302(2)(a), means an earned graduate (Masters, Ed.D., or Ph.D.) degree in recreational therapy or a graduate degree with an approved emphasis in recreational therapy, which includes:

(a) a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in therapeutic recreation and/or recreational therapy;

(b) a minimum of ~~[24]~~18 semester hours or ~~[32]~~24 quarter hours of supportive coursework as outlined by the January ~~[2012]~~2014 NCTRC Certification Standards, Part I, which are incorporated by reference; and

(c) ~~(i)~~ an approved practicum ~~that~~ ~~[which]~~

~~(i)~~ includes ~~[a minimum 480 hour, 12 consecutive week]~~ field placement experience in recreational therapy services that:

~~(A)~~ uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference~~[-]~~; and

~~(B)~~ is under the supervision of an onsite field placement supervisor who:

~~(I)~~ is licensed in Utah as a TRS or MTRS; and

~~(II)~~ is nationally certified by NCTRC as a CTRS; and

~~(ii)~~ if the practicum is conducted outside Utah, ~~[the supervisor must be certified by NCTRC as an CTRS and meet NCTRC standards for field placement supervision. This practicum must be]~~is verified on an official university transcript.

(2) "Approved emphasis, option, or concentration in therapeutic recreation or recreational therapy", as used in Subsection 58-40-302(3)(a)(ii), means an emphasis, option or concentration posted on the transcript that meets the January ~~[2012]~~2014 NCTRC Certification Standards, Part I, which are incorporated by reference, including:

(a) a minimum of 18 semester or 24 quarter hours of therapeutic recreation and general recreation content coursework with no less than a minimum of 12 semester or 16 quarter hours in therapeutic recreation, consisting of a minimum of four three-credit hour courses;

(b) a total of 18 semester or 24 quarter hours of support coursework with a minimum of:

(i) three semester hours or three quarter hours coursework in the content area of anatomy and physiology;

(ii) three semester hours or three quarter hours coursework in the content area of abnormal psychology; and

(iii) three semester hours or three quarter hours coursework in the content area of human growth and development across the lifespan. The remaining semester hours or quarter hours of coursework must be fulfilled in the content area of "human service" as defined by the NCTRC; and

(c) ~~(i)~~ ~~[a minimum 480 hour, 12 week]~~ field placement experience in therapeutic recreation services that:

~~(i)~~ uses the therapeutic recreation process as defined in the January 2011 NCTRC National Job Analysis, which is incorporated by reference~~[-]~~;

~~(ii)~~ is under the supervision of an academic supervisor and an onsite field placement supervisor, each of whom: ~~[who]~~

~~(A)~~ is ~~[both]~~state licensed as a TRS or MTRS;

~~(B)~~ is nationally certified by ~~[and]~~ NCTRC as a CTRS~~[certified]~~; and

~~(C)~~ meets the standards for field placement supervision; and

~~(iii)~~ if the practicum is conducted outside Utah, ~~[the supervisor must be certified by NCTRC as a CTRS and meet NCTRC standards for field placement supervision. This practicum must be]~~is verified on an official university transcript.

~~(3)~~ "Consultation", as used in Subsection 58-40-601(3)(a)(ii), is defined in Subsection R156-40-302f.

~~([3]4)~~ "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the NCTRC.

~~([4]5)~~ "Full-time, on-site", as used in Subsections 58-40-601(3)(a) and (b), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

~~([5]6)~~ "Maintain the ongoing documentation", as used in Subsection 58-40-601(3)(b), means:

(a) documenting the ongoing treatment or intervention provided to clients according to the treatment plan; and

(b) providing review of patient status according to federal, state, and agency regulations.

~~([6]7)~~ "MTRS" means a person licensed as a master therapeutic recreation specialist.

~~([7]8)~~ "NCTRC" means the National Council for Therapeutic Recreation Certification.

~~([8]9)~~ "Supervision", as used in Section 58-40-601, means that a person who is employed full-time[-] and on-site as a TRS or MTRS by a recreational therapy services provider is responsible to ensure that the supervised TRT implements the treatment plan as established by the supervisor ~~[oversight by an MTRS or TRS of the recreational therapy services offered].~~

~~([9]10)~~ "Supervision of a temporary TRS", as used in Subsection R156-40-302f(1)(d), means that the TRS or MTRS ~~[or TRS]~~ supervisor:

~~(a)~~ is responsible for the recreational therapy activities ~~interventions~~ performed by the temporary TRS; and

~~(b)~~ will be required to review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the TRS or MTRS ~~[or TRS]~~ in the treatment plan.

~~([10]11)~~ "TRS" means a person licensed as a therapeutic recreation specialist.

~~([11]12)~~ "TRT" means a person licensed as a therapeutic recreation technician.

~~([12]13)~~ "Written plan of operation", as used in Subsection 58-40-102(6)(b)(viii), means a comprehensive management plan that outlines recreational therapy services that, at a minimum, includes:

(a) vision and mission statement;

(b) policy and procedures;

(c) assessment protocol;

(d) treatment and/or intervention plan;

(e) scope of care; and

(f) personnel management.

~~([13]14)~~ "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Section 58-40-302, the experience requirements for licensure include:

(1) An MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-302(2)(b), which means an individual must either work as a TRS in Utah in a paid position practicing recreational therapy or work outside of Utah as a CTRS in a paid position practicing recreational therapy.

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-302(3)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-302(4)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed [M]TRS or MTRS supervisor or consultant, that includes:

- (a) a minimum of 20 hours of direct face to face supervision of programming, documentation and treatment intervention by the [M]TRS or MTRS supervisor or consultant;
- (b) training in recreational therapy or therapeutic recreation process as defined in Subsection 58-40-102(5) and (6);
- (c) interdisciplinary contact;
- (d) administration contact; and
- (e) community relations.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-40-302(2)(c), (3)(c) and (4)(d), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a ~~[n-M]~~ TRS or MTRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as a CTRS.

(2) Applicants for licensure as a TRT shall pass ~~[both]~~ the Therapeutic Recreation Technician Theory Examination with a minimum score of 70% ~~[and the Therapeutic Recreation Technician Laws and Rules Exam with a minimum score of 75%].~~

(3) Applicants for licensure as a TRT who fail the Therapeutic Recreation Technician Theory Examination three consecutive times must repeat the educational coursework.

R156-40-302e. Qualifications for Supervision.

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-601(3)(a)(i), means that the [M]TRS or MTRS supervisor is employed full-time and onsite in the same hospital, clinic, or facility as the person being supervised and is responsible for:

- (1) ~~[providing on-site training, observation, direction and evaluation to include:~~
 - ~~(a) reviewing the recreational therapy intervention to be performed by the TRT as defined by the treatment plan;~~
 - ~~(b) demonstrating as evidenced by the signature of the MTRS or TRS in the patient chart review and evaluation of ongoing documentation;~~
 - ~~(c) reviewing and observing the recreational therapy program according to administrative and governing regulations; and~~

~~(d) reviewing and evaluating adherence to the standards of the profession providing "general supervision" as defined by Subsection R156-1-102(4)(c);~~

~~(2) ensuring that recreation therapy services are provided according to the Recreational Therapy Practice Act, standards of the profession, administrative and governing regulations;~~

~~(3) providing training, clinical guidance and evaluation;~~

~~(4) demonstrating, as evidenced by the signature of the TRS or MTRS in the patient chart, review and evaluation of ongoing documentation.~~

R156-40-302f. Qualifications for Consultation.

"Consultation of a therapeutic recreation technician", as used in Subsection 58-40-601(3)(a)(ii) means that the MTRS consultant, contracted by the agency is responsible for:

(1) providing "general supervision" as defined in Subsection R156-1-102(4)(c);

(2) performing the assessment as described in Subsection 58-40-102(2)(a)(ii);

(3) prescribing, creating or modifying the treatment or intervention plans to be performed by the TRT as determined by the assessment;

(4) observing, evaluating and documenting that the recreation therapy services are being conducted according to administrative and governing regulations;

(5) observing, evaluating and documenting adherence to the standards of practice of the recreational therapy profession; and

(6) demonstrating adherence, as evidenced by the signature of the MTRS in the patient chart, reviews and evaluation of ongoing regulatory documentation.

R156-40-302[f]g. Qualifications for Temporary License as a TRS - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreational therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).

(2) The temporary license shall be issued for a period not to exceed 120 days to allow the applicant to pass the NCTRC examination.

(3) The temporary license will not be renewed or extended for any purpose.

R156-40-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) failing to establish and maintain professional boundaries with a patient or former patient;

- (2) exploiting a current and/or former patient for personal gain;
- (3) failing as a[n-M]_TRS/MTRS to ensure the student TRT completes the minimum required education and experience prior to working with patients;
- (4) failing as a[n-M]_TRS/MTRS to ensure the student TRT is competent to provide recreational therapy services when signing the education and experience verification; and
- (5) failing to abide by the provisions of the American Therapeutic Recreation Association (ATRA) Code of Ethics, November 2009, which is incorporated by reference.

KEY: licensing, recreational therapy, recreation therapy
Date of Enactment or Last Substantive Amendment: [November 26, 2012]2014
Notice of Continuation: August 15, 2011
Authorizing, and Implemented or Interpreted Law: 58-40-101; 58-1-106(1)(a); 58-1-202(1)(a)

Education, Administration
R277-477
Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38541
 FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide changes to the School LAND Trust Program in response to legislative changes in H.B. 367, 2012 General Legislative Session and H.B. 168, 2014 General Legislative Session. The amendments also make stylistic changes.

SUMMARY OF THE RULE OR CHANGE: Amendments to this rule add a definition; change "Section" to "Director" in some provisions; eliminate redundant language; and provide language to emphasize the importance of local board member and administrator training. The amendments to the rule also provide language that allows local education agencies to use a minimum amount of School LAND Trust funds for civic and character education programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-16-101.5(3)(c)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is likely no anticipated cost or savings to the state budget. The amount of the distribution of School LAND Trust funds is not changed because of the amendments to this rule.
- ◆ **LOCAL GOVERNMENTS:** Some local education agencies may receive greater or lesser School LAND Trust funds due to a minor formula adjustment in the rule. Distribution amounts are speculative, subject to the total distribution and student enrollment counts.
- ◆ **SMALL BUSINESSES:** The amendments to this rule add a definition; change "Section" to "Director" in some provisions; eliminate redundant language; provide language to emphasize the importance of local board member and administrator training; and provide language that allows a minimum amount of School LAND Trust funds for civic and character education programs which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is likely no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. School LAND Trust funds are distributed to local education agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is likely no compliance costs for affected persons. Only local education agencies will receive funds under this rule. No persons are subject to compliance under this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration**R277-477. Distribution of Funds from the Interest and Dividend Account and Administration of the School LAND Trust Program.****R277-477-1. Definitions.**

A. "Approving Entity" means the school district, University, or other legally authorized entity that approves or rejects plans for a district or charter school.

B. "Board" means the Utah State Board of Education. The Board is the primary beneficiary representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

C. "Chartering Entity" means the school district, Board, university, or other entity authorized to charter a charter school.

D. "Charter trust land council" means a council comprised of a two person majority of elected parents or guardians of students attending the charter school and may include other members, as determined by the board of the charter school. The governing board of a charter school may serve as a charter trust land council if the board membership includes at least two more parents or guardians of students currently enrolled at the school than all other members combined consistent with Section 53A-16-101.5. If not, the board of the charter school shall develop a school policy governing the election of a charter trust land council. R277-491 does not apply to charter trust land councils.

E. "Councils" means school community councils and charter trust lands councils.

F. "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

G. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

H. "Interest and Dividends Account" means a restricted account within the Uniform School Fund created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year. The USOE distributes funds~~[are distributed]~~ to school districts, charter schools and the USDB through the School LAND Trust Program at the beginning of the next fiscal year.

I. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts, and [is directed in Section 53A-16-101.5(5)(b) to] which approves School LAND Trust plans for schools under the local board's authority.

J. "Most critical academic needs" for purposes of this rule means academic needs identified in an individual school's improvement plan developed consistent with Section 53A-1a-108.5 or identified in the school charter.

K. "Principal" means an administrator licensed as a principal in the state of Utah and employed in that capacity at a school. For the purposes of this rule, "principal" includes the director of a charter school. "Principal" also includes a specific designee of the principal.

~~[K]L. "School Children's Trust [Section]Director" means [employees who report to the State Superintendent of Public Instruction (Superintendent) or Superintendent's designee and have responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6:]the Director appointed by the Board under Section 53A-16-~~

~~101.6 to assist the Board in fulfilling its duties as primary beneficiary representative for trust lands and funds.~~

~~[E]M. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. There shall be at least a two parent member majority.~~

~~[M]N. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board.~~

~~[N]O. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.~~

~~[O]P. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.~~

~~[P]Q. "USDB" means the Utah Schools for the Deaf and the Blind.~~

~~[Q]R. "USOE" means the Utah State Office of Education.~~

R277-477-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide financial resources to public schools to enhance or improve student academic achievement and implement an academic component of the school improvement plan;

(2) involve parents and guardians of a school's students in decision making regarding the expenditure of School LAND Trust Program money allocated to the school;

(3) provide direction in the distribution from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2);

(4) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, chartering entities, and the Board;

(5) provide for:

~~[(a) reviewing and monitoring of funds and revenue generated by school trust lands and the permanent State School Fund;~~

~~](a) appropriate and timely distribution of School LAND Trust funds;~~

~~(b) accountability of councils for notice to school community members and appropriate use of funds;~~

~~(c) independent oversight of the agencies managing school trust lands and the permanent State School Fund to ensure those trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;~~

~~(d) representation, advocacy, and information on school trust lands and permanent State School Fund issues to all interested~~

parties including: the School and Institutional Trust Lands Administration, the School and Institutional Trust Lands Board of Trustees, the School and Institutional Trust Fund Office, the School and Institutional Trust Fund Board of Trustees, the Legislature, the Utah Attorney General's office, school community councils, and the general public:

(b)e) compliance by councils with requirements in statute and Board rule; and

(e)f) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

(6) define the roles, duties, and responsibilities of the School Children's Trust ~~[Section]~~Director within the USOE.

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

A. All public schools receiving School LAND Trust Program funds shall have a council as required by Sections 53A-1a-108 and R277-491, a charter school trust lands council as required in 53A-16-101.5(7), or have a local board approved exemption under R277-491-3(~~6~~)E. District public schools and charter schools shall submit a Principal Assurance Form, as described in R277-491(~~5~~)(a)-5A.

B. All charter schools that elect to receive School LAND Trust funds shall have a charter trust lands council, develop an academic plan in accordance with the school charter, and report the date when the charter trust lands council and charter board approved the plan. The principal for each charter school that elects to receive School LAND Trust funds shall submit a [P]lan[s] [shall be submitted] on the School LAND Trust Program website no later than May 1; newly opening charter schools shall submit plans on the School LAND Trust Program website no later than October 1 in the school's first year.

C. ~~[Local boards of education or the other]~~An approving entity shall consider plans annually and may approve or disapprove a school plan. If the approving entity does not approve a plan [is not approved], the approving entity shall provide a written explanation [of] explaining why the plan was not approved and request [a revised plan for reconsideration] that the school revise the plan, consistent with Section 53A-16-101.5.

D. The principal for each public school shall provide [F]information on each school's plan to address most critical academic needs [shall be completed] and complete the USOE-provided form via the School LAND Trust website [maintained through the USOE for accurate and uniform reporting].

~~[E. Plans shall be electronically submitted to the USOE on the School LAND Trust Program website, including]~~(1) Along with each plan, the principal shall submit a record of the vote by the school community council or charter trust land council [when the school plan was approved including] approving the school plan.

(2) The approval shall include the date of the vote, votes for, against, and absent, consistent with Section 53A-16-101.5.

~~[F]E. To facilitate schools' submission of information [by schools], each local [school-]board of education shall establish a school district submission date for the school district schools not later than May 1 of each year. Timelines shall allow for school [committee]community council reconsideration and amendment of the school plans [following local board of approving entity explanation or plan rejection] if the approving entity rejects a plan.~~

~~[G]E. The USOE shall only distribute [F]funds [shall only be distributed] to schools with plans approved by the approving entity.~~

~~[H]G. Approving entity responsibilities:~~

(1) Principals shall show at least one of the training DVDs available on the School LAND Trust website in at least one school faculty meeting annually. In the same meeting, the principal shall explain how the school is spending its School LAND Trust funds.

(2) ~~Prior to [distribution of funds, the School Children's Trust Section]~~approval of school plans, the approving entity shall ensure that plans include academic goals, specific steps to meet those goals, measurements to assess improvement and specific expenditures focused on student academic improvement.

(3) The USOE shall not distribute [F]funds [shall not be distributed] until a school[s] ha[ve]s an approved plan to use [their-] funds to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5 and R277-477.

(4) ~~[For charter schools,]~~The School Children's Trust Director shall review and approve all charter school plans on behalf of the SCSB. [t]The School Children's Trust [Section]Director shall also provide notice as necessary to the SCSB of changes required of charter schools for compliance with state law and Board rule.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

~~[F]A. Examples of successful plans using School LAND Trust Program monies include programs focused on:~~

- (1) credit recovery courses and programs;
- (2) study skills classes;
- (3) college entrance exam preparation classes;
- (4) academic field trips;
- (5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps or books;
- (6) teachers, teacher aides, and student tutors;
- (7) professional development directly tied to school academic goals;
- (8) student focused educational technology, including hardware and software, computer carts and work stations;
- (9) books, textbooks, workbooks, library books, bookcases, and audio-visual materials;
- (10) student planners; and
- (11) nominal student incentives that are academic in nature or of marginal total cost.

~~[F]B. Examples of plans ineligible for School LAND Trust Program funding include [but are not limited to]:~~

- (1) security;
- (2) phone, cell phone, electric, and other utility costs;
- ~~(3) behavior, character education, bullying prevention;~~
- ~~(4)3~~ sports and playground equipment;
- ~~(5)4~~ athletic or intermural programs;
- ~~(6)5~~ extra-curricular non-academic expenditures;
- ~~(7)6~~ audio-visual systems in non-classroom locations;
- ~~(8)7~~ non-academic field trips;
- ~~(9)8~~ food and drink for council meetings or parent nights;
- ~~(10)9~~ printing and mailing costs for notices to parents;

(~~H~~)10 accreditation, administrative, clerical, or secretarial costs;

(~~H~~)11 cash or cash equivalent incentives for students;

(~~H~~)12 other furniture;~~and~~

(~~H~~)13 staff bonuses~~;~~and

(14) similar non-instructional items or programs.

C. Each school plan may budget and spend no more than the lesser of \$5,000 or 20 percent of the annual allocation of School LAND Trust funds for in-school civic and character education including student leadership skills training and positive behavior intervention. A school may designate funds for these programs/activities only if the plan clearly describes how these activities/programs directly affect student academic achievement.

~~(K)~~D. Schools that are specifically designated to serve ~~ing~~ students with disabilities may use funds as needed to directly influence and improve student performance according to the students' Individual Education Plans (IEPs).

~~(L)~~E. The school trust is intended to benefit all of Utah's school children. ~~(Councils are)~~The Board encourage~~s~~ councils to design and implement plans in a way ~~to~~that benefits all children at each school.

~~(M)~~F. School districts and charter schools ~~wishing~~choosing to submit information to the School LAND Trust website through a comprehensive electronic plan shall ~~meet the parameters~~satisfy standards for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or chartering entity approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

~~(N)~~G. ~~[A form that includes the names of members of the council shall be signed by members of the council to indicate]~~Principals shall ensure that all council members have the opportunity to sign the form indicating their involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year. ~~(The)~~A principal shall upload the form ~~shall be uploaded~~ to the database ~~by the principal, director, or school district employee~~.

H. Prior to approval of the School LAND Trust plans, the president or chair of an approving entity shall ensure that the members of the approving entity receive annual training on the requirements of Section 53A-16-101.5.

~~(O)~~I. When approving school plans on the School LAND Trust Program website, the approving entity shall report the meeting date(s) when the approving entity approved the plans.

R277-477-~~4~~5. Distribution of Funds - Determination of Proportionate Share.

A. A designated amount appropriated by the Legislature from the Interest and Dividends Account shall ~~be used to~~ fund the School Children's Trust Section, the administration of the program and other duties outlined in this rule and Sections 53A-16-101.5 and 53A-16-101.6. The USOE shall deposit [A]any unused balance initially allocated for School LAND Trust Program administration ~~shall be deposited~~ in the Interest and Dividends Account for future distribution to schools ~~in~~through the School LAND Trust Program.

B. The USOE, through the School LAND Trust Program, shall distribute [F]funds ~~shall be distributed~~ to school districts and

charter schools as provided under Section 53A-16-101.5(3)(a). ~~[distribution shall be based]~~USOE shall base the distribution on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

C. Each school district shall distribute funds received under R277-477-3A to each school within each school district on an equal per student basis.

~~(E)~~D. Local boards of education shall adjust distributions, maintaining an equal per student distribution within a school district, for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

~~(D)~~E. The USOE shall fund [C]charter schools ~~shall receive funding from the USOE~~ on a per pupil basis, provided that each charter school, including newly opening charter schools, receives at least 0.4 percent of the total available to charter schools as a group. A newly opening charter school shall receive the greater of 0.4 percent of the total available to charter schools as a group or the per pupil amount based on the school's estimated enrollment. The USOE shall allocate [F]the remainder of the distribution to charter schools ~~shall be allocated~~on a per pupil basis to all charter schools that ~~do not receive the minimum amount, on a per pupil basis~~receive an amount greater than the base 0.4 percent amount. The USOE shall increase or decrease a newly opening charter school's enrollment in the school's second year to reflect the school's actual initial October 1 enrollment.

F. If a school chooses not to apply for School LAND Trust Program funds ~~or does not~~ meet the requirements for receiving funds, the USOE shall retain the funds allocated for that school ~~shall be retained by the USOE~~ and include~~d~~ those funds ~~with~~in the statewide distribution for the following school year.

G. Local boards of education and school districts shall ensure timely notification to chairs and principals of the availability of the funds to schools with approved plans.

H. The School Children's Trust Director shall review and approve all [P]plans submitted by the USDB governing board ~~shall be reviewed and approved by the School Children's Trust Section and reported to the State Superintendent or designee~~as necessary.

R277-477-~~5~~6. School LAND Trust Program: Implementation of Plans and Required Reporting.

A. Schools shall make full good faith efforts to implement ~~the~~plans as approved.

B. The school community council or charter school trust land council may amend a current year plan when necessary. The council shall amend the plan by a majority vote of a quorum of the council. ~~[A school's website shall show an amended plan.]~~The principal shall amend the school plan on the School LAND Trust website. The approving entity shall consider the amendment for approval, and approve amendments before funds are spent according to the amendment.

C. A school may carryover [F]funds not used in the school approved plan ~~may be carried over by the school~~ to the next school year and add~~ed~~ those funds to the School LAND Trust Program funds available for expenditure in th~~at~~e school the following year.

D. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in a single year in the school plan or report. The USOE shall consider

~~Ø~~districts and schools with consistently large carryover balances over multiple years ~~are~~as not making adequate and appropriate progress on their approved plans. The USOE ~~and shall be subject to~~may direct compliance reviews ~~findings~~and corrective action.

E. Approval of school plans on the School LAND Trust website affirms that the approving entity has reviewed the plans and that the plans meet the requirements of Section 53A-1a-105 and R277-477.

~~E~~F. District and charter school business officials shall enter prior year audited expenditures by category on the School LAND Trust website on or before October 15th. The expenditure data shall appear in the final reports submitted online by principals for reporting to parents as required in Section 53A-1a-108.

~~F. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.~~

G. Principals shall submit ~~F~~final reports~~shall be submitted by schools~~ on the School LAND Trust website by ~~November 15~~October 20 annually.

R277-477-~~6~~7. School LAND Trust Program - School Children's Trust to Review Compliance.

A. ~~The financial report in~~The School Children's Trust Section staff shall review each school final report~~shall be reviewed by the School Children's Trust Section~~ for consistency with the ~~narrative submitted by that council~~approved school plan.

B. The School Children's Trust Section staff shall create a list of all schools whose ~~F~~final reports indicat~~ing~~e that funds from the School LAND Trust Program were expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, ~~and~~or inconsistent with the ~~school~~local board of education/charter board approved plan~~shall be listed by the School Children's Trust Section and~~. The School Children's Trust Section staff shall report~~ed~~ this list of schools to the district contact, district superintendent, and local board of education or charter board president annually.

C. USOE staff may visit schools receiving funds from the School LAND Trust Program~~as directed by the Superintendent~~ to discuss the program, receive information and suggestions, provide training, and answer questions.

D. The School Children's Trust Director shall supervise ~~A~~annual compliance reviews~~shall be conducted~~ to review expenditure of funds relative to the approved plan and allowable expenses.

E. The School Children's Trust ~~Section~~Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues. The Board Audit Committee shall make determinations regarding questioned costs and corrective action, following review and consideration of compliance and financial reviews conducted by the School Children's Trust Section staff.

F. The ~~State~~Board Audit Committee may recommend to the Board that the Board reduce or eliminate funds if a school ~~has~~ fail~~ed~~s to comply with ~~code~~Utah law or Board rule. The Board may require that the school reimburse the School LAND Trust Program for any inappropriate expenditures.

R277-477-8. School Children's Trust Director - Other Provisions.

A. The Director shall have professional qualifications and expertise in the areas generating revenue to the trust, including economics, energy development, finance, investments, public education, real estate, renewable resources, risk management, and trust law, as provided in 53A-16-101.6(3)(b).

B. The Director shall report to the Board Audit Committee monthly. The Director shall report day to day to the Superintendent or Superintendent's designee and has responsibilities as outlined in Sections 53A-16-101.5 and 53A-16-101.6.

C. The employees of the section report to the Director, who shall carry out the policy direction of the Board under law and faithfully adhere to the Board-approved budget.

D. The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Section 53A-16-101.6(5)(a).

E. The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and school community council training schedule, as described in Section 53A-16-101.6(11).

F. The Board Audit Committee may discuss or approve, or both, the School Children's Trust budget in an open portion of the Board Audit Committee meeting.

G. The Board, consistent with Section 53A-16-101.6(5)(b), shall propose an approved budget to the Legislature.

KEY: schools, trust lands funds

Date of Enactment or Last Substantive Amendment: ~~November 7, 2013~~2014

Notice of Continuation: June 10, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-16-101.5(3)(c); 53A-1-401(3)

**Education, Administration
R277-491
School Community Councils**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 38542

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-491 is amended to reflect the 2014 General Legislative Session in H.B. 221 that provides date changes for posting information to the school website. The amendments also make stylistic changes.

SUMMARY OF THE RULE OR CHANGE: Changes include changing the date when principals report on the school website a list of members of the school community council

with their contact information, the proposed meeting schedule for the year, and a summary of the annual report describing how School LAND Trust funds were used in the prior school year. It encourages principals to attend all meetings of the school community council and outlines a course of action when schools and districts fail to comply with the state law or Utah State Board of Education rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments provide date changes for posting information to the school website and stylistic changes which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments provide date changes for posting information to the school website and stylistic changes which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments provide date changes for posting information to the school website and stylistic changes which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide date changes for posting information to the school website and stylistic changes which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Responsibilities of the USOE Audit Committee will be accomplished by existing staff and within existing budgets.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-491. School Community Councils.

R277-491-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- E. "Educator" means a person employed by the school district where the person's child attends school and who holds a current educator license ~~and is employed by the school district where the person's child attends school~~.
- F. "Parent" means the parent or legal guardian of a student attending a school district public school.
- G. "Parent or legal guardian member":
 - (1) means a member of a school community council who is a parent of a student who will be enrolled at the school at any time during the parent's or legal guardian's term of office; and
 - (2) may not include an educator ~~who is employed at the school~~ that the school employs.
- H. "School principal" means the principal of the school or designee as assigned by the principal.
- I. "School community" means the geographic area the school district designate[s] ~~by the school district~~ as the attendance area, with reasonable inclusion of the parents and legal guardians of additional students who are ~~currently~~ attend ing the school.
- J. "School community council" means the council organized at each school district public school ~~as established in~~ consistent with Section 53A-1a-108 and R277-491. The council includes the principal, school employee members and parent members. ~~There~~ Each council shall be ~~have~~ at least a two parent member majority ~~on each council~~.
- K. "School employee member" means a member of a school community council ~~who is a person~~ that the school or school district employ[ed] at a school ~~by the school or school district~~, including the principal.
- ~~L. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.~~
- ~~M~~ L. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- ~~N~~ M. "USDB" means the Utah Schools for the Deaf and the Blind.
- ~~O~~ N. "USOE" means the Utah State Office of Education.

R277-491-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. Local boards of education are responsible for school community council operations, plan approval, oversight, and training.

C. The purpose of this rule is to:

(1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);

(2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school plans, and advis[e]ing school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;

(3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of assessments and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

(4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils;

(5) encourage compliance with the law; and

(6) increase public awareness of:

(a) school trust lands and related land policies;

(b) management of the permanent State School Fund established in Utah Constitution Article X, Section 5; and

(c) educational excellence.

R277-491-3. School Community Council Member Election Provisions.

A. Each school shall establish a timeline for the election of parent or legal guardian members of a school community council; the timeline shall remain consistent for at least a four-year period.

B. A school shall hold [F]the election for the parent or legal guardian members of a school community council[~~shall be held~~ near the beginning of the school year[~~, to be completed by October 15,~~ or[~~held~~ in the spring and completed before the last week of school.

C. If a school holds the election[~~is held~~ in the spring, the school community council shall attempt to notify parents of incoming students about the opportunity to run for the council, and provide those parents with the opportunity to vote in the election.

D. A school community council member's term lasts two years. [Terms shall be for two years and]A school community council shall [be]stagger[ed] terms so that approximately half of the council positions are elected each year.

E. A [P]ublic school[s] that [are]is a secure facilit[ies]y, juvenile detention facilit[ies]y, hospital program school[s], [and]or other small special program[s] may receive School LAND Trust Program funds without having a school community council if the school[s] demonstrates and documents a good faith effort to recruit members, have meetings and publicize results. The local board of education shall make this [Such]determination[~~shall be as recognized and affirmed by the local board of education~~].

F. Each school community council shall determine the size of the council by a majority vote of a quorum of council members, provided that the resulting council has at least one

employee member, the principal, and a two person majority of parents.

G. The principal shall provide notice of the school community council elections to the school community at least 10 days prior to the elections. The principal shall include in the notice[~~shall include~~ the dates, times, and location of the election, the positions [that will be elected]up for election, and information about becoming a candidate.

H. Parents and [legal]guardians may stand for election as parent or guardian members of a school community council at a school consistent with the definition of parent member in R277-491-1G.

I. The USOE encourages [S]school community councils[~~are encouraged~~ to establish clear and written timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner.

J. [Ballots and voting are required only]A school need only conduct an election if the school community council position(s) [is]are contested.

K. Parents may vote for the school community council parent members if their child(ren) are enrolled at the school, or to the extent possible consistent with R277-491-3C.

L. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

M. Entire school districts or schools may allow parents to vote by electronic ballot. [If school districts or schools allow voting by electronic means, the opportunity shall be clearly explained on the school district or school website]The school district or school shall clearly explain on its website the opportunity to vote by electronic means, if allowed by the school district or school.

N. Following the election, if [there are]those taking part in the election elect to the council more parent members who are educators in that district than parents who are not educators in that district[~~elected to the council~~], the parents on that council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in that district.

O. School community council members who were duly elected or appointed prior to a subsequent change in law or Board rule [shall be allowed to]may complete the term for which they were elected. All school community council members shall satisfy requirements of Utah [Code]law and Board rule in subsequent terms.

R277-491-4. Local School Board and School District Responsibilities Relating to School Community Councils.

A. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. Local boards of education may ask [S]school community councils[~~may be asked~~ for information to inform local board decisions.

B. [The]A local school board, in compliance with Section 53A-1a-108, shall ensure that all council members receive annual training, including training for the chair and vice chair about their specific responsibilities, and about the school community council

requirements of Sections 53A-1a-108, 53A-1a-108.1, 53A-16-108.5, and 53A-16-101.5.

C. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law and raised by any school community council member.

R277-491-5. School Community Council Principal Responsibilities.

A. Following the election, the principal shall enter and electronically sign on the School LAND Trust website a Principal's Assurance Form ~~[that assures]~~ affirming the school community council's election, ~~[at the school was elected, and]~~ that vacancies were filled after the elections, as necessary, and that the school community council's bylaws or procedures comply [is properly constituted consistent] with Section 53A-1a-108 and R277-477 and R277-491.

B. A principal may not serve as chair or vice-chair of the school community council.

C. Annually, on or before ~~[November 15]~~ October 20, the principal shall provide the following information on the school website, in the school office, and if needed, through a method that the council decides is best for the parents at the school who do not have internet access, ~~[if needed,]~~ and as provided in Section 53A-1a-108 and 53A-1a-108.1:

(1) A list of the members of the school community council and each member's direct email or phone number, or both;

(2) The school community council meeting schedule; and

(3) A summary of the annual report ~~[about]~~ describing how the school used the School LAND Trust Program funds ~~[were used to enhance or improve academic excellence at the school,]~~ consistent with Section 53A-1a-108.1(5)(b) and R277-477-4C.

D. Principals shall ensure that school websites fully communicate the opportunities provided to parents to serve on the school community council and how parents can directly influence the expenditure of the School LAND Trust Program funds. Principals shall include on [F]the website ~~[shall include]~~ each school's dollar amount received each year through the program.

R277-491-6. School Community Council Chair Responsibilities.

A. After the council is seated each year, the council shall elect a chair ~~[shall be elected by the council]~~ from the parent members and [the]a vice-chair ~~[shall be elected by the council]~~ from the parent or school employee members.

B. The school community council chair or designee shall:

(1) post the school community council meeting information (time, place and date of meeting; meeting agenda; and previous meeting draft minutes) on the school's website at least one week prior to each meeting;

(2) set the agenda for every meeting;

(3) conduct every meeting;

(4) assure that written minutes are kept consistent with Section 53A-1a-108.1(8);

(5) inform council members on resources available on the School LAND Trust website;

(6) assure that the school adopts a set of rules of order and procedures, including procedures for electing the chair and vice-chair, that the chair ~~[shall]~~ follows to conduct each meeting.

The principal shall post these rules ~~[shall be posted]~~ on the school website and [be]make them available at each meeting; and

(7) welcome and encourage public participation.

C. School community council responsibilities do not allow for closed meetings, consistent with Section 53A-1a-108.1.

R277-491-7. School Community Council Business.

A. School community councils shall report on plans, programs, and expenditures at least annually to local boards of education and cooperate with USOE monitoring and audits.

B. School community councils shall encourage participation on the school community council and may recruit potential applicants to apply for open positions on the council.

C. The USOE encourages:

(1) [S]school community councils ~~[are encouraged]~~ to establish clear and written procedures governing the removal from office of a member who moves away or consistently does not attend meetings, and additional clarifications to assist in the efficient operation of school community councils, consistent with the law and Board rules~~[-]; and~~

(2) school principals to attend all school community council meetings.

R277-491-8. Development of Plans.

A. School community council members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

(1) The School Improvement Plan;

(2) The School LAND Trust Plan;

(3) The Reading Achievement Plan (for elementary schools); and

(4) The Professional Development Plan.

B. The USOE encourages [S]school community councils ~~[are encouraged]~~ to advise and inform elected local school board members and other interested community members regarding the uses of these funds.

R277-491-9. Failure to Comply with Rule.

A. If a school district, school, or school community council fails to comply with the provisions of this rule, the School Children's Trust Director appointed under Section 53A-16-101.6 may report such failure to the Audit Committee of the Utah State Board of Education.

B. The Audit Committee of the Utah State Board of Education may recommend to the Board a reduction or elimination of School LAND Trust funds for a school district or school if the Audit Committee finds that the school district, school, or school community council has failed to comply with Utah law or Board rule.

KEY: school community councils

Date of Enactment or Last Substantive Amendment: [July 8, 2013]2014

Notice of Continuation: May 15, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Rehabilitation
R280-150
 Adjudicative Proceedings Under the
 Vocational Rehabilitation Act

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 38539
 FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R280-150 is amended to change the revision date of a CFR reference and the revision date of the Rehabilitation Case Service Manual.

SUMMARY OF THE RULE OR CHANGE: The revision date of a CFR reference is changed from 2007 to 2001, and the revision date of the Rehabilitation Case Service Manual is changed from May 9, 2008, to May 1, 2012.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 34 CFR 361.57, published by Government Printing Office, 01/22/2001

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule changes revision dates of referenced material which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This rule changes revision dates of referenced material which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This rule changes revision dates of referenced material which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule changes revision dates of referenced material which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule changes revision dates of referenced material which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION
 REHABILITATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R280. Education, Rehabilitation.

R280-150. Adjudicative Proceedings Under the Vocational Rehabilitation Act.

R280-150-1. Definitions.

"Board" means the Utah State Board of Education.

R280-150-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the Utah State Office of Rehabilitation under the policy direction of the Board and under the direction and general supervision of the Superintendent of Public Instruction, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for adjudication of disputes under the Vocational Rehabilitation Act.

R280-150-3. Standards and Procedures.

A. As its rules for adjudicative proceedings under the Vocational Rehabilitation Act, the Board adopts and hereby incorporates by reference: 34 C.F.R. 361.57, 200[7]1 edition, which adopts, defines, and publishes procedures for review of state rehabilitation service decisions, including alternative dispute resolution through mediation; and

B. The Board shall act in accordance with:

(1) Subsection V of the Rehabilitation Act of 1973, 29 U.S.C.A. 794; and

(2) The Utah State Office of Rehabilitation Case Service Manual, Chapter 21, approved on May [9, 2008]1, 2012.

KEY: administrative procedures, rules and procedures

Date of Enactment or Last Substantive Amendment: [October 8, 2008]2014

Notice of Continuation: May 15, 2014

Authorizing, and Implemented or Interpreted Law: 53A-24-103; 53A-1-401(3)

Environmental Quality, Administration
R305-4
 Clean Fuels and Vehicle Technology
 Fund Grant and Loan Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38525

FILED: 05/14/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes in Rule R305-4 are to align the rule with new requirements set forth in Section 19-1-401 as a result of H.B. 61, which passed in the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: These proposed rule changes reflect modifications to Section 19-1-401-5 that: 1) allow electric-hybrids to be eligible for the program; 2) remove the state match requirement for grants that fund refueling infrastructure; 3) remove diesel retrofits and related technologies, and 4) make other technical changes. The inclusion of electric-hybrid vehicles allows for plug-in-electric hybrid and regular electric-hybrid light-, medium-, and heavy-duty vehicles to participate in the Clean Fuels and Vehicle Technology Program. The removal of the state match requirement allows electric charging stations and other alternative fuel infrastructure to be eligible for a grant without the need to have a separate grant from an outside source. The diesel retrofit and related technologies component has been moved to the Clean Air Retrofit, Replacement, and Off-road Technology (CARROT) Fund. In addition, the annual and per-project award limitations have been raised in an effort to use the funds more expeditiously.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-401 and Section 19-1-402 and Section 19-1-403 and Section 19-1-404 and Section 19-1-405

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The new requirements of the rule will allow the Department of Environmental Quality to administer more grants, which will increase the costs to administer the program. However, these costs will be minimal and should not result in any additional costs to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This rule does not create any new requirements for local government. It does, however, increase the funds available for government vehicle projects.
- ◆ **SMALL BUSINESSES:** This rule does not create any new requirements for small businesses. It does, however, increase the funds available for private sector business vehicle projects.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

This rule does not create any new requirements for individuals, partnerships, corporations, associations, governmental entities, or public or private organizations. It does, however, increase the funds available for private sector business vehicle projects.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The requirements to apply and qualify for a grant or loan under the rule have been changed; however, those changes should not result in any additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will potentially increase the number of businesses that can receive grants and loans for eligible projects as the amount of grant and loan money to be awarded annually has increased from \$250,000 to \$500,000 and the amount per project has increased from \$100,000 to \$200,000.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 ADMINISTRATION
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/15/2014

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.

R305-4. Clean Fuels and Vehicle Technology Fund Grant and Loan Program.

R305-4-1. Authorization and Purpose.

(1) As authorized by Section 19-1-404, this rule establishes procedures for:

(a) providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel[;] or [to] purchase OEM vehicles[; ~~or to retrofit vehicles as provided under Section 19-1-403~~] to provide air pollution reduction benefits; and

(b) providing loans [or]and [state match]grants for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle as provided under Section 19-1-403.

(2) As authorized by Section 19-1-404, this rule establishes criteria and conditions for:

- (a) awarding grant and loan program monies; and
- (b) loan repayment and the collection of loans.

R305-4-2. Definitions.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean-fuel vehicle" means clean-fuel vehicle as defined in Subsection 19-1-402(2).

"Department" means the Utah Department of Environmental Quality.

"Fund" means fund as defined in Subsection 19-1-403.

"Government vehicle" means government vehicle as defined in Subsection 19-1-402(6)(5).

"Grant" means monies awarded to an applicant from the fund that do not have to be repaid.

"Electric-hybrid vehicle" means electric-hybrid vehicle as defined in Subsection 19-1-402(3).

"OEM vehicle" means OEM vehicle as defined in Subsection 19-1-402(8)(7).

"Private sector business vehicle" means private sector business vehicle as defined in Subsection 19-1-402(9)(8).

"Refueling equipment" means refueling equipment as defined in Subsection 19-1-402(10)(9).

~~"Retrofit" means retrofit as defined in Subsection 19-1-402(11).~~

R305-4-3. Grant and Loan Eligibility.

Eligibility for grants and loans from the fund is limited to projects for government vehicles and private sector business vehicles that meet the eligibility requirements set forth in R307-123, and for refueling equipment dispensing a clean fuel as provided for in Subsection 19-1-403-2(d) within the state of Utah.

R305-4-4. Preliminary Approval Application Procedure.

(1) All grant and loan applicants shall apply on forms provided by the Department as required by Subsection 19-1-404(1)(b)(vii)(A), and shall provide additional project information as requested by the Department.

(2) All private sector businesses applying for a grant or loan shall also complete a financial application that includes the following information:

- (a) a current credit report from ~~the NACM Business Credit Services or other~~ a reporting bureau authorized by the Department;
- (b) a completed balance sheet of the personal or real property that will be used to secure the loan;
- (c) copies of federal and state income tax returns for the last two years for the corporation and the applicant; and
- (d) additional information as requested by the Department.

(3) All Applicants:

- (a) may be charged an application fee of \$140 for vehicle loans, \$280 for grants, and \$350 for infrastructure loans as authorized in Subsection 19-1-403(4)(3)(a)(ii);
- (b) shall sign a statement acknowledging that:
 - (i) approved projects must meet all the eligibility requirements listed in R307-123; and
 - (ii) applicants that are pre-approved are not guaranteed project reimbursement by the Department; and
- (c) shall agree in writing to the provisions in Subsections 19-1-404(1)(b)(vii)(B) through (E), and

(d) shall, in the event that a vehicle converted~~[, retrofitted,]~~ or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident:

(i) continue to repay the loan whether or not the vehicle is repairable; or

(ii) appeal to the Department for a resolution as provided for in Subsection 19-1-404(1)(b)(vii)(C).

(A) Applicants that wish to appeal to the Department shall:

1. provide reasonable documentation that the vehicle converted~~[, retrofitted,]~~ or purchased is inoperable through mechanical failure or accident; and

2. propose a course of action that may include adjusting the loan repayment schedule or terms of the loan or grant.

(B) Any remedy pursued by the Department will be handled on a case-by-case basis and at the discretion of the Department.

(4) Once the Department has deemed that the application is complete and the proposed project complies with this rule, the application shall be reviewed by a committee consisting of at least the following:

- (a) the DAQ Grant and Loan Program Coordinator or designee;
- (b) the DAQ Mobile Section Manager or designee;
- (c) two DAQ technical specialists chosen by the Department; and
- (d) other members as designated at the discretion of the Department.

(5) The committee will evaluate each application according to the criteria provided in Sections R305-4-6 and 7.

(6) When considering grant and loan applications, the Department may modify the dollar amount or project scope for which a grant or loan is awarded.

(7) Submission of an application under this program and this rule constitutes the applicant's acceptance of the criteria and procedures of this rule.

~~[(8) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.]~~

R305-4-5. Final Approval Procedure and Payment Process.

(1) Once an applicant's project has been pre-approved to receive a grant or loan, the applicant shall provide:

- (a) for vehicles, the demonstration of eligibility requirements in R307-123-3 through 5; and
- (b) for refueling equipment, the following documentation:
 - (i) the name of the facility (including facility and/or unit number, if applicable) where refueling equipment will be installed and used;
 - (ii) the address of the facility where refueling equipment will be installed and used;
 - (iii) the government-issued building permit for the site at which the refueling equipment will be installed and used;
 - (iv) an original or copy of the bill of sale or sales contract from the purchase of the refueling equipment; ~~and~~
 - ~~(v) if applicable:~~
 - ~~(A) the name of the issuing entity for the matching grant;~~
 - ~~(B) the name of the matching grant;~~
 - ~~(C) the amount of the matching grant;~~
 - ~~(D) the type of entity issuing the matching grant; and~~

~~_____ (E) the grant agreement between awardee and the matching grant entity or entities.~~

~~_____ (2) If rejected at any stage of the process, the applicant may consult with the Department to determine appropriate revisions to the application that should be made prior to submitting the application for reconsideration.~~

~~_____ (3)](2) Once an applicant has obtained final approval to receive a grant or loan, including signed contract documents, monies from the fund will be issued as reimbursements for the applicant's project costs.~~

~~[(4) Grant or loan monies for a state match of a federal or non-federal grant will only be issued to the applicant after the applicant's project has been approved by the granting entity for the federal or non-federal grant.~~

~~_____ (5)](3) The approved applicant shall continue to comply with the provisions of this rule.~~

R305-4-6. Prioritization of Awards for Grant Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding grants:

(1) The feasibility and practicality of the project;

(2) The financial need of the applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project; and

(3) Whether and to what extent the ~~[monies requested are being provided as a state match of a federal or nonfederal grant]project is leveraged;~~ and

(4) The environmental and other benefits to the state and local community attributable to the project.

(5) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(6) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(i) the technology selected for the project; and

(ii) the location of the project.

(7) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but is not limited to the following criteria:

(a) the pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the ratio of the total project cost to the environmental and other benefits attributable to the project; and

(d) the accessibility and openness of any refueling equipment to the public, if applicable.

R305-4-7. Prioritization of Awards for Loan Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding loans:

(1) The feasibility and practicality of the project;

(2) The financial need of applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the ~~[monies requested are being provided as a state match of a federal or nonfederal grant]project is leveraged;~~

(4) The environmental and other benefits to the state and local community attributable to the project; and

(5) The applicant's creditworthiness.

(6) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(7) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the technology selected for the project; and

(b) the location of the project.

(8) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the accessibility and openness of any refueling equipment to the public, if applicable; and

(d) the ratio of the total project cost to the environmental and other benefits attributable to the project.

R305-4-8. Grant Program Limitations.

(1) Grant applications shall not be approved if:

(a) awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a grant to an applicant would result in the fund balance being less than zero;

~~[(e) the vehicle purchased with grant funds is an electric-hybrid vehicle;~~

~~]~~ ~~[(f)](e) the OEM vehicle purchased with the grant funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant.~~

~~[(g)](f) the amount of a grant for any vehicle will exceed the provisions in Subsections 19-1-403(2)(c); or~~

~~[(h)](g) the total amount awarded [including federal or nonfederal grants] for the purchase of vehicle refueling equipment will exceed the actual cost of the refueling equipment.~~

(2) The annual combined total for all grants approved shall not exceed a maximum of ~~[\$250,000]~~\$500,000 as authorized by Subsection 19-1-404(1)(b)(i).

(3) The maximum number of vehicles purchased, converted, or retrofitted using grant funds by any fleet operator shall not exceed 100 vehicles, as authorized by Subsection 19-1-404(1)(b)(iii).

(4) The maximum amount that may be approved by the Department for a grant is \$100,000; the minimum amount that may be approved is \$5,000.

(5) Awards for applicants for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-9. Loan Program Limitations.

(1) Loan application shall not be approved if:

(a) awarding a loan to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a loan to an applicant would result in the fund balance being less than zero;

~~(e) the vehicle purchased with loan funds is an electric-hybrid vehicle;~~

~~(f)(e)~~ the OEM vehicle purchased with the loan funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant;

~~(g)(f)~~ the amount of a loan for any vehicle will exceed the provisions in 19-1-403(2)(b) minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009; or

~~(h)(g)~~ the amount to be loaned for the purchase of vehicle refueling equipment will exceed the provisions in Subsection 19-1-403(2)(d)(ii).

~~(2) The total combined loans approved annually shall not exceed \$250,000.~~

~~(3)~~(2) The maximum amount that may be approved by the Department for a loan is ~~[\$100,000]~~\$200,000; the minimum amount that may be approved is \$5,000.

~~(4)~~(3) Awards for applicants applying for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-10. Servicing the Loans and Loan Repayment.

(1) Loan repayment schedules shall:

(a) not exceed ten years, as required by Subsection 19-1-404(2)(b);

(b) be based on the financial situation and income circumstances of each borrower;

(c) be amortized with equal payment amounts;

(d) be of such amount to pay all interest and principal in full; and

(e) consider projected savings from use of the clean fuel vehicle as required by Subsection 19-1-404(2)(a). In determining projected savings, the Department may use all current and relevant market cost information.

(2) The initial installment payment is due on a date established by the Department.

(3) Subsequent installment payments are due:

(a) on the first day of each month for private sector businesses; or

(b) as determined by the Department for government entities.

(4) A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(5) Loans made from the fund for a government vehicle shall be made with no interest rate as required by Subsection 19-1-404(2)(d).

(6) Loans made from the fund for a private sector vehicle shall be made at an interest rate provided by Subsection 19-1-404(2)(c).

(7) Any changes in interest rates, re-negotiation of contract terms or elimination of debt must receive approval by the Department.

(8) Loan payments received shall be applied first to penalty, next to interest, and then to principal.

(9) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(10) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Department more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(11) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Department by methods other than the U.S. Postal Service.

(12) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(13) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R305-4-11. Recovering on Defaulted Loans.

(1) Loans may be considered in default when three consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under R305-4-11(1), the Department or Division of Finance may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(3) The Department or Division of Finance need not give notice of default prior to declaring the full amount due and payable.

(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

R305-4-12. Review.

The Department reserves the right to review all data and applicants for continued compliance with this rule during the period the approved applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an applicant in order to effectively administer the program and this rule.

R305-4-13. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for or obligation to the program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle

purchased or converted to use a clean fuel or retrofitted in this program.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles

Date of Enactment or Last Substantive Amendment: [~~December 19, 2013~~2014

Notice of Continuation: July 15, 2013

Authorizing, and Implemented or Interpreted Law: 19-1-401

Environmental Quality, Air Quality
R307-101-3
Version of Code of Federal Regulations
Incorporated by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38493

FILED: 05/08/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R307-101-3 incorporates by reference the version of the Code of Federal Regulations (CFR) used in many of the rules adopted by the Air Quality Board. This allows rules that reference Section R307-101-3 to update the incorporation date with only one rule amendment. The most current version of the CFR for environmental regulations has been updated from July 1, 2012, to July 1, 2013; therefore, it is necessary to amend Section R307-101-3.

SUMMARY OF THE RULE OR CHANGE: The following is a list of changes to 40 CFR from July 1, 2009, to July 1, 2011, that affect rules which reference Section R307-101-3: Vol. 78, No. 29, Pg. 9823-9828 (EPA-HQ-OAR-2007-0089; FRL-9779-3). This action revised the definition of volatile organic compounds (VOCs) under the Clean Air Act by adding four chemical compounds to the list of compounds excluded from the definition of VOC on the basis that each of the compounds makes a negligible contribution to tropospheric ozone formation. These compounds consist of four hydrofluoropolyethers (HFPEs) which are identified as HCF2OCF2H (also known as HFE-134), HCF2OCF2OCF2H (also known as HFE-236cal2), HCF2OCF2CF2OCF2H (also known as HFE-338pcc13), and HCF2OCF2OCF2CF2OCF2H (also known as H-Galden 1040X or H-Galden ZT 130 (or 150 or 180)). If an entity uses or produces any of these four HFPE compounds (these being in the family of products known by the trade name H-Galden) and is subject to the EPA or Utah regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the ozone national ambient air quality standards (NAAQS), then the compound will not be counted as a VOC in determining whether these regulatory obligations have been

met. Vol. 78, No. 92, Pg. 28051-28078 (EPA-HQ-OAR-2011-0405 and EPA-HQ-OAR-2006-0534; FRL-9802-3). The final action removed section 60.56c(d)(2) of subpart Ec which excluded HMIWI units from having to comply with standards during periods of SSM provided that no hospital waste or medical/infectious waste was being charged to the unit during those SSM periods. The EPA had meant to delete this exemption in the 2009 NSPS but inadvertently failed to do so. Vol. 78, No. 122, Pg 37973-37978 (EPA-R07-OAR-2013-0410; FRL-9825-5). The rule amendment revised the address for EPA Region VII.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 40 CFR, published by National Archives and Records Administration's Office of the Federal Register, July 1, 2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Because the revisions do not create new requirements, no change in costs or savings is expected for the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because this revision does not create new requirements, no change in costs or savings is expected for local governments.
- ◆ **SMALL BUSINESSES:** Because this revision does not create new requirements, no change in costs or savings is expected for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this revision does not create new requirements, no change in costs or savings is expected for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because there are no new requirements created with this revision, there are no changes in compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This revision does not create any new requirements for businesses; therefore, no additional costs to businesses are expected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/06/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, ~~2012~~2013.

KEY: air pollution, definitions
Date of Enactment or Last Substantive Amendment: ~~August 8, 2013~~2014
Notice of Continuation: July 2, 2009
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)

Environmental Quality, Air Quality
R307-214
National Emission Standards for Hazardous Air Pollutants

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 38492
 FILED: 05/08/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R307-214 must be updated periodically to reflect changes to the NESHAPs as published in Title 40 of the Code of Federal Regulations (40 CFR), Parts 61 and 63. This action incorporates by reference into Rule R307-214 the July 1, 2013, version of 40 CFR Parts 61 and 63.

SUMMARY OF THE RULE OR CHANGE: There were no changes to 40 CFR Part 61 that affects Rule R307-214. The following sections of R307-214-2 are updated by incorporating the most recent version of Subpart 63 into the rule: R307-214-2(10), Subpart N; R307-214-2(18), Subpart CC; R307-214-2(22), Subpart HH; R307-214-2(37), Subpart CCC; R307-214-2(44), Subpart III; R307-214-2(41), Subpart HHH; R307-214-2(77), Subpart ZZZZ; R307-214-2(82), Subpart DDDDD; and R307-214-2(116), Subpart VVVVVV. Subpart UUUUU, is added as a new section at R307-214-2(97).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Updates 40 CFR Parts 61 and 63, published by National Archives and Records Administration's Office of the Federal Register, July 1, 2013

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: No cost or savings are anticipated for the state budget as this amendment does not create any new requirements for the state.
 ♦ LOCAL GOVERNMENTS: No costs or savings are anticipated for local governments as this amendment does not create any new requirements.
 ♦ SMALL BUSINESSES: No cost or savings is anticipated for small businesses as this amendment does not create any new requirements.
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings are anticipated for persons other than small businesses, businesses, or local government entities as this amendment does not create any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or savings are anticipated for affected persons as this amendment does not create any new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No costs or savings are anticipated for businesses as this amendment does not create any new requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Pollutants Subject to Part 61.**

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, ~~2012~~2013, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, ~~2012~~2013, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(97)(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(98)(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(99)(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(100)(101) 40 CFR Part 63 SubpartBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(101)(102) 40 CFR Part 63 Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(102)(103) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(103)(104) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(104)(105) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(105)(106) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(106)(107) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(107)(108) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(108)(109) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(109)(110) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(110)(111) 40 CFR Part 63, Subpart OOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(111)(112) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(112)(113) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(113)(114) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(114)(115) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(115)(116) 40 CFR Part 63, Subpart VVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(116)(117) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(117)(118) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(118)(119) 40 CFR Part 63, Subpart XXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

[(119)](120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

[(120)](121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

[(121)](122) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

[(122)](123) 40 CFR Part 63, Subpart BBBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

[(123)](124) 40 CFR Part 63, Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

[(124)](125) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

[(125)](126) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

~~[R307-214-3. Oil and Gas Sector: National Emission Standards for Hazardous Air Pollutants:~~

~~Revisions to the "Oil and Gas Sector: National Emission Standards for Hazardous Air Pollutants" in 40 CFR 63.14, 40 CFR Part 63 Subpart III, and 40 CFR Part 63 Subpart HHH promulgated by the Environmental Protection Agency on August 16, 2012 in 77 FR 49490 are hereby incorporated by reference.~~

]
KEY: air pollution, hazardous air pollutant, MACT, NESHAP
Date of Enactment or Last Substantive Amendment: 2014
Notice of Continuation: November 8, 2012
Authorizing, and Implemented or Interpreted Law: 19-2-104(1)
(a)

**Environmental Quality, Air Quality
R307-401-12
Reduction in Air Contaminants**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 38491
FILED: 05/08/2014**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 02/04/2014, the EPA disapproved or partially disapproved several changes to Utah's permitting rules that were adopted in 2006. This proposed rule change addresses EPA's concerns.

SUMMARY OF THE RULE OR CHANGE: EPA disapproved Section R307-401-12 because they believed that the provisions in Subsection R307-401-12(1) that exempted a source from the approval order requirements of Sections

R307-401-5 through R307-401-8 were not consistent with the provisions in Subsection R307-401-12(2) that required the source to make the new conditions enforceable in an approval order. The language in Section R307-401-12 has been revised to remove the inconsistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(3)(g)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes do not create any new requirements for the state; therefore, there are no anticipated costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** These changes do not create any new requirements for local government; therefore, there are no anticipated costs or savings.
- ◆ **SMALL BUSINESSES:** These changes do not create any new requirements for small businesses; therefore, there are no anticipated costs or savings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These changes do not create any new requirements for persons other than small businesses, businesses, or local government entities; therefore, there are no anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change is to clarify the criteria to qualify to be exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction. There are no anticipated compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change is to clarify the criteria to qualify to be exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction. This should have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
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195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-401. Permit: New and Modified Sources.****R307-401-12. Reduction in Air Contaminants.**

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the requirement to submit a notice of intent and obtain an approval order prior to construction if [approval order requirements of R307-401-5 through 8 if:]

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the director no later than 60 days after the changes are made. The director will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

KEY: air pollution, permits, approval orders, greenhouse gases

Date of Enactment or Last Substantive Amendment: [January 6,] 2014

Notice of Continuation: June 6, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104(3) (q); 19-2-108

Environmental Quality, Air Quality **R307-410-2** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38489

FILED: 05/08/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change simplifies the rule by no longer specifying a version of the Code of Federal Regulations (CFR). The general incorporation date in Section R307-101-3 will apply to this rule.

SUMMARY OF THE RULE OR CHANGE: The reference to the July 1, 2005, version of the CFR is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This change does not create any new requirements for the state; therefore, there are no anticipated costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This change does not create any new requirements for local government; therefore, there are no anticipated costs or savings.

♦ **SMALL BUSINESSES:** This change does not create any new requirements for small businesses; therefore there are no anticipated costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This change does not create any new requirements; therefore, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will require sources to comply with the 40 CFR 51.100(ff) version of the CFR referenced in Section R307-101-3. Because sources are already required to comply with these federal requirements there are no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will require sources to comply with the 40 CFR 51.100(ff) version of the CFR referenced in Section R307-101-3. Because sources are already required to comply with these federal requirements this rule change will not have any fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY

AIR QUALITY

FOURTH FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-410. Permits: Emissions Impact Analysis.****R307-410-2. Definitions.**

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is

directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) [effective July 1, 2005] are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the director.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

KEY: air pollution, modeling, hazardous air pollutant, stack height

Date of Enactment or Last Substantive Amendment: [~~June 16, 2006~~]2014

Notice of Continuation: June 6, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104

Environmental Quality, Air Quality R307-410-6 Stack Heights and Dispersion Techniques

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38490

FILED: 05/08/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 02/04/2014, the EPA disapproved or partially disapproved several changes to Utah's permitting rules that were adopted in 2006. This proposed rule change addresses EPA's concerns.

SUMMARY OF THE RULE OR CHANGE: EPA partially disapproved Section R307-410-6 because it did not clearly specify that a Good Engineering Practice (GEP) stack height demonstration must be made available for public review and that there must be an opportunity for a public hearing. While Air Quality believes this requirement is already inherent in the public review process for an approval order, Section R307-410-6 has been amended to specifically state that the public will be notified of the availability of the demonstration as part of the public review process of Section R307-401-7.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the public was already being notified of the availability of the demonstration described in Subsection R307-410-6(3) as part of the public review process; there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Because there are no new requirements for local government there are no anticipated costs or savings.

◆ **SMALL BUSINESSES:** Because there are no new requirements for small businesses, there are no anticipated costs or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because there are no new requirements, there are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the public was already being notified of the availability of the demonstration described in Subsection R307-410-6(3) as part of the public review process, there are no new compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule do not apply to businesses; therefore, the rule will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2014

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-410. Permits: Emissions Impact Analysis.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air contaminant to include determinations made

under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The director may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6. The director shall notify the public of the availability of the demonstration as part of the public notice process required by R307-401-7, Public Notice.

KEY: air pollution, modeling, hazardous air pollutant, stack height

Date of Enactment or Last Substantive Amendment: [~~June 16, 2006~~]2014

Notice of Continuation: June 6, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104

Environmental Quality, Drinking Water

R309-545

Facility Design and Operation: Drinking Water Storage Tanks

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38535
FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Engineering Section of the Division of Drinking Water was tasked to review the Drinking Water R309-500 series rules for revisions, clarifications, corrections, updates, etc.

SUMMARY OF THE RULE OR CHANGE: It has been several years since Rule R309-545 was reviewed and revised as a whole. This rule contains several outdated and incorrect references to the AWWA standards. The proposed modifications to Rule R309-545 include the following: 1) eliminate redundant references to sizing and exception requests; 2) revise to use the same terminology throughout the rule (tank vs. reservoir, etc.); 3) modify the rule to require a means to drain the tank; 4) clarify recommendations versus

requirements (should, shall, etc.); 5) eliminate the requirement for tracer studies on new tanks; 6) add requirements for curing procedures and volatile organic compound sampling for tank coating; 7) clarify penetrations on the shoebox lid of the tank hatch; 8) add requirement that the tank venting capacity shall exceed the water flow; 9) eliminate the requirement for a screen protector on vent lines that are smaller than 6-inches in diameter; 10) miscellaneous changes to correct formatting, grammar and to make the rule language more easily understood; and 11) correct numerous outdated and incorrect references.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks, for Water Storage, published by American Water Works Association, 01/26/1986
- ◆ Removes Coating Steel Water-Storage Tanks, published by American Water Works Association, 11/01/0003
- ◆ Removes Factory-Coated Bolted Carbon Steel Tanks for Water Storage, published by American Water Works Association, 02/01/1998
- ◆ Removes Circular Prestresses Concrete Water Tanks with Circumferential Tendons, published by American Water Works Association, 06/01/1996
- ◆ Removes Disinfection of Water Storage Reservoirs, published by American Water Works Association, C652-02
- ◆ Removes Automatically Controlled, Impressed-Current Cathodic Protection for the Interior of Steel Water Tanks, published by American Water Works Association, D104-01
- ◆ Removes Wire- and Strand-Wound Circular, Prestressed Concrete Water Tanks, published by American Water Works Association, 02/01/2005
- ◆ Removes Weldon Carbon Steel Tanks for Water Storage, published by American Water Works Association, 05/01/2006
- ◆ Removes Flexible Membrane Lining and Floating Cover Materials for Potable Water Storage, published by American Water Works Association, D130-02
- ◆ Removes Thermosetting Fiberglass-Reinforced Plastic Tanks, published by American Water Works Association, 01/01/2003

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-545. Because this rule amendment only makes this type of changes, it should not significantly increase Division staff time in administering the amended rule. Therefore, there should be no significant cost or savings from the proposed rule amendment to the state budget.

◆ **LOCAL GOVERNMENTS:** The Division of Drinking Water regulates public drinking water systems and local governments are not part of the regulated community. Because of the type of this rule amendment, it should not affect local governments. Therefore, there should be no significant cost or savings from the proposed rule amendment to local government.

◆ **SMALL BUSINESSES:** The Division of Drinking Water regulates public drinking water systems and small businesses are not part of the regulated community. Because of the type of this rule amendment, it should not affect small businesses. Therefore, there should be no significant cost or savings from the proposed rule amendment to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Drinking Water regulates public drinking water systems and persons other than small businesses, businesses, and local government entities are not part of the regulated community, unless they are a public water system. Because of the type of this rule amendment, it should not affect persons other than small businesses, businesses, or local government entities. Therefore, there should be no significant cost or savings from the proposed rule amendment to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division of Drinking Water regulates public drinking water systems. This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-545. Because of the type of these changes in the rule, it should not significantly increase the time public drinking water systems and their engineering consultants spend in submitting projects for plan review and approval. Therefore, there should be no significant cost or savings from this rule amendment to the public water systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes will not significantly impact businesses as the changes clarify compliance with the drinking water rules and update referenced standards for public drinking water systems.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
DRINKING WATER
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
◆ Tammy North by phone at 801-536-4293, by FAX at 801-536-4211, or by Internet E-mail at tnorth@utah.gov

◆ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.

R309-545. Facility Design and Operation: Drinking Water Storage Tanks.

R309-545-1. Purpose.

The purpose of this rule is to provide specific requirements for public drinking water storage tanks. It is intended to be applied in conjunction with other rules, specifically R309-500 through R309-550. Collectively, these rules govern the design, construction, operation, and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water, which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-545-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-545-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-545-4. General.

Storage for drinking water shall be provided as an integral part of each public drinking water system unless an exception to the rule is approved by the Director. Pipeline volume in transmission or distribution lines shall not be considered part of any storage volumes.

R309-545-5. Size of Tank(s).

~~[Required Storage Capacity: In the absence of firm water use data, at or above the 90% confidence level, s]~~ Storage tanks shall be sized in accordance with the required minimums of R309-510.

R309-545-6. Tank Material and Structural Adequacy.

(1) Materials.

The materials used in drinking water storage structures shall provide stability and durability as well as protect the quality of the stored water. Steel tanks shall be constructed from new, previously unused, plates and designed in accordance with AWWA Standard D-100-11.

(2) Structural Design.

The structural design of drinking water storage structures shall be sufficient for the environment in which they are located. ~~[The design shall incorporate a careful analysis of potential seismic risks.]~~

R309-545-7. Location of Tanks.

(1) Pressure Considerations.

The location of the [reservoir]tank and the design of the water system shall be such that the minimum working pressure in the distribution system shall meet the minimum pressures as required in R309-105-9.

(2) Connections.

Tanks shall be located at an elevation where present and anticipated connections can be adequately served. System connections shall not be placed at elevations such that minimum pressures as required in R309-105-9, cannot be continuously maintained.

(3) Sewer Proximity.

Sewers, drains, standing water, and similar sources of possible contamination shall be kept at least 50 horizontal feet from the [reservoir]tank.

(4) Standing Surface Water.

The area surrounding a ground-level drinking water storage structure shall be graded in a manner that will prevent surface water from standing within 50 horizontal feet of the structure.

(5) Ability to Isolate.

Drinking water storage structures shall be designed and located so that they can be isolated from the distribution system. Storage structures shall be capable of being drained for cleaning or maintenance. Where possible, tanks should be designed with the ability to be isolated without necessitating loss of pressure or service in the distribution system.

(6) Earthquake and Landslide Risks.

Potential geologic hazards shall be taken into account in selecting a tank location. Earthquake and landslide risks shall be evaluated. The design shall incorporate an analysis of potential seismic risks by a Professional Engineer or Geologist.

(7) Security.

The site location and design of a drinking water storage [reservoir]tank shall take into consideration security issues and potential for vandalism.

R309-545-8. Tank Burial.

(1) Flood Elevation.

The bottom of drinking water storage [reservoirs]tanks shall be located at least [three]3 feet above the 100-[-]year flood level or the highest known maximum flood elevation, whichever is higher.

(2) Ground Water.

When the bottom of a drinking water storage [reservoir]tank [is to be]will be placed below the normal ground surface, it shall be placed above the local ground water table elevation.

(3) Covered Roof.

When the roof of a drinking water storage [reservoir]tank [is to be]will be covered by earth, the roof shall be sloped to drain toward the outside edge of the tank.

R309-545-9. Tank Roof and Sidewalls.

(1) Protection From Contamination.

All drinking water storage structures shall have suitable watertight roofs and sidewalls [which]that shall also exclude birds, animals, insects, and excessive dust.

(2) Openings.

Openings in the roof and sidewalls shall be kept to a minimum and comply with the following:

(a) Any pipes running through the roof or sidewall of a metal drinking water storage structure shall be welded, or properly gasketed. In new concrete tanks, these pipes shall be connected to standard wall castings with seepage rings [which]that have been poured in place. Vent pipes, in addition[s] to seepage rings, shall have raised concrete curbs [which]that direct water away from the vent pipe and are formed as a single pour with the roof deck. No roof drains or any other pipes, which may contain water of less quality than drinking water, shall [ever]penetrate the roof, walls, or floor of a drinking water storage tank.

(b) Openings in a storage structure roof or top, designated to accommodate control apparatus or pump columns, shall be welded, gasketed, or curbed and sleeved as above, and shall have additional proper shielding to prevent vandalism.

~~(c) Openings shall be kept as far away as possible from the storage tank outlet and other sources of surface water.~~

(3) Adjacent Compartments.

Drinking water shall not be stored or conveyed in a compartment adjacent to wastewater when the two compartments are separated by a single wall.

(4) [Slope of]Roof Drainage.

The roof of all storage structures shall be designed for drainage to eliminate water ponding. Parapets, or similar construction, which would tend to hold water and snow, shall not be utilized unless adequate waterproofing and drainage are provided. Downspout or roof drain pipes shall not enter or pass through the [reservoir]tank.

R309-545-10. Internal Features.

The following shall apply to internal features of drinking water storage structures:

(1) Drains.

~~If a drain is provided, it shall not discharge to a sanitary sewer. If local authority allows discharge to a storm drain, the drain discharge shall have a physical air gap of at least two pipe diameters between the discharge end of the pipe and the overflow rim of the receiving basin.~~

(a) A means shall be provided for the draining of drinking water storage tanks.

(b) Where possible, the drain shall be separate from the outlet pipeline. If a tank drain line is provided, it shall be sloped for complete drainage.

(c) If a drain is provided, it shall not discharge to a sanitary sewer.

(d) If local authority allows discharge to a storm drain, the drain discharge shall have a physical clearance of at least 12 inches between the discharge end of the pipe and the overflow rim of the receiving basin.

(2) Internal Catwalks.

Internal catwalks, if provided and located [so as to be]over the drinking water, shall have a solid floor with raised edges. The edges and floor shall be [so]designed so that shoe scrapings or dirt will not fall into the drinking water.

(3) Inlet and Outlet.

(a) To minimize potential sediment in the flow from the [structure]tank, the [normal]outlet pipes from all [reservoirs]tanks shall be located in a manner to provide a silt trap prior to discharge into the distribution system.

(b) Inlet and outlet pipes shall be configured to provide mixing and circulation.

(4) ~~[Disinfection]~~Tank Floor.

The floor of the storage structure shall be sloped to permit complete drainage of the structure. ~~[If the drinking water reservoir is to be utilized as a contact basin for disinfection purposes, the design engineer shall conduct tracer studies or other tests, previously approved by the Director, to determine the minimum contact time and the potential for short circuiting.]~~

R309-545-11. ~~[ANSI/NSF International, Standard 61.]~~Internal Surfaces and Coatings.

(1) ANSI/NSF Standard 61 Certification.

All interior surfaces or coatings shall consist of products ~~[which]that~~ are certified ~~[by laboratories approved by ANSI and which]to~~ comply with ANSI/NSF Standard 61 or other standards approved by the Director. This requirement applies to any pipes and fittings, protective materials (e.g., paints, coatings, concrete admixtures, concrete release agents, or concrete sealers), joining and sealing materials (e.g., adhesives, caulks, gaskets, primers and sealants) and mechanical devices (e.g., electrical wire, switches, sensors, valves, or submersible pumps) ~~[which]that~~ are located so as to come into contact with the drinking water.

(2) Curing Procedures~~[Time]~~ and Volatile Organic Compounds.

(a) Proper curing procedures shall be followed per manufacturer's directions, including curing time, temperature, and forced air ventilation. Drinking water shall not be introduced into the tank until proper curing has occurred.

~~(b) [If products which require a cure or set time are utilized in such a way as to come into contact with the drinking water, then water shall not be introduced into the vessel until any required curing time has passed.]~~ It shall be the responsibility of the water ~~[purveyor]system~~ to assure that no tastes or odors, toxins, or ~~[other compounds]contaminants~~, which result in MCL exceedances, are imparted to the water as a result of tank coating or repair.

(c) Prior to placing a drinking water storage tank in service, cleaning, disinfection, and flushing procedures shall be completed.

(d) Prior to placing a drinking water storage tank in service, an analysis for volatile organic compounds from water contained therein may be required to verify that no such compounds have leached into the water.

R309-545-12. Steel Tanks.

(1) Paints.

Proper protection shall be given to all metal surfaces, both internal and external, by paints or other protective coatings. Internal coatings shall comply with ~~[ANSI/NSF Standard 61]~~R309-545-11.

(2) Cathodic Protection.

If installed, internal cathodic protection shall be designed, installed and maintained by personnel trained in corrosion engineering.

R309-545-13. Tank Overflow.

All water storage structures shall be provided with an overflow ~~[which]that~~ is discharged at an elevation between 12 and 24 inches above the ground surface or the rim of the receiving basin. ~~[with an appropriate air gap.]~~ The discharges shall be directed away from the tank and shall not cause erosion.

(1) Diameter.

All overflow pipes shall be of sufficient capacity to permit waste of water in excess of the filling rate.

(2) Slope.

All overflow pipes shall ~~[B]~~be sloped for complete drainage~~[;]~~.

(3) Screen.

All overflow pipes shall be screened with No. 4 mesh non-corrodible screen installed at a location least susceptible to damage by vandalism~~[;]~~.

(4) Visible Discharge.

All overflow pipes shall be located so that any discharge is visible~~[;]~~.

(5) Cross Connections.

All overflow pipes shall not be connected to, or discharge into, any sanitary sewer system.

(6) Paint.

If an overflow pipe within a ~~[reservoir]tank~~ is painted or otherwise coated, ~~[such]the~~ coating shall comply with ANSI/NSF Standard 61.

R309-545-14. Access Openings.

Drinking water storage structures shall be designed with reasonably convenient access to the interior for cleaning and maintenance.

(1) Height.

There shall be at least one opening above the water line, which shall be framed at least ~~[four]4~~ inches above the surface of the roof at the opening; or if on a buried structure, shall be elevated at least 18 inches above any earthen cover over the structure. The frame shall be securely fastened and sealed to the tank roof ~~[so as-]~~to prevent any liquid contaminant entering the tank. Concrete drinking water storage structures shall have raised curbs around access openings, formed and poured continuous with the pouring of the roof and sloped to direct water away from the frame.

(2) Shoebox Lid.

The frame of any access opening shall be provided with a close-~~[]~~fitting, solid shoebox type cover ~~[which]that~~ extends down around the frame at least ~~[two]2~~ inches and is furnished with a gasket(s) between the lid and frame~~[;]~~. The horizontal surface of the tank lid shall not have any openings, cracks, or penetrations, such as a lock, key hole, or bolted handle that would allow contaminants to enter the tank.

(3) Locking Device.

The lid to any access opening shall have a locking device.

R309-545-15. Venting.

Drinking water storage structures shall be vented. The air venting capacity shall exceed the water inflow and the water outflow of the tank. Overflows shall not be considered or used as vents. Vents provided on drinking water storage ~~[reservoirs]tanks~~ shall:

(1) Inverted Vent.

Be downturned a minimum of ~~[two]2~~ inches below any opening ~~[or]and~~ shielded to prevent the entrance of ~~[surface water and rainwater]contaminants~~.

(2) Open ~~[Discharge]~~Venting.

On buried structures, ~~[have the discharge]~~the end of the vent discharge shall be a minimum of 24 inches above the earthen covering.

(3) Blockage.

Be located and sized ~~[so as]~~ to avoid blockage during winter conditions.

~~[(4) Pests.~~

~~Exclude birds and animals.~~

~~(5) Dust.~~

~~Exclude insects and dust, as much as this function can be made compatible with effective venting.~~

[(6)4] Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

[(7)5] Screen Protector.

Vents that are 6-inch diameter or greater shall be fitted with additional heavy gage screen or substantial covering, which will protect the No. 14 mesh screen against vandalism or damage, and, further, discourage purposeful attempts to contaminate the reservoir.]

R309-545-16. Freezing Prevention.

All drinking water storage structures and their appurtenances, especially the riser pipes, overflows, and vents, shall be designed to prevent freezing which may interfere with proper functioning.

R309-545-17. Level Controls.

Adequate level control devices shall be provided to maintain water levels in storage structures.

~~R309-545-18. Security.~~

~~Locks on access manholes, and other necessary precautions shall be provided to prevent unauthorized entrance, vandalism, or sabotage.~~

]

R309-545-~~19~~18. Safety.

(1) Utah OSHA.

The safety of employees shall be considered in the design of the storage structure. Ladders, ladder guards, platform railings, and safety located entrance hatches shall be provided where applicable. As a minimum, ~~[such matters]~~ safety practices shall conform to pertinent laws and regulations of the Utah Occupational Safety and Health ~~[Administration]~~ Division.

(2) Ladders.

~~[Generally,]~~ Ladders having an unbroken length in excess of 20 feet shall be provided with appropriate safety ~~[devices.]~~ features, such as a safety cage, a safety harness, platforms, etc. ~~[—This requirement shall apply both to interior and exterior reservoir ladders.]~~

(3) Requirements for Elevated Tanks.

Elevated tanks shall have railings or handholds provided ~~[for] to~~ ~~[transfer from the]~~ access ~~[tube to]~~ the water compartment safely.

R309-545-~~20~~19. Disinfection.

Drinking water storage structures shall be disinfected before being put into service for the first time, and after being entered for cleaning, repair, or painting. The ~~[reservoir]~~ tank shall be cleaned of all refuse and shall then be washed with ~~[potable]~~ drinking water prior to adding the disinfectant. AWWA Standard C652-~~[02]~~11 shall be followed for ~~[reservoir]~~ tank disinfection~~;~~ ~~[—with the exception there shall be no delivery of waters used in the disinfection process to the distribution system, unless specifically authorized, in writing, by the Director.]~~

Upon completing any of the three methods for storage tank chlorination, as outlined in AWWA C652-~~[02]~~11, the water system must properly dispose of residual super-chlorinated waters in the outlet pipes. Other super-chlorinated waters, which are not to be ultimately diluted and delivered into the distribution system, shall also be properly disposed. Chlorinated water discharged from the storage tank shall be disposed of in conformance with R317 of the Utah Administrative Code.

~~[—Chlorinated water discharged from the storage tank shall be disposed of in an acceptable manner and in conformance with the rules of the Utah Water Quality Board (see R317 of the Utah Administrative Code).]~~

R309-545-~~21~~20. [Incorporation by Reference] Tank Standards.

~~[The following list of Standards shall be considered as incorporated by reference in this specific rule. The most recent published copy of the referenced standard will apply in each case.]~~ The plans and specifications shall incorporate the applicable portions of the following standards:

(1) AWWA Standards.

(a) C652-~~[02]~~11, Disinfection of Water Storage Reservoirs.

(b) D100-~~[05]~~11, Welded Steel Tanks for Water Storage.

(c) D101-53~~[(R86)]~~, Inspecting and Repairing Steel Water Tanks, Standpipes, Reservoirs, and Elevated Tanks for Water Storage.

(d) D102-~~[03]~~11, Coating Steel Water-Storage Tanks.

(e) D103-~~[97]~~09, Factory-Coated Bolted Steel Tanks for Water Storage.

(f) D104-~~[04]~~11, Automatically Controlled, Impressed-Current Cathodic Protection for the Interior Submerged Surfaces of Steel Water Tanks.

(g) D110-~~[04]~~13, Wire- and Strand-Wound, Circular, Prestressed-Concrete Water Tanks ~~[(including addendum D110a-96)].~~

(h) D115-~~[95]~~06, ~~[(Circular Prestressed Concrete Water Tanks With Circumferential Tendons)]~~ Tendon-Prestressed Concrete Water Tanks.

(i) D120-~~[02]~~09, Thermosetting Fiberglass-Reinforced Plastic Tanks.

(j) D130-~~[02]~~11, ~~[Flexible Membrane Lining and Floating-Cover Materials for Potable Water Storage]~~ Geomembrane Materials for Potable Water Applications.

(2) NSF International Standards.

(a) NSF 60, Drinking Water Treatment Chemicals - Health Effects.

(b) NSF 61, Drinking Water System Components - Health Effects.

(3) Utah OSHA.

Applicable standards of the Utah Occupational Safety and Health ~~[Administration]~~ Division are hereby incorporated by reference.

R309-545-2~~[2]~~1. Operation and Maintenance of Storage Tanks.

(1) Inspection and Cleaning.

Tanks ~~[which]~~ that are entered for inspection and cleaning shall be disinfected in accordance with AWWA Standard C652-~~[02]~~11 prior to being returned to service. ~~[—When diver(s) enter storage tanks that have not been drained for inspection purposes, they shall comply with section five of the above standard unless the tank is constructed of steel, in which case they shall comply additionally with AWWA Standard D101-53(R86).]~~

(2) Recoating or Repairing.

Any substance used to recoat or repair the interior of a drinking water storage tank shall be certified to conform ~~[with]to~~ ANSI/NSF Standard 61. If the tank is not drained for recoating or repairing, any substance or material used to repair ~~the~~ interior coatings or cracks shall be suitable for underwater application, as indicated by the manufacturer, as well as comply with both ANSI/NSF Standards 60 and 61. Recoating of the interior of a drinking water tank shall comply with the plan review requirements of R309-500-5(1)(c)(i).

(3) Seasonal Use.

Water storage tanks which are operated seasonally shall be flushed and disinfected in accordance with AWWA Standard C652-~~[02]~~11 prior to each season's use. Certification of proper disinfection~~;~~ ~~as evidenced by at least one satisfactory bacteriologic sample;~~ shall be obtained by the water system ~~[management]~~ and kept on file~~;~~ ~~[for inspection by personnel of the Division.]~~ During the non-use period, care shall be taken to see that openings to the water storage tank (those which are normally closed and sealed during normal use) are closed and secured.

KEY: drinking water, storage tanks, access, overflow and drains

Date of Enactment or Last Substantive Amendment: ~~[April 27, 2009]~~2014

Notice of Continuation: March 22, 2010

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Drinking Water R309-550 Facility Design and Operation: Transmission and Distribution Pipelines

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38536

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Engineering Section of the Division of Drinking Water was tasked to review the Drinking Water R309-500 series rules for revisions, clarifications, corrections, updates, etc.

SUMMARY OF THE RULE OR CHANGE: It has been several years since Rule R309-550 was reviewed and revised as a whole. This rule contains several outdated and incorrect references to the AWWA standards. The proposed modifications to Rule R309-550 include the following: 1) add the requirement for pressure reducing valves (PRV) stations on new water distribution lines when the water pressure exceeds 150 psi; 2) modify the Hydraulic Analysis section to reflect hydraulic modeling rule requirements when applicable; 3) clarify the minimum pipeline size by use; 4) modify the rule language pertaining to fire protection and fire hydrants to reflect the requirements of the State Fire Marshall; 5) add the

requirement for special design on community systems in areas of geologic hazard; 6) revise to include the new federal requirement for "lead-free" materials; 7) clarify the chamber drainage requirements; 8) add a new section on control valve stations including PRVs, backflow devices, and meters; 9) revise the minimum separation standards and add specific requirements for allowing sewer and water lines to be closer together under certain circumstances; 10) add installation standards for HDPE and steel pipes; 11) clarify the pipe design criteria for surface water crossings; 12) eliminate the redundant section on exceptions; 13) make miscellaneous changes to correct formatting, and grammar and to make the intent of the rule more easily understood; and 14) correct numerous outdated and incorrect references.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-550. Because this rule amendment only makes this type of changes, it should not significantly increase Division staff time in administering the amended rule. Therefore, there should be no significant cost or savings from the proposed rule amendment to the state budget.

◆ **LOCAL GOVERNMENTS:** The Division of Drinking Water regulates public drinking water systems and local governments are not part of the regulated community. Because of the type of this rule amendment, it should not affect local governments. Therefore, there should be no significant cost or savings from the proposed rule amendment to local government.

◆ **SMALL BUSINESSES:** The Division of Drinking Water regulates public drinking water systems and small businesses are not part of the regulated community. Because of the type of this rule amendment, it should not affect small businesses. Therefore, there should be no significant cost or savings from the proposed rule amendment to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Drinking Water regulates public drinking water systems and persons other than small businesses, businesses, and local government entities are not part of the regulated community, unless they are a public water system. Because of the type of this rule amendment, it should not affect persons other than small businesses, businesses, or local government entities. Therefore, there should be no significant cost or savings from the proposed rule amendment to persons to other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division of Drinking Water regulates public drinking water systems. This rule amendment makes revisions, clarifications, corrections, updates, etc. to Rule R309-550. Because of the type of these changes in the rule, it should not significantly increase the time public drinking water systems and their engineering consultants spend in submitting

projects for plan review and approval. Therefore, there should be no significant cost or savings from this rule amendment to the public water systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes will not significantly impact businesses as the changes clarify compliance with the drinking water rules and update referenced standards for public drinking water systems.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
DRINKING WATER
THIRD FLOOR

195 N 1950 W

SALT LAKE CITY, UT 84116-3085

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bob Hart by phone at 801-536-0054, by FAX at 801-536-4211, or by Internet E-mail at bhart@utah.gov
- ◆ Tammy North by phone at 801-536-4293, by FAX at 801-536-4211, or by Internet E-mail at tnorth@utah.gov
- ◆ Ying-Ying Macauley by phone at 801-536-4188, by FAX at 801-536-4211, or by Internet E-mail at ymacauley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.

R309-550. Facility Design and Operation: Transmission and Distribution Pipelines.

R309-550-1. Purpose.

The purpose of this rule is to provide specific requirements for the design and installation of transmission and distribution pipelines ~~which~~ that are utilized to deliver ~~ordinary~~ drinking water to facilities of public drinking water systems or to consumers. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation, and maintenance of public drinking water system facilities. These rules are intended to assure that ~~such~~ these facilities are reliably capable of supplying adequate quantities of water, which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-550-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-550-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-550-4. General.

Transmission and distribution pipelines shall be designed, constructed and operated to convey adequate quantities of water at ample pressure, while maintaining water quality.

R309-550-5. Water Main Design.

(1) Distribution System Pressure.

~~(a) The distribution system shall be designed to maintain minimum pressures as required in R309-105-9 [at ground level] at [all] points of connection, under all conditions of flow[;], [but especially during peak day flow conditions, including fire flows;]~~

(b) When static pressure exceeds 150 psi in new distribution water lines, pressure reducing devices shall be provided on mains in the distribution system where service connections exist.

(2) ~~[Assumed]~~ Design Flow Rates.

Flow rates ~~[to be assumed]~~ used when designing or analyzing distribution systems shall ~~[be]~~ meet the minimum requirements ~~[as given]~~ in R309-510, ~~[of these rules;]~~

(3) ~~[Computerized Network]~~ Hydraulic Analysis.

~~(a) All water mains shall be sized [after] following a hydraulic analysis based on flow demands and pressure requirements. [If the calculations needed to conduct this hydraulic analysis are complex, a computerized network analysis shall be performed to verify that the distribution system will be capable of meeting the requirements of this rule.]~~

~~(b) Where improvements will upgrade more than 50% of an existing distribution system, or where a new distribution system is proposed, a hydraulic analysis of the entire system shall be prepared and submitted for review prior to plan approval.~~

~~(c) [In the analysis and design of water distribution systems, the following Hazen-William coefficients shall be used: PVC pipe = 140; Ductile Iron Pipe = 120; Cement-Mortar Lined Ductile Iron Pipe = 130 to 140.] Some projects require a hydraulic model. The Division may require submission of a hydraulic modeling report and/or certification, as outlined in R309-511, prior to plan approval.~~

(4) Minimum Water Main Size.

For water mains not connected to fire hydrants, the minimum line size shall be 4[-] inches in diameter[-], unless it serves picnic sites, parks, semi-developed camps, primitive camps, or roadway rest-stops. Minimum water main size, serving a fire hydrant lateral, shall be 8[-] inches in diameter unless a hydraulic analysis indicates that required flow and pressures can be maintained by ~~[smaller]~~ 6-inch lines.

(5) Fire Protection.

~~[If]~~ When a public water system is required to provide water for fire ~~[suppression]~~ flow by the local fire ~~[authority]~~ code official, or if the system has installed fire hydrants on existing distribution mains for that purpose:

(a) The design of the distribution system shall be consistent with the fire flow requirements as determined by the local fire code official. [Appendix B of the 2003 International Fire Code. As specified in this code, minimum fire flow requirements are:]

~~[(i) 1000 gpm for one- and two-family dwellings with an area of less than 3600 square feet.~~

~~[(ii) 1500 gpm or greater for all other buildings.]~~

(b) The location of fire hydrants shall be consistent with ~~Appendix C of the 2003 International Fire Code. As specified in this code, average spacing between hydrants must be no greater than 500 ft.]~~ the requirements of the State adopted fire code and as determined by the local fire code official.

~~(c) An exception to the fire protection requirements of (a) and (b) may be granted if a suitable statement is received from the local fire protection authority.~~

~~(d) Water mains not designed to carry fire flows shall not have fire hydrants connected to them.~~

~~(e)~~(c) The pipe network design shall permit fire flows to be met at ~~The design engineer shall verify that the pipe network design permits fire flows to be met at~~ representative locations while minimum pressures as required in R309-105-9 are maintained at all times and at all points in the distribution system.

(d) Fire hydrant laterals shall be a minimum of 6 inches in diameter.

~~(f) As a minimum, the flows to be assumed during a fire-flow analysis shall be the "peak day demand" plus the fire flow requirement.~~

(6) Geologic Considerations.

The character of the soil through which water mains are to be laid shall be considered. ~~This information shall accompany any submittal for a pipeline project.]~~ Special design and burial techniques shall be employed for Community water systems in areas of geologic hazard (e.g., slide zones, fault zones, river crossings, etc.)

(7) Dead Ends.

(a) In order to provide increased reliability of service and reduce head loss, dead ends shall be minimized by making appropriate tie-ins whenever practical.

(b) Where dead-end mains occur, they shall be provided with a fire hydrant if flow and pressure are sufficient, or with an approved flushing hydrant or blow-off for flushing purposes. Flushing devices shall be sized to provide flows ~~which]that~~ will give a velocity of at least 2.5 fps in the water main being flushed. No flushing device shall be directly connected to any sewer.

(8) Isolation Valves.

Sufficient valves shall be provided on water mains so that inconvenience and sanitary hazards will be minimized during repairs. Valves shall be located at not more than 500 foot intervals in commercial districts and at not more than one block or 800 foot intervals in other districts. Where systems serve widely scattered customers and where future development is not expected, the valve spacing shall not exceed one mile.

(9) Corrosive Soils and Waters.

The design engineer shall consider the materials to be used when corrosive soils or waters will be encountered.

(10) Special Precautions in Areas of ~~Groundwater-] Contamination[by Organic Compounds].~~

Where distribution systems are installed in areas of ~~groundwater]contamination[ed by organic compounds]:~~

(a) pipe and joint materials, which are not subject to contamination such as permeation of the organic compounds, shall be used[-]; and

(b) non-permeable materials shall be used for all portions of the system including water mains, service connections, and hydrant leads.

(11) ~~Separation of-]Water Mains [from]and Other Sources of Contamination.~~

Design engineers shall exercise caution when locating water mains at or near certain sites such as sewage treatment plants or industrial complexes. Individual septic tanks shall be located and avoided. The engineer shall contact the Division to establish specific design requirements for locating water mains near any source of contamination.

R309-550-6. Component Materials and Design.

(1) ~~ANSI/NSF Standard for Health Effects.~~

All materials ~~which]that~~ may come in contact with drinking water, including pipes, gaskets, lubricants and O-Rings, shall be ANSI-certified as meeting the requirements of ANSI/NSF Standard 61, Drinking Water System Components - Health Effects. To permit field-verification of this certification, all ~~such-]components~~ shall be appropriately stamped with the NSF logo.

(2) ~~Restrictions on-]Asbestos and Lead.~~

(a) The use of asbestos cement pipe shall not be allowed.

(b) Pipes and pipe fittings installed after January 4, 2014, ~~containing more than 8% lead shall not be used. Lead-tip gaskets shall not be used. Repairs to lead-joint pipe shall be made using alternative methods-] are required to be "lead free" in accordance with Section 1417 of the Federal Safe Drinking Water Act. They shall be certified as meeting ANSI/NSF 372 or Annex G of ANSI/NSF 61.~~

(3) ~~AWWA-]Standards for Mechanical Properties.~~

Pipe, joints, fittings, valves, and fire hydrants shall conform to ANSI/NSF Standard 61 ~~or Standard 14], and applicable sections of [ANSI]AWWA Standards C104-A21.4-0[3]8 through C550-05 and C900-07 through C950-07.~~

(4) Used Materials.

Only materials ~~which]that~~ have been used previously for conveying ~~potable]drinking~~ water may be reused. Used materials shall meet the above standards, be thoroughly cleaned, and be restored ~~practically-] to their original condition.~~

(5) Fire Hydrants ~~Design].~~

(a) Hydrant drains shall not be connected to, or located within, 10 feet of sanitary sewers, and where possible ~~or-] storm drains.~~

(b) Auxiliary valves shall be installed in all hydrant leads.

(c) Hydrant drains shall be installed with a gravel packet or dry well unless the natural soils will provide adequate drainage.

(6) Air Relief Valves and Blow-Offs.

At high points in water mains where air can accumulate, provisions shall be made to remove air by means of hydrants or air relief valves. ~~Automatic air relief valves shall not be used in situations where flooding may occur.]~~

(a) The open end of the air relief vent pipe from automatic valves shall be provided with a #14 mesh, non-corrodible screen and a downward elbow, and where possible, be extended to at least one foot above grade. Alternatively, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding, or if it meets the requirements of (7). Chamber Drainage.

(b) Blow-offs or air relief valves shall not be connected directly to any sewer.

(c) Adequate hydrants or blow-offs shall be provided to allow periodic flushing and cleaning.

(d) The air relief valve shall be placed to prevent problems due to freezing. A shut-off valve shall be provided to permit servicing of any air relief valve.

~~_____ (a) Air Relief Valve Vent Piping.~~

~~The open end of an air relief vent pipe from automatic valves shall, where possible as determined by public water system management, be extended to at least one foot above grade and provided with a screened (#14 mesh, non-corrodible) downward elbow. Alternately, the open end of the pipe may be extended to as little as one foot above the top of the pipe if the valve's chamber is not subject to flooding and provided with a drain to daylight (See (b) below). Blow-offs or air relief valves shall not be connected directly to any sewer.~~

~~] ~~(b)~~(7) Chamber Drainage.~~

~~(a) Chambers, pits, or manholes containing valves, blow-offs, meters, or other such appurtenances to a distribution system, shall not be connected directly to any storm drain or sanitary sewer.~~

~~(b) ~~[They]~~Chambers shall be provided with a drain to daylight~~[-]~~, if possible. Where this is not possible, underground gravel~~[-]~~filled absorption pits may be used if the site is not subject to flooding and conditions will assure adequate drainage. Sump pumps may also be considered if a drain to daylight or absorption pit is not feasible.~~[Where a chamber contains an air relief valve, and it is not possible to provide a drain to daylight, the vent pipe from the valve shall be extended to at least one foot above grade (See (a) above). Only when it is both impossible to extend the vent pipe above grade, and impossible to provide a drain to daylight may a gravel-filled sump be utilized to provide chamber drainage (assuming local ground conditions permit adequate drainage without ground water intrusion).]~~~~

~~(8) Control Valve Stations~~

~~(a) Pressure Reducing Valves (PRVs)~~

~~(i) Isolation Valves shall be installed on either side of the pressure reducing valve.~~

~~(ii) Where variable flow conditions will be encountered, consideration should be given to providing a low-flow and a high-flow line.~~

~~(b) Backflow Devices~~

~~Installation of Backflow devices shall conform to the State-adopted plumbing code.~~

~~(c) Meters~~

~~Meter installation shall conform to the State-adopted plumbing code and local jurisdictional standards.~~

R309-550-7. Separation of Water Mains and Transmission Lines from Sewers~~[and Other Pollution Sources]~~.

~~(1) Basic Separation Standards.~~

~~(a) The horizontal distance between ~~[pressure-]~~water ~~[mains]~~lines and sanitary sewer lines shall be at least ~~[ten]~~10 feet. Where a water main and a sewer line must cross, the water main shall be at least 18 inches above the sewer line. Separation distances shall be measured edge-to-edge (i.e. from the nearest edges of the facilities).~~

~~(b) Water mains and sewer lines shall not be installed in the same trench.~~

~~_____ (2) Exceptions to Basic Separation Standards.~~

~~] ~~(c) Where ~~[E]~~local conditions make it impossible to ~~[,]~~ such as available space, limited slope, existing structures, etc., may create a situation where there is no alternative but to install water ~~[mains-]~~or sewer lines at separation distances~~[a distance less than that]~~ required by ~~[S]~~subsection ~~(1)~~a, above~~[-]~~, and the sewer pipes are in good condition, and there is not high groundwater in the area, it may be acceptable if the design includes a minimum horizontal separation of 6 feet and a minimum vertical clearance of 18 inches with the waterline~~~~

being above. In order to determine whether the design is acceptable, the following information shall be submitted as part of the plans for review. [Exceptions to the rule may be provided by the Director if it can be shown that the granting of such an exception will not jeopardize the public health.]

_____ (i) reason for not meeting the minimum separation standard;
_____ (ii) location where the water and sewer line separation is not being met;

_____ (iii) horizontal and vertical clearance that will be achieved;
_____ (iv) sewer line information including pipe material, size, age, type of joints, thickness or pressure class, whether the pipe is pressurized or not, etc.;

_____ (v) water line information including pipe material, size, age, type of joints, thickness or pressure class, etc.;

_____ (vi) ground water and soil conditions; and

_____ (vii) any mitigation efforts.

(d) If the basic separation standards as outlined in subsections (a) through (c) above cannot be met, an exception to the rule can be applied for with additional mitigation measures to protect public health, in accordance with R309-105-6(2)(b).

(3) Special Provisions.

The following special provisions apply to all situations:

(a) The basic separation standards are applicable under normal conditions for sewage collection lines and water distribution mains. More stringent requirements may be necessary if conditions such as high groundwater exist.

~~_____ (b) Sewer lines shall not be installed within 25 feet horizontally of a low head (5 psi or less pressure) water main.~~

~~] ~~(c)~~(b) ~~[Sewer lines shall not be installed within 50 feet horizontally of any transmission line segment which may become unpressurized.]~~All water transmission lines that may become unpressurized shall not be installed within 20 feet of sewer lines.~~

~~_____ (d) New water mains and sewers shall be pressure tested where the conduits are located ten feet apart or less.~~

~~] ~~(e)~~(c) In the installation of water mains or sewer lines, measures shall be taken to prevent or minimize disturbances of the existing line.~~

~~_____ (f)~~(d) Special consideration shall be given to the selection of pipe materials if corrosive conditions are likely to exist or where the minimum separation distances cannot be met. These conditions may be due to soil type, groundwater, and/or the nature of the fluid conveyed in the conduit, such as a septic sewage which produces corrosive hydrogen sulfide.

~~_____ (g)~~(e) Sewer Force Mains

~~_____ (i) Sewer force mains shall not be installed within ten feet (horizontally) of a water main.~~

~~_____ (ii) When a sewer force main must cross a water line, the crossing shall be as close as practical to the perpendicular. The sewer force main shall be at least 18 inches below the water line.~~

~~] ~~(iii)~~(i) When a new sewer force main crosses under an existing water main, all portions of the sewer force main within ~~[ten]~~10 feet (horizontally) of the water main shall be enclosed in a continuous sleeve.~~

~~_____ (iv)~~(ii) When a new water main crosses over an existing sewer force main, the water main shall be constructed of pipe materials with a minimum rated working pressure of 200 psi or equivalent pressure rating.

~~(4) Water Service Laterals Crossing Sewer Mains and Laterals.~~

Water service laterals shall conform to all requirements given herein for the separation of water and sewer lines.

R309-550-8. Installation of Water Mains.

(1) Standards.

~~[(a)]~~The specifications shall incorporate the provisions of the manufacturer's recommended installation procedures or the following applicable standards:

~~[(+)](a)~~ For ductile iron pipe, AWWA Standard C600-10~~[05]~~, Installation of Ductile Iron Water Mains and Their Appurtenances;

~~[(+)](b)~~ For PVC pipe, ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and PVC Pipe and AWWA Manual of Practice M23, 2003;

~~(c)~~ For HDPE pipe, ASTM D2774, Recommended Practice for Underground Installation of Thermoplastic Pressure Piping and AWWA Manual of Practice M55, 2006; and

~~(d)~~ For Steel pipe, AWWA Standard C604-11, Installation of Buried Steel Water Pipe- 4 inch and Larger.

~~[(b)]~~ The provisions of the following publication shall be followed for PVC pipe design and installation:

~~PVC Pipe - Design and Installation, AWWA Manual M23, 2002, published by the American Water Works Association~~

(2) Bedding.

A continuous and uniform bedding shall be provided in the trench for all buried pipe. Stones larger than the backfill materials described below shall be removed for a depth of at least ~~six~~ 6 inches below the bottom of the pipe.

(3) Backfill.

Backfill material shall be tamped in layers around the pipe and to a sufficient height above the pipe to adequately support and protect the pipe. The material and backfill zones shall be as specified by the standards referenced in Subsection (1), above. As a minimum:

(a) ~~[F]~~for plastic pipe, backfill material with a maximum particle size of 3/4 inch shall be used to surround the pipe; ~~and, [-]~~

(b) ~~[F]~~for ductile iron pipe, backfill material shall contain no stones larger than 2 inches.

(4) Dropping Pipe into Trench.

Under no circumstances shall the pipe or accessories be dropped into the trench.

(5) Burial Cover.

All water mains shall be covered with sufficient earth or other insulation to prevent freezing, unless they are part of a non-community system that can be shut-down and drained during winter months when temperatures are below freezing.

(6) Thrust Blocking.

All tees, bends, plugs, and hydrants shall be provided with ~~[reaction]~~thrust blocking, anchoring, tie rods, or restraint joints designed to prevent movement. Restraints shall be sized to withstand the forces experienced.

(7) Pressure and Leakage Testing.

All types of installed pipe shall be pressure tested and leakage tested in accordance with AWWA Standard C600-~~[99]~~ 10.

(8) Surface Water Crossings.

(a) Above Water Crossings

The pipe shall be adequately supported and anchored, protected from damage and freezing, and accessible for repair or replacement.

(b) Underwater Crossings

(i) A minimum cover of ~~[two]~~ 2 feet or greater, as local conditions may dictate, shall be provided over the pipe.

(ii) When crossing water courses ~~[which]that~~ are greater than 15 feet in width, the following shall be provided:

~~[(+)](A)~~ ~~[The p]~~Pipe with joints shall be of special construction, having restrained joints for any joints within the surface water course and flexible restrained joints at both edges of the water course.

~~[(+)](B)~~ Isolating ~~[V]~~valves shall be provided ~~at~~ on both ~~[ends]sides~~ of the water crossing[s] at locations not subject to high ground water or flooding, so that the section can be isolated for testing or repair; ~~the valves shall be easily accessible, and not subject to flooding; and the valve nearest to the supply source shall be in a manhole.]~~

~~[(+)](C)~~ A means shall be provided, such as a sampling tap, not subject to flooding, to allow for representative water quality testing on the upstream and downstream side of the crossing. ~~[Permanent taps shall be made on each side of the valve within the manhole to allow insertion of testing equipment to determine leakage and for sampling purposes.]~~

~~(D)~~ A means shall be provided to pressure test the underground water crossing pipe.

(9) Sealing Pipe Ends During Construction.

The open ends of all pipelines under construction shall be covered and effectively sealed at the end of the day's work.

(10) Disinfecting Water ~~[Distribution Systems]Lines.~~

All new water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-05 or a method approved by the Director. The specifications shall include detailed procedures for the adequate flushing, disinfection and microbiological testing of all water mains. On all new and extensive distribution system construction, evidence of satisfactory disinfection shall be provided to the Division. Samples for coliform analyses shall be collected after disinfection is complete and the system is refilled with ~~[potable]drinking~~ water. A standard heterotrophic plate count is advisable. The use of water for ~~[eutinary]public drinking water~~ purposes shall not commence until the bacteriologic tests indicate the water ~~[to be]is~~ free from contamination.

R309-550-9. Cross Connections and Interconnections.

(1) Physical Cross Connections.

There shall be no physical cross connections between the distribution system and pipe, pumps, hydrants, or tanks ~~[which are supplied from, or which]that~~ may be ~~[supplied or]~~contaminated from~~[-]~~ any source, including pressurized irrigation. ~~[-except as approved by the Director.]~~

(2) Recycled Water.

Neither steam condensate nor cooling water from engine jackets or other heat exchange devices shall be returned to the ~~[potable]drinking~~ water supply.

(3) System Interconnects.

The ~~[approval of the Director shall be obtained for]~~ interconnections between different ~~[potable]drinking water [supply]~~ systems shall be reviewed and approved by the Director.

R309-550-10. Water Hauling.

(1) Community Water Systems.

Water hauling is not an acceptable permanent ~~[method]source~~ for ~~[eutinary]drinking~~ water distribution in

community water systems. ~~Proposals for water hauling shall be submitted to and approved by the Director.~~

~~(+)(2) [Exceptions: Non-community Systems.~~

The Director may allow ~~its~~ water hauling ~~use~~ for non-community public water ~~supplies~~ systems by special approval if:

(a) consumers ~~could~~ can not otherwise be supplied with good quality drinking water~~;~~; or,

(b) the nature of the development, or ground conditions, are such that the placement of a pipe distribution system is not justified.

Proposals for water hauling shall be submitted to, and approved by, the Director.

~~(2)(3) Emergencies.~~

Water [H]hauling [may also be necessary as] may be a temporary means of providing [eulinary]drinking water in an emergency.

R309-550-11. Service Connections and Plumbing.

(1) Service Taps.

Service taps shall ~~be made so as to~~ not jeopardize the ~~sanitary~~ quality of the system's water.

(2) Plumbing.

~~(a) Service lines shall be capped until used.~~

~~(b)(a) Water services and plumbing shall conform to the Utah Plumbing Code. [Solders and flux containing more than 0.2% lead and pipe and pipe fittings containing more than 8% lead shall not be used.]~~

(b) Pipes and pipe fittings installed after January 4, 2014, are required to be "lead-free" in accordance with Section 1417 of the federal Safe Drinking Water Act. They shall be certified meeting the ANSI/NSF 372 or Annex G of ANSI/NSF 61.

(3) Individual Home Booster Pumps.

Individual booster pumps shall not be allowed for any individual service from the public water supply mains. Exceptions to the rule may be ~~provided~~ granted by the Director if it can be shown that the granting of such an exception will not jeopardize the public health.

(4) Service Lines.

(a) Service lines shall be capped until connected for service.

(b) The portion of the service line under the control of the water [supplier]system is considered to be part of the distribution system, [and shall comply with all requirements given herein.]

(5) Service Meters and Building Service Line.

Connections between the service meter and the home shall be in accordance with the Utah Plumbing Code.

~~(6) Allowable Connections.~~

~~All dwellings or other facilities connected to a public water supply shall be in conformance with the Utah Plumbing Code.~~

R309-550-12. Transmission Lines.

(1) Unpressurized Flows.

Transmission lines shall conform to all applicable requirements in this rule. Transmission line design shall minimize unpressurized flows.

(2) Proximity to Concentrated Sources of Pollution.

A water supplier shall not route an unpressurized transmission line any closer than ~~fifty~~ 20 feet to any concentrated

source of pollution (~~[i.e.]e.g.~~ septic tanks and drain fields, garbage dumps, pit privies, sewer lines, feed lots, etc.). Furthermore, unpressurized transmission lines shall not be placed in boggy areas or areas subject to the ponding of water.

~~(3) Exceptions.~~

~~Where the water supplier cannot obtain a fifty foot separation distance from concentrated sources of pollution, it is permitted to use a Class 50 ductile iron pipe with joints acceptable to the Director. Reasonable assurance must be provided to assure that contamination will not be able to enter the unpressurized pipeline.~~

R309-550-13. Operation and Maintenance.

(1) Disinfection After Line Repair.

The disinfection procedures of Section 4.7, AWWA Standard C651-05 shall be followed if any water main is cut into or repaired.

(2) Cross Connections.

The water ~~supplier~~ system shall not allow a connection ~~which~~ that may jeopardize water quality. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of the Utah Plumbing Code shall be met with respect to cross connection control and backflow prevention.

[Suppliers]Water systems shall maintain an inventory of each pressure vacuum breaker assembly, spill-resistant vacuum breaker assembly, double check valve assembly, reduced pressure principle backflow prevention assembly, and high hazard air gap used by their customers, and a service/inspection record for each such assembly.

Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work. This responsibility may be borne by the water system or the water system management may require that the customer ~~having~~ with the backflow prevention assembly be responsible for having the device tested.

[Suppliers]Water systems serving areas also served by a pressurized irrigation system shall ~~prevent~~ not allow cross connections between the two. ~~Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.~~

(3) ANSI/NSF Standards.

All pipe and fittings used in routine operation and maintenance shall be ANSI-certified as meeting NSF Standard 61 or Standard 14.

(4) Seasonal Operation.

Water systems operated seasonally shall be disinfected and flushed according to ~~the techniques given in~~ AWWA Standard C651-05 for pipelines and AWWA Standard C652-~~02~~ 11 for storage facilities prior to each season's use. A satisfactory bacteriologic sample shall be ~~achieved~~ obtained prior to use. During the non-use period, care shall be taken to close all openings into the system.

KEY: drinking water, transmission and distribution pipelines, connections, water hauling

Date of Enactment or Last Substantive Amendment: [March 8, 2006]2014

Notice of Continuation: March 22, 2010

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Water Quality **R317-1-3** Requirements for Waste Discharges

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38530

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This agency action is essential to prevent further deterioration of state waters due to nutrient pollution. It is an important and moderate first step in the Department's nutrient strategy that will ultimately provide effective and permanent protection of state waters.

SUMMARY OF THE RULE OR CHANGE: The current language of Subsection R317-1-3(3.3) about extensions to deadlines for compliance is no longer relevant and is being replaced with new language for technology-based limits for controlling nutrient pollution. This change incorporates a technology-based effluent limit of 1.0 milligram per liter phosphorus into Utah Pollutant Discharge Elimination System permits for all non-lagoon treatment works that discharge into surface waters of the state. For lagoon treatment systems, the change establishes a cap of 125% times the current average annual phosphorus load being discharged. Four exceptions are defined in the rule change. Where conditions of exception are demonstrated, no technology based limits or loading cap will be applied. The exceptions are as follows: 1) phosphorus effluent limits are established by TMDL; 2) receiving water phosphorus concentration will not be increased by more than 10% at the point of discharge; 3) economic hardship; or 4) effluent limits or loading cap are clearly unnecessary to protect downstream uses of the receiving water body. Also included are some corrections to references to conform with recommended formatting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 19, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Aggregate anticipated cost to the state budget is approximately \$250,000 over five years for engineering, construction, and financial management of capital improvement projects. Funds will be generated through State Revolving Fund loan initiation fees.

♦ **LOCAL GOVERNMENTS:** Non-rural cities, towns, and service districts owning wastewater treatment works may require capital improvements and/or increased annual operating expenses to meet the requirements of this rule change. Statewide costs for wastewater treatment works capital improvements are estimated to be \$27,000,000 (FY2017 U.S. dollars) with increased annual operating cost of \$5,100,000 total (FY2020 U.S. dollars) for 29 mechanical treatment plants serving approximately 700,000 effective

residential units (ERU). Users of affected wastewater treatment systems on average will pay an additional \$1.34 per month per ERU. These costs were adapted from "Statewide Nutrient Removal Cost Impact Study," Final Report, prepared for Utah Division of Water Quality (UDWQ) by CH2M-HILL, October 2010. In a companion study titled "Economic Benefits of Nutrient Reduction in Utah Waters," Final Report, completed for UDWQ by CH2M-HILL in April 2013, Utahns surveyed were willing to pay between \$7 and \$15 per month in higher utility bills to prevent further deterioration of water quality associated with nutrient pollution. Rural communities will, in general, not be affected by this change until they have grown by at least 25%. Treatment alternatives and optimization will then minimize future costs.

♦ **SMALL BUSINESSES:** Average monthly sewer bills in non-rural cities, towns, and service districts may increase by \$1.34 per month (FY2020 U.S. dollars). For small businesses, this additional cost equates to approximately \$0.22 per employee per month. Optimization of treatment plant operations will reduce these costs.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Average monthly sewer bills in non-rural cities, towns, and service districts may increase by \$1.34 per month with a maximum estimated increase of \$4.30 per month (FY2020 U.S. dollars). Optimization of treatment plant operations will reduce these costs as much as 100 per cent.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The affected persons will generally be those living in households in non-rural cities, towns, and service districts. In order to comply with this rule, the average monthly sewer bills for those households may increase by \$1.34 per month. For average households this additional cost equates to approximately \$0.40 per person per month (FY2020 U.S. dollars).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed controls for phosphorus established by this action are achievable using current technologies employed in wastewater treatment in Utah and are consistent with controls implemented throughout the U.S. Current scientific understanding of the relationship between phosphorus loading and ecological response predicts a beneficial outcome, i.e., waters of the state will be preserved and protected for their designated beneficial uses. Few Utah businesses will be affected by this rule other than through sewer rates, which may increase by \$0.22 per employee per month (FY2020 U.S. dollars) without treatment optimization. Two Utah industries that have the potential to discharge phosphorus into waters of the state were identified. JB Swift and Co. currently meets the proposed effluent limit of 1 mg/L due to TMDL restrictions, satisfying the first exception to the rule. ATK Launch Systems, adds phosphorus to its wastewater treatment system to promote biological treatment of a groundwater contaminant (perchlorate). ATK has indicated that it intends to pursue an exception to the rule.

Treatment optimization may also be practical to minimize costs to this industry.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/03/2014 07:00 PM, Central Valley Water Reclamation Facility, 800 W Central Valley Rd, South Salt Lake. UT
♦ 06/12/2014 07:00 PM, Orem City Council Chambers, 56 N State St, Orem, UT
♦ 06/19/2014 07:00 PM, Ash Creek SSD, 1350 S Sand Hollow Rd, Hurricane, UT
♦ 06/24/2014 07:00 PM, Weber Basin Water Conservancy District, 2837 E Highway 193, Layton, UT
♦ 07/09/2014 07:00 PM, Vernal City Hall, 374 E Main St, Vernal, UT
♦ 07/17/2014 07:00 PM, Price City Hall, 185 E Main St, Price, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/29/2014

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-1. Definitions and General Requirements.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

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

3.2 Compliance With Secondary Treatment Requirements.

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

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

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

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

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

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

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

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

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

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

3.3 Technology-based Limits for Controlling Nutrient Pollution.

A. Total Phosphorus Limits

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

2. The phosphorus effluent limit identified in Subsection R317-1-3.3 shall be achieved by January 1, 2020.

B. Discharging Lagoons -Phosphorus Loading Cap

1. No technology-based effluent limit for phosphorus will be instituted for discharging treatment lagoons. Instead, each discharging lagoon will be evaluated to determine the current annual average total phosphorus load based on average flows and concentrations. Absent field data to determine these loads, they will be estimated by the Division.

2. A cap of 125% times the current average annual total phosphorus load will be established. Once the lagoon's phosphorus caps have been reached the owner of the facility will have five years to construct treatment processes or implement treatment alternatives to prevent the total phosphorus loading cap from being exceeded.

C. Exceptions

1. Where an existing TMDL has allocated a total phosphorus wasteload to a treatment works, no technology-based limit or loading cap, as applicable, for total phosphorus will be applied.

2. If the owner of a discharging treatment works can demonstrate that the discharge from the treatment works will not increase the total phosphorus concentration in the receiving water beyond 10%, no technology-based limit or loading cap, as applicable, for total phosphorus will be applied.

3. If the owner of a discharging treatment works can demonstrate that imposing a technology-based limit or loading cap for phosphorus would result in an economic hardship for the users of the treatment works, no technology-based limit or loading cap for phosphorus will be applied. "Economic hardship" is defined as sewer service fees, as a result of implementing a technology-based limit or loading cap for phosphorus, being greater than 1.4% of the median adjusted gross household income of the service area based on the latest information compiled by the Utah Tax Commission.

4. If the owner of a discharging treatment works can demonstrate that the technology-based limit identified in Subsection R317-1-3.3.A, or the loading cap identified in Subsection R317-1-3.3.B, are clearly unnecessary to protect waters downstream from the point of discharge, the technology-based limit or the loading cap, as applicable, will not be applied.

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

E. Monitoring

1. All discharging treatment works with reasonable potential to discharge nitrogen or phosphorus are required to implement, at a minimum, influent monitoring for total phosphorus and total Kjeldahl

nitrogen concentrations, and effluent monitoring for total phosphorus, ammonium (as N), ortho phosphorus, nitrate-nitrite (as N) and total Kjeldahl nitrogen, as follows:

a. annually for treatment works with flows less than 1 mgd;

b. quarterly for treatment works with flows greater than 1 mgd and less than 5 mgd; or

c. monthly for treatment works with flows greater than 5 mgd

2. All monitoring under Subsection R317-1-3.3.E shall be based on 24-hour composite samples.

3. These monitoring requirements shall be self-implementing beginning January 1, 2015. [~~Extensions To Deadlines For Compliance:~~

~~The Director may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.]~~

3.4 Pollutants In Diverted Water Returned To Stream.

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

KEY: water pollution, waste disposal, [~~industrial waste~~]nutrient limits, effluent standards

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: October 2, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

Environmental Quality, Water Quality R317-10 Certification of Wastewater Works Operators

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38531

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of S.B. 21 passed in the 2012 General Legislative Session which instituted changes in the duties and responsibilities of the Water Quality Board and the director of the Division of Water Quality, Rule R317-10 was subjected to intense review by the Office of the Attorney General for compliance with this bill. This amendment contains changes to the program in response to the legislative changes and

others proposed by a workgroup, which included the members of the Wastewater Operator Certification Council and several other individuals from the wastewater community, who were invited to participate as stakeholders. The Water Quality Board is responsible for establishing the rules for certification of the wastewater works operators and this rule establishes the Wastewater Operator Certification Council as an advisory council to the director in that certification program and redefines the specific duties of the council, director, and division staff.

SUMMARY OF THE RULE OR CHANGE: The following changes: 1) change language to reflect the transfer of responsibility for administration of the certification program from the executive secretary of the Water Quality Board to the director of the Division of Water Quality; 2) remove numbering of definitions in coordination with the recent proposed changes to Rule R317-1; 3) revise the membership of the council to better represent those actively involved in the certification program; 4) remove the definition for "Executive Secretary" and replaced it with the definition for "Director"; 5) change subsection numbering and organization to improve organization and expression of the concepts; 6) correct punctuation, capitalization, and references to better comply with Division of Administrative Rules guidelines; 7) add language to include the addition of the requirement of S.B. 81 from 2012 General Legislative Session regarding citizenship or alien identification certification; 8) The "Wastewater Operator Certification Council" is established by the board in an advisory capacity to the director, and the specific duties have been redefined; 9) remove the verbiage specifically offering "oral exams." If ADA accommodations are requested, the applicant would follow established procedures for the specific accommodation; 10) due to the need for tighter security for exams and the demands on staff, the window for requesting exam reviews has been narrowed to ten days after receiving the exam scores; 11) the section about grandfather certificates has been altered to clarify the conditions that allow for maintaining the existing certificates, and include the current requirements for renewal; 12) details of duties that are performed by the division staff, and not the council, have been removed; 13) Section R317-10-13 is redefined to reflect recent legislative changes that now govern challenges to the director's decisions; 14) Section R317-10-14 is modified to describe the process for suspending or revoking a certification under the authority of the director, including correction of the regulating rule reference; 15) change term "gross negligence" to "significant negligence" at the advice of counsel.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 19, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No cost or savings to the state is expected to result from this rule change since most changes are on paper and do not impact the actual operation of the Wastewater Operator Certification Program. All council

members serve on a voluntary basis and receive no monetary compensation for attendance, or travel to meetings. Since council meetings have been held on an "as needed basis," there is no regular schedule for meetings, and this is not expected to change.

◆ **LOCAL GOVERNMENTS:** No cost or savings to local governments are expected due to these changes. The requirements that the local governments need to meet are not affected by these changes. They will still have the same reporting requirements and will still need to have certified operators in charge of the wastewater treatment and collection systems as defined in the rule.

◆ **SMALL BUSINESSES:** No cost or savings to small businesses are expected as these rules apply to political subdivisions of the state and any businesses that wish to have certified operators are doing so on a voluntary basis.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes proposed will only affect other individuals or entities who wish to participate on a voluntary basis. No costs for participation in this program are affected and all fees are established through the regularly established channels.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes do not affect the compliance costs for the affected persons since the changes will only be noticed within the Division of Water Quality as the titles of signatures change and the responsibility for administering the certification program remains with the division.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes proposed in this amendment should have no fiscal impact on businesses, since this particular certification requirement is only for municipalities, and not for businesses unless they voluntarily participate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WATER QUALITY
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.**R317-10. Certification of Wastewater Works Operators.****R317-10-1. Objectives.**

The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel in charge of wastewater works are trained, experienced, reliable and efficient; ~~to~~ protect the public health and the environment; ~~and~~ provide for the health and safety of wastewater works operators; and ~~to~~ establish standards and methods whereby wastewater works operating personnel can demonstrate competency.

R317-10-2. Scope.

A. These certification rules apply to all wastewater treatment works and sewerage systems, with the exception of Onsite Wastewater Systems and Large Underground Wastewater Disposal Systems as defined in Section R317-1-1. This includes both wastewater collection systems and wastewater treatment systems except underground wastewater disposal systems.

B. Wastewater works operated by political subdivisions must employ certified operators as required in this rule.

C. Operators of wastewater systems not requiring certified operators, ~~{such as industrial wastewater treatment systems}~~, may be certified according to provisions of these rules for testing and certification.

R317-10-3. Authority.

The ~~{C}~~certification ~~{P}~~program for ~~{W}~~wastewater ~~{W}~~works ~~{O}~~operators is authorized by Section 19-5-104 ~~{of the Utah Code Annotated}~~.

R317-10-4. Definitions.

~~{A.}~~"Board" means the Water Quality Board.

~~{B.}~~"Category" means type of certification, such as ~~{collection or wastewater treatment}~~.

~~{C.}~~"Certificate" means a certificate issued by the director, with recommendation from the ~~{C}~~council, stating that the recipient has met the minimum requirements for the specified operator category and grade described in this rule.

~~{D.}~~"Certified Operator" means a person with the appropriate education and experience, as specified in this rule, who has successfully completed the certification exam or otherwise meets the requirements of this rule.

~~{E.}~~"Chief Operator" means the supervisor in direct responsible charge of all shift operators for a collection or treatment system.

~~{F.}~~"Collection System" means the system designed to collect and transport sewage from the beginning points that the collection entity regards as their responsibility to maintain and operate, to the points where the treatment facility assumes responsibility for operation and maintenance.

~~{G.}~~"Council" means the Utah Wastewater Operator Certification Council, as established in Section R317-10-8.

~~{H.}~~"Continuing Education Unit (CEU)" means ten contact hours of participation in and successful completion of an organized and approved continuing education experience. College credit in approved courses may be substituted for CEUs on an equivalency basis as defined in this rule.

~~{I.}~~"Direct Responsible Charge (DRC)" means active on-site charge and performance of operation duties. The person in direct

responsible charge is generally a supervisor over wastewater treatment or collection who independently makes decisions affecting all treatment or system processes during normal operation which may affect the quality, safety, and adequacy of treatment of wastewater discharged from the plant. In cases where only one operator is employed, this operator shall be considered to be in direct responsible charge.

~~{J.}~~"~~{Executive Secretary}~~Director" means the ~~{Executive Secretary}~~Director of the Division of Water Quality ~~{Board}~~.

~~{K.}~~"Grade Level" means any one of the possible steps within a certification category ~~{of either wastewater collection or wastewater treatment}~~. There are four levels each for collection and treatment system operators, Grade I being the lowest and Grade IV the highest level. There is one level for lagoon operators.

~~{L.}~~"Grandfather Certificate" means a certificate issued to an operator, without taking an examination, by virtue of the operator meeting experience and other requirements in Subsection R317-10-11. ~~{G}~~H of this rule.

~~{M.}~~"Operating Experience" means experience gained in operating a wastewater treatment plant or collection system which enables the operator to make correct supervisory, operational, safety, and maintenance decisions affecting personnel, water quality, public health, regulatory compliance, and wastewater works operation, efficiency, and longevity.

~~{N.}~~"Operator" means any person who is directly involved in or may be responsible for operation of any wastewater works or facilities treating wastewater.

~~{O.}~~"Population Equivalent (P.E.*)" means the population which would contribute an equivalent waste load based on the calculation of total pounds of ~~{B.O.D.}~~BOD contributed divided by 0.2. This calculation may be used where a significant amount of industrial waste is discharged to a wastewater system.

~~{P.}~~"Restricted Certificate" means a certificate issued upon passing the certification examination when other requirements have not been met.

~~{Q.}~~"Small Lagoon System" means a Class I wastewater lagoon treatment system with attached collection system serving fewer than 3,500 population equivalent.

~~{R.}~~"Wastewater Works" means facilities for collecting, pumping, treating, or disposing of sanitary wastewater.

R317-10-5. Wastewater Works Owner Responsibilities.

A. The chief operator and supervisors who make process decisions for the system and are designated to be in direct responsible charge must be certified at no less than the level of the facility classification.

1. All other operators in direct responsible charge must be certified at no less than one grade lower than the facility classification, or at the lowest required facility classification except as provided in ~~{B below}~~ Subsection R317-10-5.

2. All facilities must have an operator certified at the facility level on duty or on call.

3. If a facility or system undergoes a re-rating, all operators considered to be in DRC must be certified at the appropriate level within one year after the date of the notification by the division of the new rating.

B. The ~~{Executive Secretary must be notified by the}~~ facility owner must notify the director within 10 working days after ~~{termination of employment of}~~ the ~~{C}~~chief ~~{O}~~operator

considered in DRC has terminated employment, or ~~when he~~ is otherwise unable to perform those duties. The wastewater works must have an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, designated as DRC within one year from the date the vacancy occurred.

C. For newly constructed wastewater works, an appropriately certified operator, or an operator with a restricted certificate at the appropriate level, must be employed within one year after the system is deemed operable.

D. Those required to be certified may operate a system with a restricted certificate of the required grade for up to one year for a Class I or Class II facility, or up to two years for a Class III or Class IV facility, but may not continue to operate a system if they are unable to obtain an unrestricted certificate at the end of the stipulated period.

E. Contracts

1. General. In lieu of employing a DRC operator as part of its workforce, a facility owner may enter into a contract for DRC services with an operator certified at the appropriate level, or with another public or private entity with operators certified at the appropriate level.

2. Any such contract must be reviewed and approved by the ~~Executive Secretary~~ director.

3. If ~~there is a~~ contract ~~is with another entity~~, it must include the names of the certified individuals who will be in direct responsible charge of the operation of the facility. At a minimum the contract must contain the following elements:

a. ~~A~~ a clear description of the overall duties and responsibilities of the facility owner, and the responsibilities of ~~the~~ any contracted DRC operator ~~(s)~~ related to the supervision of the facility's operation, including the frequency of visits and the duties to be performed ~~(-)~~;

b. ~~H~~ I identification of the contract period and effective date of the contract;

c. ~~C~~ E consideration;

d. ~~F~~ T termination clause; and

e. ~~E~~ E execution by authorized signatories.

R317-10-6. Facility Classification System.

Treatment plants and collection systems shall be classified in accordance with Table 1.

TABLE 1
FACILITY CLASSIFICATION SYSTEM

FACILITY CATEGORY		CLASS			
		I	II	III	IV
Collection (1)	Pop. Served	3,500 and less	3,501 to 15,000	15,001 to 50,000	50,001 and greater
Treatment Plant (2)	Range of Fac. Points	30 and less	31 to 55	56 to 75	76 and greater
Small Lagoon Systems (3)	Pop. Served	3,500 and less <u>and less</u>			
	Equiv. Served	<u>and less</u>			

(1) Simple "in-line" treatment, ~~(-)~~ (+) such as booster pumping, preventive chlorination, or odor control, ~~(-)~~ (+) is considered an integral part of a collection system.

(2) Treatment plants shall be assigned "facility points" in accordance with Table 2 "Wastewater Treatment Plant Classification System".

(3) A combined certificate shall be issued for treatment works ~~(-)~~ (+) and collection system operation.

.....

R317-10-7. Qualifications for Operator Grades.

A. General

1. "Qualification Points" means the accumulated points earned through ~~total of years of~~ education and experience required to obtain a certification without restriction. Points allocated for relevant education and experience must meet the minimum requirements for each grade. All substitutions are year for year equivalents. A college "year" is considered 45 quarter hours or 30 semester hours of credit.

2. College-level education must be in a job-related field to be credited. However, partial credit may be given for non-job related education at the discretion of the director with the recommendation of the ~~(C)~~ council.

3. Experience may be substituted for a high school education or a graduate equivalence degree in Grades I and II only.

4. Education may be substituted for experience, as specified ~~(below)~~ for each grade.

B. Grade I - minimum 13 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. One year of operating experience (one point per year).

3. Experience may be substituted for all or any part of the education requirements, on a one-to-one basis.

4. Education may not be substituted for experience.

C. Grade II - minimum 14 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Two years of operating experience (one point per year).

3. Up to one year of additional education may be substituted for an equivalent amount of operating experience.

4. Experience may be substituted for all or any part of the education requirement, on a one-to-one basis.

D. Grade III - minimum 16 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Four years of operating experience (one point per year).

3. Up to ~~(2)~~ two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to ~~(+)~~ one year of education.

E. Grade IV - minimum 18 points required.

1. High school diploma or equivalency (12 points), or highest grade completed (one point per grade, up to 12 points).

2. Six years of operating experience (one point per year).

3. Up to ~~(2)~~ two years of additional education may be substituted for an equivalent amount of operating experience.

4. Relevant and specialized operator training may be substituted for education requirement, where 25 CEUs is equivalent to ~~(+)~~ one year of education.

F. An applicant is also required to meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

R317-10-8. Utah Wastewater Operator Certification Council.

A. Membership.

1. Members of the [C]ouncil shall be appointed by the [B]board.

a. ~~[from r]~~ Recommendations for appointments may be made by interested individuals or organizations, including the Department of Environmental Quality, Utah League of Cities and Towns, Water Environment Association of Utah, ~~[the Professional Wastewater Operators Division of the Water Environment Association of Utah,]~~ the [Utah] Rural Water Association of Utah, ~~[Utah Valley State College,]~~ and the Civil~~[/]~~ and Environmental Engineering Departments of ~~[Utah's]~~ universities in Utah.

b. The [C]ouncil shall serve at the discretion of the [B]board to oversee the certification program in an advisory capacity to the director as provided in this rule.

[B]2. The [C]ouncil shall consist of ~~[eight]~~ seven voting members and should include representation from interest groups as follows:

[4]a. ~~[Three]~~ four members who are operators holding valid certificates ~~[.A.] with at least [one] two members [shall] being [a] wastewater collection system operator[-] and two members being wastewater treatment system operators;~~

[2]b. [Ø] one member with at least three years of management experience in either wastewater treatment, ~~[and] collection, or both,~~ who ~~[shall]~~ represents municipal wastewater management[-];

[3]c. [Ø] one member who is at large and may represent an educational institution ~~[civil or environmental engineering faculty member of a university] in Utah[-];~~

[4]d. ~~[One non-voting member who is a Senior Environmental Engineer in the Division of Water Quality or other duly designated person who shall represent the Board.~~

5. [Ø] one member from the private sector who is currently certified as a wastewater operator[-];

[6]e. [Ø] one member representing vocational training[-]; and

f. at least two non-voting division staff members should be in attendance at any council meeting.

[C]3. Voting [C]ouncil members shall serve as follows:

[4]a. [F] terms of office shall be for three years with two members retiring each year, ~~[except for the third year when three shall retire[-];]~~

b. any member who does not attend at least 50 percent of the meetings during a year of service may be replaced at the discretion of the board;

[2]c. [A] appointments to succeed a [C]ouncil member who is unable to serve his full term shall be for the remainder of the unexpired term[-]; and

[3]d. [C]ouncil members may be reappointed, but they do not automatically succeed themselves.

4. A majority of voting members shall constitute a quorum for the purpose of transacting council business.

[Ø]5. Each year the Council shall elect from its membership a Chair~~[man]~~ and Vice Chair~~[man]~~.

[E]B. ~~[The d]~~ Duties of the [C]ouncil shall include:

1. evaluating examinations to ensure compatibility with operator responsibilities, accuracy of content, and composition of individual exam databank items; ~~[Preparing and conducting examinations for the various grades of operators, and issuing and distributing the certificates.];~~

2. evaluating certification applications, as requested by the director, and making recommendations for approval or disapproval; ~~[Regularly reviewing the certification examinations to ensure compatibility between the examinations and operator responsibilities.];~~

3. assisting in administering examinations at various locations; ~~[Ensuring that the certification examinations and training curricula are compatible.];~~

4. providing a forum for ongoing evaluation of the certification program and recommending changes to the director; ~~[Distributing examination applications and notices.];~~

5. providing advice and recommendations for CEU approval; and ~~[Receiving all applications for certification and evaluating the record of applicants as required to establish their qualifications for certification under this rule.];~~

6. ~~[Maintaining records of operator qualifications and certification.~~

7. ~~[P]~~ preparing an annual report of certification program activities for distribution to the [B]board and other interested parties.[-]

F. A majority of voting members shall constitute a quorum for the purpose of transacting official Council business.[-]

R317-10-9. Application for Examination.

A. Prior to taking an examination, an applicant must file an application of intention with the director using an approved form ~~[Council]~~, accompanied by:

1. evidence of qualifications for certification in accordance with the provisions of ~~[this rule on application forms available from the Council]~~ Section R317-10-11;

2. the appropriate fee; and

3. documentation that requirements for certification of citizenship or alien residency are met.

B. Approved forms are available on the internet at www.waterquality.utah.gov.

R317-10-10. Examination.

A. The time and place of examinations to qualify for a certificate shall be determined by the director upon recommendation of the [C]ouncil.

B. All examinations shall be ~~[graded]~~ scored and the applicant notified of the results.

C. Examination fees shall be charged according to the approved division fee schedule to cover the costs of testing.

~~[B. Normally, all examinations for certification shall be written. However, upon request an oral examination will be given. Such examination shall be conducted by at least two people, at least one of whom is a Council member. Those persons assisting the Council member must be approved by the Council.]~~ D. All exams shall be administered in a manner that will ensure the integrity of the certification program.

[C]E. In the event an applicant fails an exam, the applicant may request to review the exam within ~~[30]~~ ten days following receipt of the exam score.

F. The [C]ouncil shall not review examination questions for the purpose of changing individual examination scores.

1. However, recommendations may be made to improve individual questions ~~[may be edited]~~ in the databank for future examinations.

2. If an error is found in the grading of the exam, credit may be given.

R317-10-11. Certificates.

A. ~~[A]H-e~~Certificates are issued by the director and shall indicate one of the following classifications:~~[grades for which they are issued.]~~

1. Wastewater Treatment Operator - Grades I through IV.
2. Restricted Wastewater Treatment Operator - Grades I through IV.
3. Wastewater Collection Operator - Grades I through IV.
4. Restricted Wastewater Collection Operator - Grades I through IV.
5. Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.
6. Restricted Small Lagoon System Operator - Grade I, Wastewater Treatment and Collection System Combined.

B. General.

1. An applicant shall have the opportunity to take any grade of examination.

2. Replacement certificates may be obtained by submitting a written request with payment of a duplicate certificate fee.

c. Restricted and Unrestricted Certificates.

1. A restricted certificate shall be issued if the applicant passes the exam but review of the application form indicates that the applicant lacks the experience or education required for [a]that particular [grade]classification.

2. An unrestricted certificate shall be issued if the applicant passes the exam and the experience and education requirements appropriate to the particular grade are met.

3. Restricted certificates shall become unrestricted when an application is submitted to the division showing that the appropriate experience and education requirements are met and a change in status fee is paid.

4. A restricted certificate does not qualify a person as a certified operator ~~[at the grade level]~~for the classification that the restricted certificate is issued, until the limiting conditions are met, except as provided in Section R317-10-5.

5. Upon application, a restricted certificate may be renewed subject to the conditions in ~~[C below]~~Subsection R317-10-11.D.

~~D.~~ [Replacement certificates may be obtained by payment of a duplicate certificate fee]Certificate Expiration and Renewal.

~~[C-C]~~1. Each certificate[s] shall continue in effect for a period of up to three years, unless revoked prior to that time.

2. The certificate must be renewed each three years by payment of a renewal fee and submittal of evidence of required CEUs.

3. The certificate[s] expires on December 31 of the last year of the certificate.

4. Operators considered in DRC must renew by the expiration date in order for the wastewater works to remain in compliance with this rule.

5. Request for renewal shall be made on forms ~~[supplied by the Council]~~approved by the division.

6. It shall be the responsibility of the operator to make application for certificate renewal.

~~[D]~~E. Reinstatement of Expired Certificate.

1. An expired certificate may be reinstated within one year after expiration by payment of a reinstatement fee with the renewal application when other renewal requirements are also met.

2. After one year, an expired certificate cannot be reinstated, and the operator must retest to become certified.

3. The required CEUs for renewal must be accrued before expiration of the certificate.

4. When unusual circumstances exist, an operator may petition the ~~[C]~~ouncil to request additional time to meet the requirements.

5. Each petition for exception will be considered on its own merits and recommendation made to the director.

~~[E]~~F. CEUs must be earned during the 3 year period prior to the expiration date of the certificate.

~~[F]~~G. The ~~[Council]~~director may, after appropriate review by the council, waive examination of applicants holding a valid certificate or license issued in compliance with other certification plans having equivalent standards, and issue a comparable Utah certificate upon payment of a reciprocity fee.

1. If the applicant is working in another state at the time of application, or has relocated to Utah but has not yet obtained employment in the corresponding wastewater field in Utah, a letter of intent to issue a certificate by reciprocity may be provided.

2. When the applicant provides proof of employment in th[e]at wastewater field in Utah, and meets all other requirements, a certificate may be issued.

~~[G]~~H. In the past, certain individuals received a grandfather certificate.

1. A grandfather certificate ~~[shall be]~~was originally issued under authority of Subsection 19-5-104(2)(b)(v) ~~[, upon application and payment of an administrative fee, to qualified operators who must be certified (chief operators, supervisors, or anyone considered in direct responsible charge)].~~ The certificate shall be valid only for the wastewater works at which the operator is employed as that facility existed on March 16, 1991. ~~[Operators must obtain initial certification on or before March 16, 1994.]~~ The certificate may not be transferred to another facility or person. If the facility undergoes an addition of a new process, even if the facility classification does not change, or the collection system has a change in rating, the respective operator must obtain a restricted or unrestricted certificate within one year as specified in this rule.

Grandfather certificates ~~[shall be]~~were issued for a period of up to three years and must be renewed prior to the expiration date to remain in effect.

2. Renewal shall include:

- a. the payment of a renewal fee;
- b. ~~[and]~~ submittal of an application form;
- c. evidence of required CEUs; and
- d. the applicant must meet the requirements of Section 63G-12-104 regarding citizenship or alien identification certification.

3. The renewal fee shall be the same as that charged for renewal of other wastewater operator certificates.

4. If the grandfather certificate is not renewed prior to the expiration date, the wastewater works may be considered to be out of compliance with this rule. The operator would then be required to pass the appropriate certification examination to become a certified operator.

~~The grandfather certificate shall be issued if the currently employed operator:~~

1. Was a chief operator or person in direct responsible charge of the wastewater works on March 16, 1991; and
2. Had been employed at least ten years in the operation of the wastewater works prior to March 16, 1991; and

~~3. Demonstrates to the Council his capability to operate the wastewater works at which he is employed by providing employment history and references.]~~

R317-10-12. CEUs and Approved Training.

A. CEUs shall be required for renewal of each certificate according to the following schedule:

.....

B. All CEUs for certificate renewal shall be subject to review for approval to ensure that the training is applicable to wastewater works operation ~~and meets CEU criteria. Identification of approved training, appropriate CEU or credit assignment and verification of successful completion is the responsibility of the Council. Training records shall be maintained by the Council].~~

C. The council shall review training documentation and recommend appropriate CEU or credit assignment to the director for approval. ~~All in-house or in-plant training which is intended to meet any part of the CEU requirements must be approved by the Council. In-house or in-plant training must meet the following general criteria to be approved:~~

~~1. Instruction must be under the supervision of an instructor approved by the Council.~~

~~2. An outline must be included with all submittals listing subjects to be covered and the time allotted to each subject.~~

~~3. A list of the teacher's objectives must be submitted which documents the essential points of the instruction ("need-to-know" information) and the methods used to illustrate these principles.~~

~~D. No more than one-half of required CEU credits, over a three-year period prior to the expiration date of a certificate, shall be given for registration and attendance at the annual technical program meetings of the Water Environment Association of Utah, the Water Environment Federation, Rural Water Association of Utah, or similar organizations].~~

~~D]E. Training must be related to the responsibilities of a wastewater works operator]. If a person holds multiple categories of wastewater operator certificates, such as {treatment and collection}, CEU credit may be received for each certificate from one training experience [only—]if the training is applicable to each [certificate]category. [It is recommended that at least one-half of the required CEUs be technical training directly related to the job duties.]~~

R317-10-13. Recommendations of the Council.

A. Initial recommendations.

~~1. All decisions of the [C]ouncil shall be in the form of recommendations for action by the [Executive Secretary]director.~~

~~2. The [C]ouncil shall notify an applicant of any initial recommendation.~~

~~3. Any such applicant may, within 30 days of the date the [C]ouncil's notice was mailed, request reconsideration and an informal hearing before the [C]ouncil by writing to: Wastewater Operator Certification Council, Division of Water Quality, [Department of Environmental Quality, State of Utah,]P.O. Box 144870, Salt Lake City, Utah 84114-4870.~~

~~4. The [C]ouncil shall notify the person of the time and location for the informal hearing.~~

B. Following the informal hearing, or the expiration of the period for requesting reconsideration, the [C]ouncil shall notify the ~~[Executive Secretary]director~~ of its final recommendation.

C. A challenge to the ~~[Executive Secretary]director's~~ determination regarding [C]wastewater operator certification may be made as provided in ~~Rule R305-7[R317-9-3]~~.

R317-10-14. Certificate Suspension and Revocation Procedures.

A. Grounds for suspending or revoking an operator's certificate may be any of the following:

1. ~~[D]demonstrated~~ disregard for the public health and safety;

2. ~~[M]misrepresentation~~ or falsification of figures, ~~and/or~~ reports, ~~or both,~~ submitted to the State;

3. [C]cheating on a certification exam;

4. [F]falsely obtaining or altering a certificate; or

5. ~~[Gross]significant~~ negligence, incompetence or misconduct in the performance of duties as an operator.

B. Suspension or revocation may result where it may be shown that circumstances and events relative to the operation of the wastewater works were under the operator's jurisdiction and control. Circumstances beyond the control of an operator shall not be grounds for suspension or revocation action.

C. The [C]ouncil may make recommendations to the ~~[Executive Secretary]director~~ regarding the suspension or revocation of a certificate.

~~1. Prior to making any such recommendation, the [C]ouncil shall inform the individual in writing of the reasons the [C]ouncil is considering such a recommendation.~~

~~2. The [C]ouncil shall [allow the individual]provide an opportunity for an informal hearing [before the Council. Any request for an informal hearing shall be made]if requested by the certificate holder in writing within 30 days [of]after the date [the Council's notification is mailed]of the notice.~~

~~D. Following an informal hearing, or the expiration of the period for requesting a hearing, the [Council shall notify the Executive Secretary of its final recommendation]director shall make a final determination, after taking into consideration the final recommendation of the council.~~

~~E. A challenge to the [Executive Secretary]director's determination may be made as provided in [R317-9-3]Rule R305-7.~~

R317-10-15. Noncompliance.

~~[A.]Noncompliance with these [C]certification rules is a violation [of]under Section 19-5-115 and may be subject to enforcement by the director[Utah Code Annotated.~~

~~B. The Council shall refer cases of noncompliance with this rule to the Executive Secretary].~~

KEY: water pollution, operator certification, wastewater treatment, renewals

Date of Enactment or Last Substantive Amendment: [October 26, 2011]2014

Notice of Continuation: July 11, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-9** Federally Qualified Health Centers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38528

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to streamline and consolidate the scope of services in federally-qualified health centers and rural health clinics for Medicaid recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment consolidates the scope of services in federally-qualified health centers and rural health clinics by removing sections in the rule text that specify reimbursement, eligibility, and service coverage, and deferring to the scope of services found in the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual. This amendment also changes the title of the rule to include rural health clinics.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 433.56 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only consolidates the scope of services for Medicaid recipients in rural health clinics and in federally-qualified health centers.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide services to Medicaid recipients in rural health clinics and in federally-qualified health centers.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only consolidates the scope of services for Medicaid recipients in rural health clinics and in federally-qualified health centers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this change only consolidates the scope of services for Medicaid recipients in rural health clinics and in federally-qualified health centers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only consolidates the

scope of services for Medicaid recipients in rural health clinics and in federally-qualified health centers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on business because it makes no change in current policy.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

◆ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-9. Federally Qualified Health Centers and Rural Health Clinics.

R414-9-1. Introduction.

~~Federally qualified health centers and rural health clinics provide a scope of services for Medicaid recipients in accordance with the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

[R414-9-1. Introduction and Authority:

~~(1) This rule establishes Medicaid payment methodologies for federally qualified health centers (FQHCs):~~

~~(2) This rule is authorized by 42 CFR Subpart X, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.~~

R414-9-2. Definitions:

~~In addition to the definitions in R414-1, the following definitions apply to this rule:~~

~~(1) "Federally Qualified Health Center" means an entity that is a Federally Qualified Health Center under the provisions of 42 CFR Subpart X.~~

(2) "Rural Health Clinic" (RHC) means an entity that is a Rural Health Clinic under the provisions of 42 CFR Subpart X.

R414-9-3. Payment Choices for FQHCs.

(1) An FQHC may elect to be paid under either the Prospective Payment Method (PPS) as described in R414-9-4 or the Alternate Payment Method (APM) as described in R414-9-5.

(2) If an FQHC elects to change its payment method in subsequent years, it must elect to do so no later than thirty days prior to the beginning of the FQHC's fiscal year by written notice to the Department.

R414-9-4. Prospective Payment System.

The Department pays FQHCs under a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472, 2002 edition, which are adopted by reference and modified as follows:

(1) The Department makes supplemental payments for the difference between the amounts paid by Managed Care Organizations (MCOs) that contract with FQHCs and the amounts the FQHCs are entitled to under the PPS as they are estimated and paid quarterly to the FQHCs. The Department makes quarterly interim payments no later than thirty days after the end of the quarter based on the most recent prior annual reconciliation. As necessary, the Department settles annual reconciliations with each FQHC.

(2) The Department requires FQHCs to contract with local Mental Health service (MH) providers that are paid a capitation rate by DHCF to avoid duplicate payments. FQHC MH charges are billed to MH providers which reimburse FQHCs on the basis of the MH provider fee schedule.

(3) For FQHCs servicing MCOs and capitated MH organizations, the Department annually determines and settles the difference between FQHC encounter rate and the MCO, MH, and third party liability reimbursement.

R414-9-5. Alternate Payment Method.

(1) The Department adopts an Alternate Payment Method (APM). An FQHC is required to calculate the Ratio of Covered-Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government. As part of that calculation, it allocates allowable costs to Medicaid. The Department multiplies the Medicaid allowable costs by the Medicaid charge percentage to determine the amount to pay. The Department makes interim payments on the basis of billed charges from the FQHC, which reduce the annual settlement amount. Third party liability collections by the FQHC for Medicaid patients also reduce the final cost settlements.

(2) An FQHC participating in the APM must provide the Department annual cost reports and other cost information required by the Department necessary to calculate the annual settlement within ninety days from the close of its fiscal year, including its calculations of its anticipated settlement. The Department reviews submitted cost reports and provides a preliminary payment, if applicable, to FQHCs. Within six months after the end of the FQHC's fiscal year, the Department conducts a review or audit of submitted cost reports and makes a final settlement. This allow for inclusion of late filed claims and adjustments processed after the submitted cost report was prepared. If the Department overpaid an FQHC, the FQHC must

repay the overpayment. If the Department underpaid an FQHC, the Department shall pay the FQHC the underpaid amount.

(3) The Department compares the APM reimbursements with the reimbursements calculated using the PPS methodology described in R414-9-4 and pays the greater amount to the FQHC.

R414-9-6. Rural Health Clinics.

(1) The Department reimburses all RHCs through a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472.

(2) The Department pays each RHC the amount, on a per visit basis, equal to the amount paid in the previous RHC fiscal year, increased by the percentage increase in the Medicare Economic Index (MEI) for primary care services, and adjusted to take into account any increase or decrease in the scope of services furnished by the RHC during that fiscal year.

(3) For newly qualified RHCs after State fiscal year 2000, the Department establishes initial payments either by reference to payments to other RHCs in the same or adjacent areas with similar caseloads, or in the absence of other RHCs, by cost reporting methods. After the initial year, payment is set using the MEI used for other RHCs, and adjustments for increases or decreases in the scope of service furnished by the RHC during that fiscal year.]

KEY: Medicaid, facility, reimbursement

Date of Enactment or Last Substantive Amendment: [July 1, 2012]2014

Notice of Continuation: December 2, 2013

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

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-99
Chiropractic Services

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 38529

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to streamline and consolidate the scope of chiropractic services for Medicaid recipients.

SUMMARY OF THE RULE OR CHANGE: This amendment consolidates the scope of chiropractic services by removing sections in the rule text that specify reimbursement, eligibility, and service coverage, and deferring to the scope of services found in the Chiropractic Medicine Utah Medicaid Provider Manual and in the Medicaid State Plan.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 410.21 and 42 CFR 433.56 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because this change only consolidates the scope of chiropractic services for Medicaid recipients.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide chiropractic services to Medicaid recipients.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this change only consolidates the scope of chiropractic services for Medicaid recipients.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this change only consolidates the scope of chiropractic services for Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this change only consolidates the scope of chiropractic services for Medicaid recipients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no effect on business because this amendment does not change current practices.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov
- ◆ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-99. Chiropractic Services.

R414-99-1. Introduction.

~~The Chiropractic Services program provides a scope of services for Medicaid recipients in accordance with the Chiropractic Medicine Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

[R414-99-1. Authority and Purpose.

~~This rule is authorized under the provisions of 42 CFR 410.21, 42 CFR 433.56 and Utah Code Section 26-18-3. It establishes eligibility and access requirements and establishes the reimbursement methodology for chiropractic services.~~

R414-99-2. Client Eligibility Requirements.

~~Chiropractic services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.~~

R414-99-3. Program Access Requirements.

~~A client must obtain prior authorization from the Medicaid authorization contractor, who either provides or manages all Medicaid chiropractic services statewide. Services requested are justified with sufficient information for approval.~~

R414-99-4. Service Coverage.

- ~~(1) Chiropractic services may be provided when medically necessary and include examination, diagnosis and manual manipulations to influence joint and neurophysiological function of the regions of the spine, including x-rays of the spine.~~
- ~~(2) A client may receive only one treatment per day.~~

R414-99-5. Reimbursement for Chiropractic Service.

- ~~(1) Fees for services for which the Department of Health will pay for chiropractic services are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.~~
- ~~(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.~~
- ~~(3) The Department pays chiropractic providers through the chiropractic contractor based on a fixed encounter rate per visit.~~
- ~~(4) A recipient must pay a \$1.00 copayment for each chiropractic visit. The Department deducts \$1.00 from the reimbursement paid to the provider for each client visit.~~
 - ~~(a) The provider should collect the copayment amount from the recipient.~~
 - ~~(5) A Medicaid client who is a child under the age of 20, pregnant, an institutionalized individual, a client whose gross income before exclusions or deductions is below the federal Temporary Assistance to Needy Families standard payment allowance as verified by the eligibility caseworker and clients obtaining services for family planning purposes are exempt from copayment requirements.]~~

KEY: Medicaid, chiropractic services
Date of Enactment or Last Substantive Amendment: [February 24, 2009]2014
Notice of Continuation: December 2, 2013
Authorizing, and Implemented or Interpreted Law: 26-18

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-510
 Intermediate Care Facility for Persons
 with Intellectual Disabilities Transition
 Program**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 38532
 FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to provide the Department more flexibility in determining how funds dedicated to the Transition Program are allocated and to require a more inclusive application process within the program.

SUMMARY OF THE RULE OR CHANGE: This amendment implements changes to the Transition Program for persons with intellectual disabilities who reside in intermediate care facilities. At its discretion, the Department may set aside a portion of Transition Program money to fund individuals who meet Transition Program eligibility to transfer to the Community Supports Waiver when the individual is scheduled for discharge by the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) in which they are residing, and for whom placement in an alternative ICF/ID is not an option. Additionally, individuals who meet eligibility program requirements for the Transition Program are considered candidates for the program and an application is longer required.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget as a result of this amendment because the services affected by this change are within the allocation of funds set forth by the Legislature for the Transition Program in state fiscal year 2015.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide Transition Program services for Medicaid recipients.

- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses as a result of this amendment because the services affected by this change are within the allocation of funds set forth by the Legislature for the Transition Program in state fiscal year 2015.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients as a result of this amendment because the services affected by this change are within the allocation of funds set forth by the Legislature for the Transition Program in state fiscal year 2015.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single Medicaid provider or to Medicaid recipient as a result of this amendment because the services affected by this change are within the allocation of funds set forth by the Legislature for the Transition Program in state fiscal year 2015.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Anticipate no impact on businesses because this does not provide additional money for services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
 HEALTH CARE FINANCING,
 COVERAGE AND REIMBURSEMENT POLICY
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF/ID) Transition Program. Program participation is voluntary and allows an individual to transition out of an ICF/ID into the Community Supports Waiver for

Individuals with Intellectual Disabilities and Other Related Conditions] (CSW)].

(2) This rule is authorized by Section 26-18-3. Waiver services for this program are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

[~~_____~~ (1) "Department" means the Department of Health.

] (2) The term "Intermediate Care Facility for the Mentally Retarded" (ICF/MR) has been replaced with the term "Intermediate Care Facility for Persons with Intellectual Disabilities" (ICF/ID). ICF/ID is equivalent to ICF/MR as described under federal law.

[~~_____~~ (3) "ICF/ID Transition Program applicant" is an individual who meets the eligibility requirements found in Section R414-510-3 of this rule, and who submits an ICF/ID Transition Program application to the Department of Health, Division of Medicaid and Health Financing (DMHF) during the open application period as described in Subsection R414-510-4(3) of this rule.

] (4) "Slot" refers to the funding [that is] available for one individual to participate in the ICF/ID Transition Program.

~~_____~~ (3) "Representative" means a parent or guardian who assists a potential Transition Program participant.

R414-510-3. Client Eligibility Requirements.

Waiver [S]services are potentially available to an individual who:

(1) receives ICF/ID benefits under the [Utah] Medicaid State Plan;

(2) has been diagnosed with an intellectual disability or a related condition;

(3) meets ICF/ID level of care criteria defined in Section R414-502-8;

(4) meets [the Department of Human Services, Division of Services for People with Disabilities] state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and

(5) has resided in a Medicaid-certified, privately-owned ICF/ID located in Utah for at least 12 consecutive months.

R414-510-4. Program Access Requirements.

(1) Each fiscal year, the Department shall determine whether there are sufficient funds available to open slots in the Transition Program. The Department shall stipulate to the amount of funds that it dedicates to the Transition [p]Program if funds are available.

(2) Based on funds dedicated to the Transition [p]Program, the Department shall estimate the number of slots available. The Department estimates the number of slots available by dividing the total amount of funds dedicated to the program in a fiscal year by the state portion of the average daily ICF/ID rate.

(3) At its discretion, the Department may reserve a number of slots for individuals:

(a) who meet the eligibility requirements of Section R414-510-3;

(b) who receive a discharge notice from the ICF/ID in which they reside;

(c) who have no viable option for alternative ICF/ID placement; and

(d) who DSPD accepts for ICF/ID placement.

[~~_____~~ (3) During a fiscal year when the Transition Program is open, the Department shall announce an open application period for accepting applications. The Department will publicize the availability of the program in the following manner:

~~_____~~ (a) Provide a letter to the administrator of each privately-owned ICF/ID and to the parent(s) of each ICF/ID resident under the age of 18 or where one has been appointed, the guardian of each resident over the age of 18. The letter will:

~~_____~~ (i) Be written on a developmentally appropriate level;

~~_____~~ (ii) Describe the purpose and operation of the program, including availability of funding;

~~_____~~ (iii) Describe how to apply;

~~_____~~ (iv) Contain contact information for additional questions.

~~_____~~ (b) Post information about program availability on the Utah Medicaid website.

~~_____~~ (c) Hold at least one open and public meeting information session introducing the program. The meeting will be held pursuant to public notice requirements and a notice of the meeting will also be publicized in the same manner as the letter in Subsection R414-510-4(3)(a) above. Meeting information will include:

~~_____~~ (i) A description of the purpose(s) of the program;

~~_____~~ (ii) An explanation of the operation of the program including availability of funding;

~~_____~~ (iii) A question and answer period; and

~~_____~~ (iv) An opportunity for residents and guardians to apply for the program.

] (4) [After the open application period,] the Department [places] shall place the names of [each] all ICF/ID [Transition Program applicant] residents who meet the eligibility requirements in Section R414-510-3 on both a longevity list and a random list. On the longevity list, the Department ranks each [ICF/ID Transition Program applicant] individual according to length of consecutive stay in an ICF/ID in Utah. On the random list, the Department [randomly] ranks each [ICF/ID Transition Program applicant] individual based on a computerized random selection.

(5) The Department [takes] will then select individuals evenly [first] from the top of the longevity list and then [from] the random list for [placement in CSW until the amount of funds committed to the program is disbursed for the care of the individuals. If the Legislature funds an odd number of program slots, the Department places one additional individual from the longevity list] notification regarding voluntary participation in the Transition Program.

(6) [If an ICF/ID Transition Program applicant is selected for transition and has a spouse who also resides in a Utah ICF/ID and who meets the eligibility criteria in Section R414-510-3, the Department shall provide an additional slot for the spouse to participate in the transition program without affecting the number of available slots from the longevity and random lists.] The Department shall notify individuals selected for voluntary participation in the Transition Program by providing a letter to each representative that describes:

(a) the purpose and operation of the Transition Program, including availability of funding;

(b) the selection process used to identify the individual as a potential participant;

(c) how participation in the program is optional;

(d) how Department staff will contact the individual or representative by phone or in-person, for the purpose of answering,

questions to allow the individual or representative to make an informed choice about participation in the Transition Program; and

(e) contact information for an individual or representative who has additional questions.

(7) The Department shall make follow-up phone calls or in-person visits to each individual or representative to provide information that describes:

(a) the purpose and operation of the Transition Program, including availability of funding;

(b) the selection process used to identify the individual as a potential participant;

(c) how participation in the program is optional;

(d) how Department staff will contact the individual or representative by phone or in-person, for the purpose of answering questions to allow the individual or representative to make an informed choice about participation in the Transition Program; and

(e) how in cases where a selected individual does not have or require a representative, a DSPD Transition Program coordinator will visit the selected individual in-person at the ICF/ID to verify if program participation is desired.

(8) When an individual or representative voluntarily confirms his desire to participate in the Transition Program, the Department shall provide a letter to the ICF/ID administrator to inform the administrator of the choice of the individual or representative to participate in the Transition Program.

[(7) The Department shall use the lists to admit new applicants into CSW from the Transition Program until the amount of funds committed to the program is disbursed for the care of the individuals.](9) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF/ID and who meets the eligibility criteria in Section R414-510-3, the Department shall provide an additional slot for the spouse to participate in the Transition Program without affecting the number of available slots from the longevity and random lists.

[(8) The Department shall keep these lists open for the purpose of filling slots vacated through program attrition. If the Department admits a CSW client through the Transition Program, and the client leaves the program for any reason, the Department shall contact and enroll the next person on the list.](10) Based on available funding, the Department shall continue to select eligible individuals through the aforementioned process until the Department exhausts the amount of funds committed to the program.

[(9) The Department shall create new lists in accordance with Subsection R414-510-4(4) when funds are available to open new Transition Program slots.](11) The Department shall keep the longevity list and random lists open for the sole purpose of filling slots vacated through Transition Program attrition. If a waiver client who is admitted through the Transition Program leaves the program for any reason, the Department shall contact and enroll the next person on the list who is interested in moving into the Transition Program.

(12) The Department shall create new lists in accordance with Subsection R414-510-4(4) when there is funding available to open new Transition Program slots.

R414-510-5. Service Coverage.

[(The)s]Services and limitations within the Transition Program are found in the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions[are incorporated by reference in Section R414-61-2].

R414-510-6. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with ~~[DMHF]the Department~~ to set 1915(c) Home and Community-Based Services Waiver (HCBS) waiver rates for waiver-covered services. The DHS rate-setting process is designed to comply with requirements under the 1915(c) HCBS Waiver program and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[November 1, 2012]2014~~

Notice of Continuation: January 9, 2012

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

Health, Center for Health Data, Vital Records and Statistics **R436-55** Hemp Extract Registration

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38537

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the general procedures and requirements that an individual must follow to obtain and maintain a hemp extract registration card.

SUMMARY OF THE RULE OR CHANGE: This is a new rule to meet the legislative mandates specified in H.B. 105 from the 2014 General Legislative Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 55

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Net impact of zero--Statute requires that Office of Vital Records and Statistics charge a fee sufficient to cover all costs of administration. Fee revenue cannot exceed costs of implementation and operation.
- ◆ **LOCAL GOVERNMENTS:** Local government has no role in registration or issuance of registry certificates. Local law enforcement will have access to a verification process UCJIS.
- ◆ **SMALL BUSINESSES:** Private sector has no role in implementation under statute.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals applying for the registry will be required to pay a \$400 annual fee to cover the costs to the Department of implementing and operating the registry. Total costs to the Department for FY2015 are \$40,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each applicant to the Hemp Extract Registry will pay a registration fee (\$400) per application. There are about 100 individuals/families who may apply for the registration card.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: May create a small increase in business for certifying labs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
CENTER FOR HEALTH DATA,
VITAL RECORDS AND STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Janice Houston by phone at 801-538-6262, by FAX at 801-538-7012, or by Internet E-mail at jlhouston@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Janice Houston, Director

R436. Health, Center for Health Data, Vital Records and Statistics.

R436-55. Hemp Extract Registration.

R436-55-1. Legal Authority.

This rule is promulgated under authority granted in Utah Code Title 26, Chapter 55.

R436-55-2. Purpose.

This rule establishes the general procedures and requirements that an individual must follow to obtain and maintain a hemp extract registration card.

R436-55-3. Definitions.

For purposes of this rule, the definitions in Section 26-55-102 apply, in addition:

(1) "Applicant" means any individual applying for a hemp extract registration card.

(2) "Evaluation record" means the neurologist's clinical evaluation and observation records as described in Subsection 26-55-103(7).

(3) "Higher education institute" as defined in 20 U.S.C. Sec. 1001.

(4) "Institutional Review Board" or "IRB" means a multi-disciplinary committee which reviews proposed research involving human subjects.

(5) "Qualifying patient" means an individual who has been diagnosed by a neurologist as having intractable epilepsy.

(6) "Written certification" means a non-prescription statement signed by a neurologist that indicates the qualifying patient suffers from intractable epilepsy and may benefit from the use of hemp extract. The statement may be on a form prescribed by the department or in another format.

R436-55-4. Application for a Hemp Extract Registration Card.

(1) For an applicant who is a qualifying patient and is at least 18 years of age, the applicant shall submit the following to the department:

(a) an application on a form prescribed by the department that includes:

(i) the applicant's name, date of birth, and address; and

(ii) the name, address, and telephone number of the neurologist providing the written certification;

(b) a copy of the applicant's photographic identification;

(c) proof of Utah residency;

(d) a written certification; and

(e) the applicable fee.

(2) To apply for a hemp extract registration card for a qualifying patient who is under 18 years of age, the qualifying patient's parent shall submit the following to the department:

(a) an application on a form prescribed by the department that includes:

(i) the qualifying patient's name, date of birth, and address;

(ii) the parent's name and address;

(iii) the name, address, and telephone number of the neurologist providing the written certification;

(b) a copy of the parent's photographic identification;

(c) proof of the parent's Utah residency;

(d) an attestation that the parent is responsible for health care decisions for the qualifying patient;

(e) a written certification; and

(f) the applicable fee.

R436-55-5. Submission of an Evaluation Record.

(1) The neurologist shall transmit the evaluation record to the department by first class mail or through secure electronic transmission within five business days after signing a written certification or upon request by the department.

(2) The evaluation record must include at least the following:

(a) the qualifying patient's name and date of birth;

(b) date of clinic office visit;

(c) the neurologist's name, Department of Professional Licensing number and expiration date;

(d) diagnosis of epilepsy; and

(e) if evaluation record is submitted for the initial registration, an indication that qualifying patient currently suffers from intractable epilepsy; or

(f) if evaluation record is submitted after registration of a hemp extract registration card:

(i) the hemp extract's effect on seizure control; and

(ii) any adverse effects or other effects that may be attributed to use of the hemp extract.

(3) In addition to the requirements listed in subsection (2), the department recommends the evaluation record include, which may be based on self-reporting to the neurologist by the qualified patient, the following:

(a) hemp extract information, such as the supplier, product description, dosage, frequency of use, and duration of use by the qualifying patient;

(b) frequency of seizures before and after use of hemp extract;

(c) evidence supporting the diagnosis of intractable epilepsy; and

(d) information about other treatments or medications, including dosage, frequency and dates of use, used to treat or control qualifying patient's epilepsy.

(4) For an evaluation record, a neurologist may either complete the evaluation record on a form prescribed by the department or may provide it in another format.

R436-55-6. Issuance, Expiration, and Renewal of Hemp Extraction Registration Card.

(1) If an application is approved, the department shall issue a hemp extract registration card to the applicant. The hemp extract registration card must include the following:

(a) the registrant's name, date of birth, and address;

(b) the qualifying patient's name, date of birth, and address, if the qualifying patient is under 18 years of age;

(c) an issuance date and expiration date;

(d) the neurologist's name, Department of Professional Licensing number and expiration date; and

(e) a department-issued registry identification number.

(2) A hemp extract registration card issued to a registrant is valid for one year after the issuance date unless revoked or surrendered.

(3) To maintain a valid hemp extract registration card, a registrant shall submit at least fifteen business days prior to the expiration date on the hemp extract registration card the following to the department:

(a) a renewal application on a form prescribed by the department;

(b) a new written certification; and

(c) the renewal fee.

R436-55-7. Application Denial; Revocation of Hemp Extract Registration Card.

(1) The Department shall deny an application for a hemp extract registration card that:

(a) contains false information, including a false name, address, written certification, date of birth, or photo identification; or

(b) fails to provide an evaluation record or any of the information required by Section R436-55-4.

(2) The Department shall return the denied application to the applicant, accompanied by an explanation of the reason for its return.

(3) The Department shall revoke a hemp extract registration card upon finding that a registrant or neurologist submitted false information to the department.

R436-55-8. Interim Changes.

(1) When there has been a change in the qualifying patient's name, address, or neurologist, the registrant must notify the department within ten business days by submitting a form as prescribed by the department.

(2) A registrant shall report to the department upon discovery that the registrant's hemp extract registration card is lost, stolen, or damaged. The registrant may request a replacement card.

(3) If the department issues a new hemp extract registration card to a registrant based on a request for a replacement card or an application to update information on the hemp extract registration card, the replacement card shall have the same expiration date as the hemp extract registration card being replaced or updated.

R436-55-9. Verification of Registry to Law Enforcement.

The department may verify to a law enforcement agency whether an individual is a lawful possessor of a hemp extract registration card, without disclosing more information than is reasonably necessary to verify the authenticity of the hemp extract registration card.

R436-55-10. Review and Approval of Research Requests.

(1) If the researcher requests statistical information, the department shall provide the higher education institution with the requested statistical information upon receipt of the written request and payment of the associated costs.

(2) If the research involves the use of identifiable health data, the request must be in writing and must be signed by the researcher of the higher education institution. In addition:

(a) The request must outline the research protocol to be used. Approval by an Institutional Review Board must be included with the request.

(b) If the research involves a follow-back or follow-up study, the request must describe who is to be contacted, how, by whom, and what questions will be asked. If a survey is planned, a copy of the survey must be submitted.

(c) If the research involves linking data files, the variables to be used to determine the match must be identified.

(d) The researcher and all persons who may have access to the identifying health data in the evaluation records shall sign a confidentiality agreement, which is available from the department.

(e) The researcher may not use or allow other persons to use the evaluation records for any purpose other than the approved research.

(f) The department shall review each research request and notify the requestor one of the following:

(i) The request is approved and the researcher is notified in writing of the approval and of the associated costs.

(ii) The request is given tentative approval and the researcher:

(A) is notified in writing of the approval and associated costs; and

(B) discusses and resolves concerns identified by the department.

(iii) The request is not approved and the researcher is:

(A) notified in writing the reasons for the disapproval;

(B) notified of the areas of concern with the request;
(C) allowed to address the areas of concern and resubmit
the request; and
(D) notified that the decision to deny may be appealed to
the Executive Director of the Department of Health.

KEY: hemp extract registration

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 26-55

Insurance, Administration
R590-270
Risk Adjustment Data Submission
Requirements

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38534

FILED: 05/15/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to outline the responsibilities of a carrier with regard to the required data submission to the All Payer Claims Database (APCD) that is necessary for the evaluation of a state-based risk adjustment program in the individual and small employer health benefit plan markets. The commissioner was given the authority to write this rule as a result of H.B. 141 passed during the 2014 General Legislative Session.

SUMMARY OF THE RULE OR CHANGE: This rule outlines the responsibilities of a carrier with regard to the required data submission to the APCD that is necessary for the evaluation of a state-based risk adjustment program in the individual and small employer health benefit plan markets. The commissioner was given the authority to write this rule through the addition of a new section of the code, 31A-30-302, in H.B. 141 passed during the 2014 General Legislative Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-30-302(3)(a) and Subsection 31A-30-302(4)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds DSG2.0 Additional Data Elements, published by Utah Insurance Department, 05/05/2014
- ◆ Adds One-time APCD Supplemental Eligibility File, published by Utah Insurance Department, 05/05/2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is a cost to the Health Department and the Insurance Department to collect and

analyze the data provided by health carriers. The expense to do this has been covered by a grant from the United States Department of Health and Human Services.

◆ **LOCAL GOVERNMENTS:** This rule will have no impact on local government. It deals solely with health insurance carriers that issue risk adjustment covered plans to Utah residents and small employers.

◆ **SMALL BUSINESSES:** This rule will have no fiscal impact on insurance agencies that are for the most part small businesses. There are a few health insurance companies that are considered small businesses. They will be affected as noted in "Persons other than small businesses, or local government entities" below.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Health insurance carriers are now submitting health insurance data regarding their individual and small group plans, with Health and Human Services and paying a fee to them to collect and analyze the data. The new law would divert this responsibility to state government, specifically the Utah Health Department and Insurance Department, to collect and analyze this data. Money the insurance carriers were paying to the federal government will then go the Utah Health and Insurance Departments. Insurers will now be required to forward their data to the All Payer Claims Database. The data to be given to the All Payer Claims Database, a state agency, will require more information and a formatting of the data. These changes will create a fiscal impact on some insurers who will have a difficult time adjusting to these changes due to how their systems and programs are set up and how they process change administratively. Other insurers will adjust with very little fiscal impact or adjustment to their processes. Health insurance carriers who are impacted financially could pass the costs on to their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amount of the fee insurers pay to the federal government for the collection and analysis of their data may not change. Who they pay the fee to will change. Instead of the federal government the fee will be given to Utah agencies now collecting and analyzing the data. Changes in the data required and changes to the formatting of the data will have a substantial impact on some insurance companies who will have a difficult time to adjust their systems and administrative processes to these changes. The fiscal impact will vary from company to company.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact of the requirements of this rule will be felt more by those health insurers that insure a large number of small groups and individual plans. The fee amount for the gathering and analyzing of the data will not change. Whether or not there will be a fiscal impact on an insurers as a result of a change in the information gathered and its formatting will depend on how their data is structured and what their administrative processes are. It will all vary from company to company.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/01/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC
HEARING REGARDING THIS RULE:

♦ 06/16/2014 09:00 AM, State Office Building, 450 N State St,
Room 3112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R590. Insurance, Administration.

R590-270. Risk Adjustment Data Submission Requirements.

R590-270-1. Authority.

This rule is promulgated pursuant to Subsections 31A-30-302(3)(a) and (4)(a) wherein the commissioner may adopt a rule to require a carrier to submit data to the All Payer Claims Database (APCD).

R590-270-2. Purpose.

The purpose of this rule is to outline the responsibilities of a carrier with regard to the required data submission to the APCD that is necessary for the evaluation of a state-based risk adjustment program in the individual and small employer health benefit plan markets.

R590-270-3. Applicability and Scope.

(1) This rule applies:

(a) to a carrier that issues a risk adjustment covered plan to a Utah:

(i) resident; or

(ii) domiciled small employer; and

(b) regardless of any limitations or exemptions offered in R428 rules or Section 26-33a-102, based on the number of covered individual Utah residents.

(2) This rule does not apply to a transitional health benefit plan.

R590-270-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 26-33a-102, and R428 rules, the following definitions apply for the purpose of this rule.

(1) "Non-grandfathered health plan" means a health benefit plan issued to an individual or small employer:

(a) after March 23, 2010; or

(b) on or before March 23, 2010 that lost grandfather status at a renewal that occurred after March 23, 2010.

(2) "Risk adjustment covered plan" means a plan as defined by 45 CFR 155.20.

(3) "Subscriber premium" means the monthly premium for the subscriber and associated dependents that correspond to the carrier's rate data template filed with the Utah Insurance Department.

(4) "Transitional plan" means a non-grandfathered health plan issued to an individual or small employer prior to January 1, 2014, that is renewed after January 1, 2014 pursuant to guidance issued by the United States Department of Health and Human Services Office for Consumer Information and Insurance Oversight dated November 14, 2013 and March 5, 2014.

(5) "APCD Carrier" means a carrier that is required to submit data to the APCD based on parameters outlined in R428 rules.

(6) "RA Carrier" means a carrier that is not required to submit data to the APCD based on parameters outlined in R428 rules, but issues risk adjustment covered plans where that plan is subject to risk adjustment in Utah.

R590-270-5. APCD Carrier Data Submission Requirements.

(1) An APCD Carrier shall submit complete and accurate data to the APCD as prescribed by R428 rules.

(2) For any submissions to the APCD on or after January 1, 2015, an APCD Carrier shall include in the medical eligibility file the DSG2.0 Additional Data Elements, which is hereby incorporated by reference and available on the Department's website at insurance.utah.gov.

(a) The DSG2.0 Additional Data Elements shall be inserted into the medical eligibility file after all existing fields, that is, after field ME899.

(b) The DSG2.0 Additional Data Elements may be submitted with null values for records that are not subject to risk adjustment as outlined in 45 CFR Section 156.80.

(3) For any submissions to the APCD on or after January 1, 2015, an APCD Carrier shall submit data to the APCD for non-Utah residents if the individual receives coverage through a risk adjustment covered plan issued to a Utah domiciled small employer group.

(4)(a) An APCD Carrier shall submit the required data to the APCD by the end of the month following the applicable data month.

(b) Notwithstanding any exemption or extension requested under R428 rules, an APCD Carrier must provide to the APCD, in production format by August 31, 2014, at least all claims adjudicated on or after January 1, 2014 and ending on or before June 30, 2014.

(5)(a) An APCD Carrier shall submit a one-time supplemental eligibility file to the Office of Health Care Statistics. The supplemental eligibility file shall:

(i) be a supplement to the monthly medical eligibility file;

(ii) be submitted through a secure method agreed upon by OHCS;

_____ (iii) be submitted by November 1, 2014; and
_____ (iv) have a one to one match to records in the most recent
available monthly medical eligibility file submitted to the APCD;
and

_____ (b) The one-time supplemental eligibility file shall
follow:

_____ (i) the record layout in the medical eligibility file in the
One-time APCD Supplemental Eligibility File, which is hereby
incorporated by reference and available on the Department's website
at insurance.utah.gov; or

_____ (ii) an alternative format as approved by the
commissioner.

R590-270-6. RA Carrier Data Submission Requirements.

_____ (1) Starting January 1, 2015, a RA Carrier shall submit
complete and accurate data to the APCD as prescribed by R428
rules, regardless of any limitations or exemptions offered in R428
rules or Section 26-33a-102 based on the number of covered
individual Utah residents.

_____ (2) For any submissions to the APCD on or after January
1, 2015, a RA Carrier shall include the DSG2.0 Additional Data
Elements in the medical eligibility file.

_____ (a) The DSG2.0 Additional Data Elements shall be
inserted into the medical eligibility file after all existing fields, that
is, after field ME899.

_____ (b) The DSG2.0 Additional Data Elements may be
submitted with null values for records that are not subject to risk
adjustment as outlined in 45 CFR Section 156.80.

_____ (3) For any submissions to the APCD on or after January
1, 2015, a RA Carrier shall submit data to the APCD for non-Utah
residents if the covered individual receives coverage through a risk
adjustment covered plan issued to a Utah domiciled small employer
group.

_____ (4) A RA Carrier shall submit the required data to the
APCD by the end of the month following the applicable data month.

_____ (5) The commissioner may approve an alternate
submission method if a RA Carrier demonstrates to the satisfaction
of the commissioner that the requirements of this rule impose an
unreasonable burden to the RA Carrier and would place the RA
Carrier in a state of supervision, insolvency, or liquidation.

R590-270-7. Data Use Limitations.

_____ The additional fields required by this rule will be used
exclusively for purposes identified in Subsection 26-33a-106.1(1).

R590-270-8. Penalties.

_____ A person found to be in violation of this rule shall be
subject to penalties as provided under Section 31A-2-308.

R590-270-9. Enforcement Date.

_____ The commissioner will begin enforcing the provisions of
this rule 45 days from the rule's effective date.

R590-270-10. Severability.

_____ If any provision of this rule or its application to any
person or situation is held to be invalid, that invalidity shall not
affect any other provision or application of this rule which can be
given effect without the invalid provision or application, and to this
end the provisions of this rule are declared to be severable.

KEY: insurance, risk adjustment program

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 31A-30-
302(3)(a) and (4)(a)

Natural Resources, Wildlife Resources
R657-13
Taking Fish and Crayfish

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38483

FILED: 05/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 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) fish and crayfish management program.

SUMMARY OF THE RULE OR CHANGE: This rule revision removes the second pole permit requirement and instead allows the use of two poles to be included with a resident or nonresident season fishing or combination license beginning 07/01/2014.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment allows Utah license holders to fish all lakes with two poles without a second pole permit with no additional licenses required. DWR determines 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.

◆ **LOCAL GOVERNMENTS:** Since this amendment only adds opportunity to anglers this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment provides additional opportunity to anglers, therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment provides additional opportunity to anglers, therefore, this rule does not impose any additional financial

requirements on persons, nor generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create a cost or savings impact to individuals who participate in fishing in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-13. Taking Fish and Crayfish.

R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Daily limit" means the maximum limit, in number or amount, of protected aquatic wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass; trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, two daily limits, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

~~(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.~~

~~(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.~~

~~(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.~~

~~(dd) "Single hook" means a hook or multiple hooks having a common shank.~~

~~(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.~~

~~(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.~~

~~(gg) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.~~

~~(hh)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.~~

~~(ii) "Trout" does not include whitefish or Bonneville cisco.~~

~~(ii) "Underwater spearfishing" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other device to propel a pointed shaft to take fish from under the surface of the water.~~

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within ~~both the Utah and Idaho boundaries of~~ Bear Lake ~~[with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler]as follows:~~

~~(i) an individual may fish with up to two poles [anywhere] on the Utah portion of Bear Lake [that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.]; and~~

~~(ii) an individual must comply with Idaho regulations regarding fishing with more than one pole when fishing on the Idaho portion of Bear Lake.~~

(b) Only one daily limit may be taken in a single day even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4) [-]).

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one daily limit may be taken in a single day even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Any person possessing a valid Utah fishing license is permitted to fish anywhere on Lake Powell, including the Arizona portion of the reservoir.

(d) A person possessing a valid Arizona fishing license shall be required to purchase a valid Utah reciprocal permit to fish the Utah waters of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than ~~one line]two lines~~ is unlawful, except:

(a) ~~[when using a valid second pole permit in conjunction with an unexpired Utah fishing or combination license,] while fishing for crayfish without the use of fish hooks as provided in R657-13-15; or~~

(b) while fishing ~~[for crayfish without the use of fish hooks;] through the ice at Flaming Gorge Reservoir as provided in R657-13-7.~~

~~[(c) while fishing through the ice at Flaming Gorge Reservoir. A second pole permit is not required when fishing through the ice at Flaming Gorge Reservoir, or when fishing for crayfish with lines without hooks.]~~

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than three baited hooks, three artificial flies, or three artificial lures, except for a setline.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole ~~[(Second Pole Permits)].~~

(1) A person may use ~~[a second pole]~~ up to two fishing poles to take fish on all waters open to fishing, provided they ~~[have]~~ possess an unexpired fishing or combination license ~~[and a valid second pole permit]~~, except as provided in Subsection (5) below.

~~(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.~~

~~(b)(i) A second pole permit is a 365-day permit valid only when used in conjunction with an unexpired Utah fishing or combination license.~~

~~(ii) A second pole permit does not allow an angler to take more than one daily limit or to possess more than one possession limit.~~

~~(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.~~

~~(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.~~

~~(5) A person may use up to six lines [without a second pole permit] when fishing at Flaming Gorge Reservoir through the ice. When using more than [two lines] one line at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.~~

(3) Regardless of the number of poles or lines used, an angler may not take more than one daily limit or possess more than one possession limit.

(4) When fishing on waters located within another state, a person must abide by that state's regulations regarding fishing with more than one pole.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

~~(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).~~

~~(b) A person [who obtains a second pole permit may fish with] may use up to two [poles] lines for angling while setline fishing.~~

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to any valid Utah fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with any unexpired Utah fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than ~~[one line]~~ two lines may have hooks attached ~~[, except when an angler possesses a valid second pole permit in which case two hooked lines may be used]~~. On unhooked lines, bait is tied to the line so that the crayfish grasps the bait with its claw; and

(d) live crayfish are not transported from the body of water where taken.

KEY: fish, fishing, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [April 21, 2014]

Notice of Continuation: October 1, 2012

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-19-1; 23-22-3

**Natural Resources, Wildlife Resources
R657-45
Wildlife License, Permit, and Certificate
of Registration Forms**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38482

FILED: 05/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 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 wildlife license, permit, and certificate of registration forms.

SUMMARY OF THE RULE OR CHANGE: Provisions of this rule are being amended to allow for the purchasing of multi-year fishing, hunting, and combination licenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-19 and Section 23-19-2

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule is being amended allow sportsmen to purchase a multi-year fishing, hunting or combination license. DWR determines that there is not a cost or savings impact to the state budget or DWR's budget associated with this amendment.

◆ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: This rule is being amended to allow for the purchase of a multi-year license. The adult license fee will be discounted \$1 per each year up to five years. Therefore, this amendment would not generate a savings or cost impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule is being amended to allow for the purchase of a multi-year license. The adult license fee will be discounted \$1 per each year up to five years. Therefore, this amendment would generate a savings impact to persons wishing to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is being amended to allow for the purchasing of multi-year fishing, hunting or combination licenses, this would allow for a \$1 per year cost savings (up to five years) for those wishing to participate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.**R657-45. Wildlife License, Permit, and Certificate of Registration Forms and Terms.****R657-45-1. Purpose and Authority.**

Under authority of Sections 23-14-~~19 and~~18, 23-14-19, 23-19-2 and 23-19-7 the Wildlife Board has established this rule for prescribing the forms and terms of a [~~Wildlife License, Permit, and Certificate of Registration~~]wildlife license, permit, and certificate of registration.

R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.

(1) A [~~License~~]license, [~~Permit, and Certificate of Registration~~]permit, and certificate of registration issued for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The [~~License~~]license, [~~Permit, and Certificate of Registration~~]permit, and certificate of registration forms shall include the licensee's customer identification number, name, date of birth, address, height, weight, eye color, hair color, gender, and any other information the Division of Wildlife Resources may request.

R657-45-3. License Terms and Renewal.

(1)(a) Upon paying the prescribed fee and satisfying the criteria for issuance, a person may obtain a resident or nonresident fishing, hunting, or combination license valid for:

(i) 365 days (one year);

(ii) 730 days (two years);

(iii) 1095 days (three years);

(iv) 1460 days (four years); or

(v) 1825 days (five years).

(b) In addition to the license term prescribed in Subsection (1)(a), a person may obtain a:

(i) three or seven day resident or nonresident fishing license; or

(ii) three day nonresident hunting license.

(2)(a) Except as provided in Subsections (b) through (d), a multi-year fishing, hunting, and combination license under Subsection (1)(a) is available to residents and nonresidents at a discounted, adult license fee rate based on residency, license type, and license term.

(i) A multi-year license is available to youth only at the adult license fee rate.

(b) A resident senior, age 65 and older, may obtain a multi-year fishing, hunting, or combination license at the 365 day senior license fee rate multiplied by the number of years in the license term.

(c) A resident disabled veteran that is eligible for a discounted fishing license under Section 23-19-38.3 and R657-12-10, may obtain a multi-year fishing license at the reduced 365 day license fee rate multiplied by the number of years in the license term.

(3) A person with a current, one to five year hunting, fishing, or combination license may renew the license by purchasing:

(a) a new license on or after its expiration date; or

(b) the same license for a term prescribed in Subsection (1)(a) within six months of the expiration date on the unexpired license.

(i) A license renewed under Subsection (3)(b) is effective on the date of purchase and remains valid for a period equal to the sum of the remaining days on the unexpired license and the applicable term on the renewal license.

(4) Except as provided in Subsections (4)(a), a fishing, hunting, or combination license issued under this Section remains valid if the licensee subsequently changes residency during the term of license.

(a) A Utah resident license is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(5)(a) A resident that establishes a new domicile outside Utah during the unexpired term of a Utah resident fishing, hunting, or combination license, shall notify the Division of the change prior to purchasing a resident hunting, fishing, or trapping license in any other state or country.

(b) Upon receiving notice of a domicile change under Subsection (5)(a), the Division will issue a free nonresident replacement license for the remaining term of the resident license.

(c) The Division may charge a handling fee for a residency based license exchange under this Subsection.

(d) The pro rata difference between the nonresident and resident license fee will not be refunded to a person that establishes Utah residency during the term of a nonresident license.

(6) A person that purchases a hunting permit and subsequently changes residency may lawfully use that permit for the applicable hunting season without notifying the Division of residency change.

KEY: license, permit, certificate of registration

Date of Enactment or Last substantive Amendment: [~~May 8, 2008~~2014

Notice of Continuation: May 6, 2013

Authorizing, and implemented or Interpreted Law: 23-19-2

Natural Resources, Wildlife Resources

R657-67

Utah Hunter Mentoring Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38484

FILED: 05/06/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule creates a hunting mentor program that will increase hunting opportunities for Utah families; the rule also provides the procedures under which a minor child may share the permit of another to take big game, including all big game general season permits, big game limited entry permits, once-in-a-lifetime permits, and all antlerless big game permits.

SUMMARY OF THE RULE OR CHANGE: This rule revision recommends removing the 10 business day requirement for the submission of an application prior to the desired hunting date. The division feels that applications can be processed in less time and that the 10 day requirement would prove to be more restrictive on the public wishing to participate than is needed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-1 and Section 23-14-18 and Section 23-14-19 and Section 23-14-3 and Section 23-19-1

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost impact to the state budget or DWR's budget.

◆ **LOCAL GOVERNMENTS:** This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule will not create a cost impact to small businesses because they are not directly affected by the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will not create a cost impact to Utah residents wishing to participate in the program because it does not require the purchasing of additional permits in order to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule revision will not create a cost impact to individuals who participate in the program because it does not require the purchasing of additional permits in order to participate.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses because they are not directly affected by the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2014

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2014

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.

R657-67. Utah Hunter Mentoring Program.

R657-67-1. Purpose and Authority.

Under the authority of Utah Code Annotated Sections 23-14-1, 23-14-3, 23-14-18, 23-14-19, and 23-19-1, this rule creates a hunting mentor program that will increase hunting opportunities for Utah families and provides the procedures under which a minor child may share the permit of another to take big game, including all big game general season permits, big game limited entry permits, once-in-a-lifetime permits, and all antlerless big game permits.

R657-67-4. Administrative Process for Sharing Permits.

(1) The Hunting Mentor shall submit a complete application for participation in the mentor program [at least 10 business days before the requested effective date] and receive the Division's written authorization prior to sharing a permit.

(2) A complete application for the mentor program includes the following:

- (a) A handling fee as established by the Utah Legislature;
- (b) The Permit Number that is to be shared;
- (c) A physically identifying description of the Qualifying

Minor;

- (d) The Qualifying Minor's hunter education number;
- (e) Written certification(s) of the following:
 - (i) That the Qualifying Minor is the child, stepchild, grandchild, or legal ward of the Hunting Mentor; or
 - (ii) That the Qualifying Minor has a life threatening medical condition; and the Hunting Mentor must also certify that they have received written authorization from the Qualifying Minor's parent or legal guardian approving their participation in the hunting activity; and

(f) any wildlife document(s) that must be surrendered in order to qualify for the Hunter Mentoring Program.

(3) If a Qualifying Minor must surrender a wildlife document in order to qualify for the Mentor Program, that surrender must be done prior to or at the time of their application to the Utah Hunter Mentoring Program as described in R657-67-6.

(4) If a Hunting Mentor wishes to change the Qualifying Minor with whom they share their permit, they must:

- (a) Surrender the authorization issued to the Qualifying Minor by the Division;
- (b) Reapply with the Division to have a new Qualifying Minor participate in the mentor program in the same manner as described in this Section.

(5) If a Hunting Mentor wishes to change the Qualifying Minor with whom they share their permit, they must:

KEY: wildlife, game laws, hunter education

Date of Enactment or Last Substantive Amendment: ~~February 10, 2014~~

Authorization, and Implementing or Interpreted Law: 23-14-1, 23-14-3, 23-14-18, 23-14-19, and 23-19-1.

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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 July 1, 2014.

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 Division 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 Division of Administrative Rules.

From the end of the 30-day waiting period through September 29, 2014, an agency may notify the Division 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 Division 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.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Water Quality R317-2-14 Numeric Criteria

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 38288
FILED: 05/12/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule text was changed as a result of the responses received during the public comment period that ended on 04/04/2014. This change is being published as only a 30-day notice with no further comments being solicited. The amendment with the proposed changes will become effective at the end of the notice period as it was approved on 04/30/2014 by the Water Quality Board.

SUMMARY OF THE RULE OR CHANGE: The one-hour and thirty-day averaging times were deleted. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 1, 2014, issue of the Utah State Bulletin, on page 25. 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 change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The deletion of the averaging times will have no effect on the implementation costs for the state budget because the change in proposed rule has the same costs as previously evaluated for the amendment.
- ◆ **LOCAL GOVERNMENTS:** The deletion of the averaging times will have no effect on the implementation costs for local government because the change in proposed rule has the same costs as previously evaluated for the amendment.
- ◆ **SMALL BUSINESSES:** The deletion of the averaging times will have no effect on the implementation costs for small businesses because the change in proposed rule has the same costs as previously evaluated for the amendment.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The deletion of the averaging times will have no effect on the implementation costs for other persons because the change in proposed rule has the same costs as previously evaluated for the amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The deletion of the averaging times will have no effect on the compliance costs for affected persons because the change in

proposed rule has the same costs as previously evaluated for the amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no change in the fiscal impact to businesses caused by the change in proposed rule that is different from those identified in the original amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2014

AUTHORIZED BY: Walter Baker, Director

**R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-14. Numeric Criteria.**

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC,
RECREATION, AND AGRICULTURAL USES

Parameter	Domestic	Recreation and		Agri- culture
	Source	Aesthetics	2B	
	1C	2A	2B	4
BACTERIOLOGICAL				
(30-DAY GEOMETRIC MEAN) (NO.)/100 ML (7)				
E. coli	206	126	206	
MAXIMUM				
(NO.)/100 ML (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			

INORGANICS (MAXIMUM MG/L)		
Bromate	0.01	
Boron		0.75
Chlorite	<1.0	
Fluoride (3)	1.4-2.4	
Nitrates as N	10	
Total Dissolved Solids (4)		1200
RADIOLOGICAL (MAXIMUM pCi/L)		
Gross Alpha	15	15
Gross Beta (Combined)	4 mrem/yr	Radium 226, 228
Strontium 90	5	
Tritium	8	
Uranium	20000	
	30	

ORGANICS (MAXIMUM UG/L)		
Chlorophenoxy Herbicides		
2,4-D	70	
2,4,5-TP	10	
Methoxychlor	40	

POLLUTION INDICATORS (5)			
BOD (MG/L)	5	5	5
Nitrate as N (MG/L)	4	4	
Total Phosphorus as P (MG/L) (6)	0.05	0.05	

FOOTNOTES:

- (1) Reserved
- (2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.
- (3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from Gunnison Bay to Blue Creek Reservoir: [~~one-hour~~]maximum 6,300 mg/l and an [~~30-day~~] average of 3,900 mg/l

Blue Creek Reservoir and tributaries, Box Elder County, [~~one-hour~~]maximum 2,200 mg/l

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchapah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchapah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchapah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89 1,450 mg/l (Apr.-Sept.) 1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

KEY: water pollution, water quality standards

Date of Enactment or Last Substantive Amendment: 2014

Notice of Continuation: October 2, 2012

Authorizing, and Implemented or Interpreted Law: 19-5

End of the Notices of Changes in Proposed 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 <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Crime Victim Reparations, Administration **R270-3** ADA Complaint Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38498
FILED: 05/12/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Section 63M-7-506, Functions of board - (1) The Crime Victim Reparations and Assistance Board shall: (c) adopt rules to implement and administer this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees. The Utah Office for Victims of Crime adopts this grievance procedures rule to provide for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments submitted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: Continuation of the rule is required for the office to remain complaint with ADA.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CRIME VICTIM REPARATIONS
ADMINISTRATION
ROOM 200
350 E 500 S
SALT LAKE CITY, UT 84111-3347
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 05/12/2014

Crime Victim Reparations, Administration **R270-4** Government Records Access and Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38499
FILED: 05/12/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Section 63M-7-506, Functions of board - (1) The Crime Victim Reparations and Assistance Board shall: (c) adopt rules to implement and administer this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees. In Subsection R270-4-1(A), the authority for the Office of Crime Victim Reparations rule is found in the Government Records Access and Management Act, Section 63G-2-101 et seq. In Subsection R270-4-1(B), the Office of Crime Victim Reparations will be considered as an agency for the purposes of the Government Records Access and Management Act. In Subsection R270-4-1(C), the Director of the Office of Crime Victim Reparations will be considered to be the agency head for the purposes of activities under the Government Records Access and Management Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The agency frequently receives requests for records through the Government Records Access and Management Act process. The agency is required have the rule under Section 63G-2-307. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CRIME VICTIM REPARATIONS
 ADMINISTRATION
 ROOM 200
 350 E 500 S
 SALT LAKE CITY, UT 84111-3347
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 05/12/2014

Education, Rehabilitation
R280-150
Adjudicative Proceedings Under the
Vocational Rehabilitation Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38538
 FILED: 05/15/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides standards and procedures for adjudication of disputes under the Vocational Rehabilitation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 EDUCATION
 REHABILITATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 05/15/2014

Environmental Quality, Air Quality
R307-101
General Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38494
 FILED: 05/08/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-2-104(1)(a) authorizes the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources..." Rule R307-101 includes definitions used throughout all the rules contained in Title R307 that are written under Section 19-2-104. Without these definitions, the remaining rules would be unenforceable.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-101 was amended seven times since the last five year review: DAR No. 32958 - no comments were received on this amendment; DAR No. 33251 - no comments were received on this amendment; DAR No. 35615 - no comments were received on this amendment; DAR No. 36624 - one comment was received from the Wasatch Clean Air Coalition, requesting that the definition of "Executive secretary" not be removed from the rule. Because the term does not appear anywhere else within the Air Quality rules, the term was ultimately removed from the rule; DAR No. 36723 - comments were received, requesting that Section R307-101-2 add new definitions for "Primary PM2.5" and "Secondary PM2.5." and that the definition for "PM2.5 precursor" be altered; DAR No. 37582 - no comments were received on this amendment; and DAR No. 37702 - no comments were received on this amendment. No other comments were received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R307-101-2 includes all the definitions that apply throughout all the rules contained in Title R307. Without them, the remaining rules would be unenforceable, so this rule should be continued. Section R307-101-3 incorporates by reference the most current version of the Code of Federal Regulations cited in many of the Air Quality Rules. In addition, Rule R307-101 is also a component of Utah's State Implementation Plan, which has been federally approved.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/08/2014

**Environmental Quality, Water Quality
R317-401
Graywater Systems**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38481

FILED: 05/06/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Water Quality Board is authorized by Subsection 19-5-104(1)(A)(v) to make rules in order to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems. The director is authorized by Subsection 19-5-105 to: 1) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state; 2) enforce rules created by the Board; 3) require permits for the construction of treatment facilities; 4) review plans and specifications; and 5) adopt other measures to prevent, control, or abate pollution of waters of the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was first promulgated 07/02/2004. No written comments have been received. However, during a recent review by the Conference of Local Environmental Health Administrators (CLEHA) Onsite Wastewater Partnership, the members expressed their support for the existing rule and its importance to the overall effort to prevent pollution and protect public health.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule was developed in response to a number of inquiries from the public and local health departments regarding the use, under certain conditions, of graywater originating from laundries, showers, tubs, and lavatories for subsurface irrigation. The rule sets out the

requirements for use of graywater and is required for adequate protection of the state's water resources. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
 WATER QUALITY
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 05/06/2014

OR REQUIRE THE RULE: The rule is issued by the Chief Information Officer, with the approval of the Office of the Attorney General under the authority of Subsections 67-5-22(3)(a) and 67-5-22 (4)(iii), and Sections 63G-4-202 and 63F-1-206.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Pursuant to Subsection 67-5-22(4)(iii), the Identity Theft Reporting Information System (IRIS) database may be accessed by vendors and federal, state, and local government agencies approved by the Utah Attorney General's Office. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TECHNOLOGY SERVICES
 ADMINISTRATION
 ROOM 6000 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

AUTHORIZED BY: Mark VanOrden, Executive Director and CIO

EFFECTIVE: 05/05/2014

Technology Services, Administration
R895-13
Access to the Identity Theft Reporting Information System Database

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 38480
 FILED: 05/05/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

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

Agencies have notified the Division 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.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Agriculture and Food

Conservation Commission

No. 38071 (NEW): R64-3. Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)

Published: 11/15/2013

Effective: 05/08/2014

No. 38071 (CPR): R64-3. Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)

Published: 04/01/2014

Effective: 05/08/2014

Regulatory Services

No. 38315 (AMD): R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes

Published: 03/15/2014

Effective: 05/08/2014

Commerce

Occupational and Professional Licensing

No. 38337 (AMD): R156-15. Health Facility Administrator Act Rule

Published: 04/01/2014

Effective: 05/08/2014

Education

Administration

No. 38357 (NEW): R277-119. Discretionary Funds

Published: 04/01/2014

Effective: 05/08/2014

No. 38358 (AMD): R277-524.

Paraprofessional/Paraeducator Programs, Assignments, and Qualifications

Published: 04/01/2014

Effective: 05/08/2014

No. 38359 (AMD): R277-709-11. Coordinating Council

Published: 04/01/2014

Effective: 05/08/2014

No. 38360 (AMD): R277-735. Corrections Education Programs

Published: 04/01/2014

Effective: 05/08/2014

Rehabilitation

No. 38361 (AMD): R280-202. USOR Procedures for Individuals with the Most Severe Disabilities

Published: 04/01/2014

Effective: 05/08/2014

Environmental Quality

Air Quality

No. 38332 (AMD): R307-357-4. Standards

Published: 04/01/2014

Effective: 05/08/2014

Pardons (Board Of)

Administration

No. 38324 (AMD): R671-102. Americans with Disabilities Act Complaint Procedures

Published: 04/01/2014

Effective: 05/08/2014

No. 38325 (AMD): R671-201. Original Parole Grant Hearing Schedule and Notice

Published: 04/01/2014

Effective: 05/08/2014

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2014 through May 15, 2014. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
<u>Fleet Operations</u>					
R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4
R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	2014-10/111
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4
AGRICULTURE AND FOOD					
<u>Animal Industry</u>					
R58-3	Brucellosis Vaccination Requirements	38294	AMD	04/16/2014	2014-5/4
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67
<u>Conservation Commission</u>					
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	NEW	05/08/2014	2013-22/15
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82

Marketing and Development

R65-12 Utah Small Grains and Oilseeds Marketing Order 38287 NEW 04/16/2014 2014-5/5

Regulatory Services

R70-410 Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes 38315 AMD 05/08/2014 2014-6/5
 R70-530 Food Protection 38262 R&R 03/27/2014 2014-4/5

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-16 Disqualification Based Upon Conviction of Crime 38274 AMD 03/25/2014 2014-4/10
 R81-1-32 Further Application 38323 AMD 04/29/2014 2014-6/7
 R81-7 Single Event Permits 38275 AMD 03/25/2014 2014-4/11
 R81-10b Temporary Beer Event Permits 38276 AMD 03/25/2014 2014-4/14

ATTORNEY GENERAL

Administration

R105-2 Records Access and Management 38245 NSC 01/30/2014 Not Printed

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-13 Health Reform - Health Insurance Coverage in State Contracts - Implementation 38476 5YR 05/01/2014 2014-10/113

COMMERCE

Consumer Protection

R152-21 Credit Services Organizations Act Rules 38266 5YR 01/29/2014 2014-4/67
 R152-26 Telephone Fraud Prevention Act 38125 AMD 01/07/2014 2013-23/4

Corporations and Commercial Code

R154-2 Utah Uniform Commercial Code, Revised Article 9 Rules 38320 R&R 04/21/2014 2014-6/9

Occupational and Professional Licensing

R156-1-501 Unprofessional Conduct 38157 AMD 01/21/2014 2013-24/6
 R156-1-501 Unprofessional Conduct 38253 NSC 01/31/2014 Not Printed
 R156-15 Health Facility Administrator Act Rule 38337 AMD 05/08/2014 2014-7/5
 R156-22 Professional Engineers and Professional Land Surveyors Licensing Act Rule 38279 AMD 04/08/2014 2014-5/7
 R156-42a Occupational Therapy Practice Act Rule 38254 5YR 01/21/2014 2014-4/68
 R156-42a Occupational Therapy Practice Act Rule 38313 AMD 04/21/2014 2014-6/24
 R156-44a Nurse Midwife Practice Act Rule 38249 5YR 01/16/2014 2014-4/69
 R156-46a Hearing Instrument Specialist Licensing Act Rule 38155 AMD 01/21/2014 2013-24/7
 R156-46a Hearing Instrument Specialist Licensing Act Rule 38257 5YR 01/27/2014 2014-4/69
 R156-55a Utah Construction Trades Licensing Act Rule 38151 AMD 01/21/2014 2013-24/10
 R156-55a-301 License Classifications - Scope of Practice 38380 NSC 04/14/2014 Not Printed
 R156-60 Mental Health Professional Practice Act Rule 38421 5YR 04/08/2014 2014-9/50
 R156-61 Psychologist Licensing Act Rule 38233 5YR 01/13/2014 2014-3/49
 R156-67 Utah Medical Practice Act Rule 38106 AMD 01/07/2014 2013-23/5
 R156-68 Utah Osteopathic Medical Practice Act Rule 38107 AMD 01/07/2014 2013-23/6
 R156-69 Dentist and Dental Hygienist Practice Act Rule 38149 AMD 01/21/2014 2013-24/20
 R156-72 Acupuncture Licensing Act Rule 38165 AMD 02/10/2014 2014-1/8
 R156-80a Medical Language Interpreter Act Rule 38388 5YR 03/31/2014 2014-8/37
 R156-81 Retired Volunteer Health Care Practitioner Act Rule 38382 5YR 03/25/2014 2014-8/37

Real Estate

R162-2f Real Estate Licensing and Practices Rules 38213 AMD 02/25/2014 2014-2/4

RULES INDEX

R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	38270	AMD	03/31/2014	2014-4/16
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CORRECTIONS

Administration

R251-111	Government Records Access and Management	38255	NEW	03/26/2014	2014-4/25
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CRIME VICTIM REPARATIONS

Administration

R270-1-13	Awards	38221	EMR	01/04/2014	2014-3/47
R270-3	ADA Complaint Procedure	38258	EXT	01/27/2014	2014-4/75
R270-3	ADA Complaint Procedure	38498	5YR	05/12/2014	Not Printed
R270-4	Government Records Access and Management Act	38259	EXT	01/27/2014	2014-4/75
R270-4	Government Records Access and Management Act	38499	5YR	05/12/2014	Not Printed

EDUCATION

Administration

R277-102	Adjudicative Proceedings	38408	5YR	04/04/2014	2014-9/51
R277-105	Recognizing Constitutional Freedoms in the Schools	38409	5YR	04/04/2014	2014-9/51
R277-116	Utah State Board of Education Internal Audit Procedure	38183	AMD	02/07/2014	2014-1/10
R277-117	Utah State Board of Education Protected Documents	38295	5YR	02/13/2014	2014-5/59
R277-117	Utah State Board of Education Protected Documents	38299	AMD	04/07/2014	2014-5/16
R277-119	Discretionary Funds	38357	NEW	05/08/2014	2014-7/7
R277-400	School Emergency Response Plans	38296	5YR	02/13/2014	2014-5/59
R277-400	School Emergency Response Plans	38300	AMD	04/07/2014	2014-5/17
R277-400-5	Plan(s) Content--Educational Services and Student Supervision and Building Access	38426	NSC	04/29/2014	Not Printed
R277-437	Student Enrollment Options	38185	AMD	02/07/2014	2014-1/12
R277-438	Dual Enrollment	38347	5YR	03/14/2014	2014-7/89
R277-470-6	Charter School Mentoring Program	38186	AMD	02/07/2014	2014-1/14
R277-477-3	Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans	38326	NSC	04/01/2014	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	38187	AMD	02/07/2014	2014-1/15
R277-486	Professional Staff Cost Program	38348	5YR	03/14/2014	2014-7/89
R277-486	Professional Staff Cost Program	38356	NSC	04/01/2014	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	38301	AMD	04/07/2014	2014-5/20
R277-497	School Grading System	38111	AMD	01/08/2014	2013-23/8
R277-503	Licensing Routes	38240	AMD	03/10/2014	2014-3/4
R277-510-4	NCLB Highly Qualified Assignments - Elementary Teachers 1-8	38289	NSC	02/27/2014	Not Printed
R277-518	Career and Technical Education Licenses	38241	AMD	03/10/2014	2014-3/8
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38349	5YR	03/14/2014	2014-7/90
R277-524	Paraprofessional/Paraeducator Programs, Assignments, and Qualifications	38358	AMD	05/08/2014	2014-7/8
R277-525	Special Educator Stipends	38114	AMD	01/08/2014	2013-23/9
R277-526	Paraeducator to Teacher Scholarship Program	38302	AMD	04/07/2014	2014-5/23
R277-527	International Guest Teachers	38190	AMD	02/07/2014	2014-1/18
R277-528	Use of Public Education Job Enhancement Program (PEJEP) Funds	38242	NEW	03/10/2014	2014-3/12
R277-601	Standards for Utah School Buses and Operations	38410	5YR	04/04/2014	2014-9/52
R277-704	Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports	38113	AMD	01/08/2014	2013-23/11

R277-709	Education Programs Serving Youth in Custody	38116	AMD	01/14/2014	2013-23/13
R277-709-11	Coordinating Council	38359	AMD	05/08/2014	2014-7/10
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	38351	5YR	03/14/2014	2014-7/90
R277-725	Electronic High School	38411	5YR	04/04/2014	2014-9/52
R277-735	Corrections Education Programs	38352	5YR	03/14/2014	2014-7/91
R277-735	Corrections Education Programs	38360	AMD	05/08/2014	2014-7/11
R277-916	Career and Technical Education Introduction and Work-Based Learning Programs	38412	5YR	04/04/2014	2014-9/53
<u>Rehabilitation</u>					
R280-150	Adjudicative Proceedings Under the Vocational Rehabilitation Act	38538	5YR	05/15/2014	Not Printed
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	38353	5YR	03/14/2014	2014-7/91
R280-202	USOR Procedures for Individuals with the Most Severe Disabilities	38361	AMD	05/08/2014	2014-7/14
ENVIRONMENTAL QUALITY					
<u>Administration</u>					
R305-1	Records Access and Management	38244	NSC	01/30/2014	Not Printed
<u>Air Quality</u>					
R307-101	General Requirements	38494	5YR	05/08/2014	Not Printed
R307-103-1	Administrative Procedures	38252	NSC	01/31/2014	Not Printed
R307-110-17	Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits	38061	AMD	01/09/2014	2013-21/8
R307-150	Emission Inventories	38261	5YR	01/28/2014	2014-4/70
R307-210-2	Oil and Gas Sector: New Source Performance Standards	38104	AMD	03/06/2014	2013-23/17
R307-214-3	Oil and Gas Sector: National Emission Standards for Hazardous Air Pollutants	38105	AMD	03/06/2014	2013-23/18
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties	38166	AMD	03/06/2014	2014-1/20
R307-357-4	Standards	38332	AMD	05/08/2014	2014-7/16
R307-401-19	General Approval Order	37833	AMD	01/06/2014	2013-15/29
R307-401-19	General Approval Order	37833	CPR	01/06/2014	2013-23/55
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	38260	5YR	01/28/2014	2014-4/70
R307-840	Lead-Based Paint Program Purpose, Applicability, and Definitions	38330	5YR	03/06/2014	2014-7/92
<u>Drinking Water</u>					
R309-511	Hydraulic Modeling Requirements	38013	AMD	01/21/2014	2013-19/48
R309-515	Facility Design and Operation: Source Development	38012	AMD	01/21/2014	2013-19/51
<u>Radiation Control</u>					
R313-14	Violations and Escalated Enforcement	38076	AMD	04/03/2014	2013-22/45
R313-14	Violations and Escalated Enforcement	38076	CPR	04/03/2014	2014-4/50
R313-22-34	Issuance of Specific Licenses	38145	AMD	02/14/2014	2013-23/19
R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	38082	AMD	04/03/2014	2013-22/49
R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	38082	CPR	04/03/2014	2014-4/53
R313-38-3	Clarifications or Exceptions	38147	AMD	04/07/2014	2013-23/20
R313-38-3	Clarifications or Exceptions	38147	CPR	04/07/2014	2014-5/56
R313-70-5	Payment of Fees	38146	AMD	02/18/2014	2013-23/22
<u>Solid and Hazardous Waste</u>					
R315-8-14	Landfills	38334	NSC	04/01/2014	Not Printed
R315-12	Administrative Procedures	38335	NSC	04/01/2014	Not Printed

RULES INDEX

Water Quality

R317-1-7	TMDLs	38235	AMD	03/27/2014	2014-3/13
R317-5	Large Underground Wastewater Disposal (LUWD) Systems	38271	R&R	03/26/2014	2014-4/26
R317-401	Graywater Systems	38481	5YR	05/06/2014	Not Printed

GOVERNOR

Economic Development

R357-7	Utah Capital Investment Board	38154	NEW	01/24/2014	2013-24/22
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Economic Development, Pete Suazo Utah Athletic Commission

R359-1-604	Boxing - Gloves	38033	AMD	01/24/2014	2013-20/25
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Energy Development (Office of)

R362-2	Renewable Energy Systems Tax Credits	38163	AMD	01/22/2014	2013-24/23
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HEALTH

Administration

R380-70	Standards for Electronic Exchange of Clinical Health Information	38256	5YR	01/24/2014	2014-4/71
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Center for Health Data, Health Care Statistics

R428-15	Health Data Authority Health Insurance Claims Reporting	38144	AMD	01/07/2014	2013-23/43
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Children's Health Insurance Program

R382-3	Accountable Care Organization Incentives to Appropriately Use Emergency Room Services in the Children's Health Insurance Program	38102	NEW	01/13/2014	2013-23/23
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Disease Control and Prevention, Environmental Services

R392-101	Food Safety Manager Certification	38229	5YR	01/10/2014	2014-3/49
R392-200-4	Site Standards	38177	AMD	02/19/2014	2014-1/24
R392-302	Design, Construction, and Operation of Public Pools	38089	AMD	02/14/2014	2013-22/69
R392-303	Public Geothermal Pools and Bathing Places	38285	5YR	02/11/2014	2014-5/60
R392-303	Public Geothermal Pools and Bathing Places	38176	AMD	02/24/2014	2014-1/25

Disease Control and Prevention, Health Promotion

R384-100	Cancer Reporting Rule	38367	5YR	03/18/2014	2014-8/38
R384-200	Program Eligibility, Benefits, and Administration	38178	NEW	03/21/2014	2014-1/22
R384-203	Prescription Drug Database Access	38081	NEW	03/01/2014	2013-22/68

Disease Control and Prevention, Medical Examiner

R448-10	Unattended Death and Reporting Requirements	38419	5YR	04/07/2014	2014-9/55
R448-20	Access to Medical Examiner Reports	38420	5YR	04/07/2014	2014-9/55

Family Health and Preparedness, Child Care Licensing

R430-8	Exemptions From Child Care Licensing	38453	5YR	04/25/2014	2014-10/113
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Family Health and Preparedness, Children with Special Health Care Needs

R398-4	Cytomegalovirus Public Health Initiative	38139	NEW	01/17/2014	2013-23/25
R398-10	Autism Spectrum Disorders and Mental Retardation Reporting	38339	5YR	03/12/2014	2014-7/92
R398-10	Autism Spectrum Disorders and Mental Retardation Reporting	38340	NSC	04/01/2014	Not Printed
R398-20	Early Intervention	37984	AMD	01/28/2014	2013-19/61

Family Health and Preparedness, Emergency Medical Services

R426-8	Emergency Medical Services Ambulance Rates and Charges	38272	AMD	03/24/2014	2014-4/42
R426-100	Air Medical Service Rules	38079	REP	01/06/2014	2013-22/119

Family Health and Preparedness, Licensing

R432-2-5	Requirements for a Satellite Service Operation	38086	AMD	01/24/2014	2013-22/123
R432-3	General Health Care Facility Rules Inspection and Enforcement	38173	AMD	02/27/2014	2014-1/37
R432-7	Specialty Hospital - Psychiatric Hospital Construction	38391	5YR	04/01/2014	2014-8/40
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	38392	5YR	04/01/2014	2014-8/41
R432-9	Specialty Hospital - Rehabilitation Construction Rule	38393	5YR	04/01/2014	2014-8/41
R432-10	Specialty Hospital - Long-Term Acute Care Construction Rule	38394	5YR	04/01/2014	2014-8/42
R432-11	Orthopedic Hospital Construction	38395	5YR	04/01/2014	2014-8/42
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	38396	5YR	04/01/2014	2014-8/43
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	38397	5YR	04/01/2014	2014-8/43
R432-14	Birth Center Construction Rule	38422	5YR	04/10/2014	2014-9/54
R432-30	Adjudicative Procedure	38398	5YR	04/01/2014	2014-8/44
R432-32	Licensing Exemption for Non-Profit Volunteer End-of-Life Care	38399	5YR	04/01/2014	2014-8/44
R432-270	Assisted Living Facilities	38423	5YR	04/10/2014	2014-9/54

Family Health and Preparedness, Primary Care and Rural Health

R434-40	Utah Health Care Workforce Financial Assistance Program Rules	38305	NEW	05/08/2014	2014-6/53
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Health Care Financing, Coverage and Reimbursement Policy

R414-1-5	Incorporations by Reference	38191	AMD	05/01/2014	2014-1/32
R414-1B	Prohibition of Payment for Certain Abortion Services	38369	5YR	03/18/2014	2014-8/39
R414-11	Podiatric Services	38371	5YR	03/18/2014	2014-8/39
R414-14	Home Health Services	38130	AMD	01/10/2014	2013-23/26
R414-21	Physical and Occupational Therapy	38132	AMD	01/10/2014	2013-23/28
R414-49	Dental Services	38133	AMD	01/10/2014	2013-23/30
R414-49	Dental Services	38201	NSC	01/23/2014	Not Printed
R414-50	Dental, Oral and Maxillofacial Surgeons	38134	REP	01/10/2014	2013-23/32
R414-51	Dental, Orthodontia	38135	REP	01/10/2014	2013-23/33
R414-54	Speech-Language Pathology Services	38227	5YR	01/07/2014	2014-3/50
R414-61	Home and Community-Based Services Waivers	38318	AMD	04/21/2014	2014-6/29
R414-90	Diabetes Self-Management Training	38368	5YR	03/18/2014	2014-8/40
R414-304-5	MAGI-Based Coverage Groups	38317	AMD	04/21/2014	2014-6/30
R414-306-5	Medical Transportation	38129	AMD	01/10/2014	2013-23/35
R414-310	Medicaid Primary Care Network Demonstration Waiver	38321	AMD	04/21/2014	2014-6/32
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	38322	AMD	04/21/2014	2014-6/42
R414-401	Nursing Care Facility Assessment	38418	5YR	04/07/2014	2014-9/53
R414-503	Preadmission Screening and Resident Review	38141	R&R	01/07/2014	2013-23/37
R414-511	Medicaid Accountable Care Organization Incentives to Appropriately Use Emergency Room Services	38103	NEW	01/13/2014	2013-23/42

HUMAN RESOURCE MANAGEMENT

Administration

R477-4-4	Recruitment and Selection for Career Service Positions	38077	AMD	01/14/2014	2013-22/124
R477-6-9	Severance Benefit	38092	AMD	01/14/2014	2013-22/125
R477-7	Leave	38084	AMD	01/14/2014	2013-22/126
R477-101	Administrative Law Judge Conduct Committee	38091	NEW	01/14/2014	2013-22/129

RULES INDEX

HUMAN SERVICES

Administration

R495-882 Termination of Parental Rights 38280 5YR 02/10/2014 2014-5/61

Child and Family Services

R512-41 Qualifying Adoptive Families and Adoption Placement 38263 5YR 01/28/2014 2014-4/72
 R512-43 Adoption Assistance 38217 AMD 03/10/2014 2014-3/15
 R512-75 Rules Governing Adjudication of Consumer Complaints 38264 5YR 01/28/2014 2014-4/72
 R512-306 Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program 38265 5YR 01/28/2014 2014-4/73

Recovery Services

R527-38 Unenforceable Cases 38277 5YR 02/05/2014 2014-5/61
 R527-275 Passport Release 38336 5YR 03/06/2014 2014-7/93

Substance Abuse and Mental Health

R523-1 Procedures 38297 REP 04/07/2014 2014-5/27
 R523-4 Local Mental Health Authorities and Local Substance Abuse Authorities 38292 NEW 04/07/2014 2014-5/36
 R523-5 Certification of Designated Examiners and Case Managers 38293 NEW 04/07/2014 2014-5/42
 R523-6 Medication, Psychosurgery and Electroshock Procedures for Children, Consumer Rights, Due Process, Family Involvement 38298 NEW 04/07/2014 2014-5/45

INSURANCE

Administration

R590-93 Replacement of Life Insurance and Annuities 38413 5YR 04/07/2014 2014-9/56
 R590-96 Rule to Recognize New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities 38069 AMD 01/21/2014 2013-22/137
 R590-98 Unfair Practice in Payment of Life Insurance and Annuity Policy Values 38414 5YR 04/07/2014 2014-9/56
 R590-166 Home Protection Service Contract Rule 38417 5YR 04/07/2014 2014-9/57
 R590-170 Fiduciary and Trust Account Obligations 38283 5YR 02/11/2014 2014-5/62
 R590-186-8 Investigating Unprofessional Conduct 38273 AMD 03/26/2014 2014-4/43
 R590-190 Unfair Property, Liability and Title Claims Settlement Practices Rule 38416 5YR 04/07/2014 2014-9/57
 R590-191 Unfair Life Insurance Claims Settlement Practices Rule 38415 5YR 04/07/2014 2014-9/58
 R590-195 Car Rental Related Licensing Rule 38307 5YR 02/20/2014 2014-6/75
 R590-195 Car Rental Related Licensing Rule 38308 REP 04/22/2014 2014-6/59
 R590-220 Submission of Accident and Health Insurance Filings 38311 5YR 02/24/2014 2014-6/75
 R590-225 Submission of Property and Casualty Rate and Form Filings 38309 5YR 02/20/2014 2014-6/76
 R590-226 Submission of Life Insurance Filings 38364 5YR 03/18/2014 2014-8/45
 R590-226-5 Filing Submission Requirements 38290 NSC 02/27/2014 Not Printed
 R590-227 Submission of Annuity Filings 38365 5YR 03/18/2014 2014-8/45
 R590-227-5 Filing Submission Requirements 38291 AMD 04/09/2014 2014-5/49
 R590-227-5 Filing Submission Requirements 38424 NSC 05/01/2014 Not Printed
 R590-228 Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings 38366 5YR 03/18/2014 2014-8/46
 R590-229 Annuity Disclosure 38090 AMD 03/11/2014 2013-22/139
 R590-229 Annuity Disclosure 38090 CPR 03/11/2014 2014-3/44
 R590-249-1 Authority 38286 NSC 02/27/2014 Not Printed
 R590-252 Use of Senior-Specific Certifications and Professional Designations 38282 5YR 02/11/2014 2014-5/62
 R590-258-1 Authority 38284 NSC 02/27/2014 Not Printed
 R590-268 Small Employer Stop-Loss Insurance 38087 NEW 03/13/2014 2013-22/142
 R590-268 Small Employer Stop-Loss Insurance 38087 CPR 03/13/2014 2014-3/45
 R590-269 Individual Open Enrollment Period 38088 NEW 01/13/2014 2013-22/144

Title and Escrow Commission

R592-8-5	Request for Exemption Process	38246	AMD	03/10/2014	2014-3/20
R592-11	Title Insurance Producer Annual and Controlled Business Reports	38156	AMD	03/10/2014	2013-24/34
R592-11	Title Insurance Producer Annual and Controlled Business Reports	38156	CPR	03/10/2014	2014-4/64

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-1	General Provisions	38303	5YR	02/17/2014	2014-6/77
R597-3	Judicial Performance Evaluations	38304	5YR	02/17/2014	2014-6/77

LABOR COMMISSION

Adjudication

R602-2	Adjudication of Workers' Compensation and Occupational Disease Claims	38306	AMD	04/22/2014	2014-6/61
R602-2-5	Timeliness of Decisions	38193	AMD	02/21/2014	2014-2/7
R602-7	Adjudication of Discrimination Claims	38327	5YR	03/05/2014	2014-7/94
R602-8	Adjudication of Utah Occupational Safety and Health Citation Claims	38328	5YR	03/05/2014	2014-7/94

Boiler and Elevator Safety

R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	38226	AMD	03/10/2014	2014-3/22
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LIEUTENANT GOVERNOR

Administration

R622-2	Use of the Great Seal of the State of Utah	38379	5YR	03/24/2014	2014-8/46
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Elections

R623-1	Lieutenant Governor's Procedure for Regulation of Lobbyist Activities	38383	5YR	03/26/2014	2014-8/47
R623-2	Uniform Ballot Counting Standards	38384	5YR	03/26/2014	2014-8/47
R623-3	Utah State Plan on Election Reform	38385	5YR	03/26/2014	2014-8/48

MONEY MANAGEMENT COUNCIL

Administration

R628-19	Requirements for the Use of Investment Advisers by Public Treasurers	38281	5YR	02/10/2014	2014-5/63
R628-20	Foreign Deposits for Higher Education Institutions	38179	NEW	02/18/2014	2014-1/41
R628-21	Conditions and Procedures for the Use of Reciprocal Deposits	38180	NEW	04/15/2014	2014-1/42
R628-21	Conditions and Procedures for the Use of Reciprocal Deposits	38180	CPR	04/15/2014	2014-6/70

NATURAL RESOURCES

Parks and Recreation

R651-102	Government Records Access Management Act	38343	NSC	04/01/2014	Not Printed
R651-411	OHV Use in State Parks	38216	5YR	01/02/2014	2014-3/51
R651-636	Procedures for Application to Receive Funds From the Zion National Park Restricted Account	38225	5YR	01/06/2014	2014-3/51
R651-700	Administrative Procedures for Real Property Management	38224	5YR	01/06/2014	2014-3/52

Water Rights

R655-13	Stream Alteration	38267	5YR	01/29/2014	2014-4/73
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RULES INDEX

Wildlife Resources

R657-5	Taking Big Game	38168	AMD	02/10/2014	2014-1/44
R657-10	Taking Cougar	38231	AMD	03/11/2014	2014-3/23
R657-12	Hunting and Fishing Accommodations for People with Disabilities	38169	AMD	02/10/2014	2014-1/52
R657-13	Taking Fish and Crayfish	38167	AMD	02/10/2014	2014-1/54
R657-13	Taking Fish and Crayfish	38316	AMD	04/21/2014	2014-6/66
R657-27	License Agent Procedures	38230	AMD	03/11/2014	2014-3/26
R657-38	Dedicated Hunter Program	38170	AMD	02/10/2014	2014-1/61
R657-41	Conservation and Sportsman Permits	38171	AMD	02/10/2014	2014-1/68
R657-43	Landowner Permits	38232	AMD	03/11/2014	2014-3/30
R657-60	Aquatic Invasive Species Interdiction	38236	AMD	03/11/2014	2014-3/32
R657-62	Drawing Application Procedures	38427	5YR	04/14/2014	2014-9/58
R657-67	Utah Hunter Mentoring Program	38172	NEW	02/10/2014	2014-1/70

PARDONS (BOARD OF)

Administration

R671-102	Americans with Disabilities Act Complaint Procedures	38324	AMD	05/08/2014	2014-7/76
R671-201	Original Parole Grant Hearing Schedule and Notice	38325	AMD	05/08/2014	2014-7/78
R671-201-1	Schedule and Notice	38314	EMR	03/01/2014	2014-6/73

PUBLIC EDUCATION JOB ENHANCEMENT PROGRAM

Job Enhancement Committee

R690-100	Public Education Job Enhancement Program Participant Eligibility and Requirements	38243	REP	03/10/2014	2014-3/37
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PUBLIC SAFETY

Administration

R698-4	Certification of the Law Enforcement Agency of a Private College or University	38310	5YR	02/21/2014	2014-6/78
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Driver License

R708-10	Driver License Restrictions	38370	5YR	03/18/2014	2014-8/48
R708-22	Commercial Driver License Administrative Proceedings	38406	5YR	04/03/2014	2014-9/59
R708-24	Renewal of a Commercial Driver License (CDL)	38407	5YR	04/03/2014	2014-9/59
R708-26	Learner Permit Rule	38373	5YR	03/18/2014	2014-8/49
R708-26	Learner Permit Rule	38372	NSC	04/14/2014	Not Printed
R708-31	Ignition Interlock Systems	38196	AMD	02/21/2014	2014-2/8
R708-31	Ignition Interlock Systems	38374	5YR	03/18/2014	2014-8/49

Peace Officer Standards and Training

R728-502	Procedure for POST Instructor Certification	38377	5YR	03/19/2014	2014-8/50
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PUBLIC SERVICE COMMISSION

Administration

R746-341	Lifeline/Link-up Rule	38198	AMD	02/24/2014	2014-2/9
R746-343-15	Surcharge	38278	AMD	05/01/2014	2014-5/51
R746-350	Application to Discontinue Telecommunications Service	38234	5YR	01/13/2014	2014-3/52

REGENTS (BOARD OF)

Salt Lake Community College

R784-1	Government Records Access and Management Act Rules	38362	5YR	03/17/2014	2014-8/50
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University of Utah, Administration

R805-3	Overnight Camping and Campfires on University of Utah Property	38355	5YR	03/14/2014	2014-7/95
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R805-6	University of Utah Shooting Range Access and Use Requirements	38018	NEW	02/11/2014	2013-20/46
<u>University of Utah. Museum of Natural History (Utah)</u>					
R807-1	Curation of Collections from State Lands	38354	5YR	03/14/2014	2014-7/95
TAX COMMISSION					
<u>Auditing</u>					
R865-7H	Environmental Assurance Fee	38223	5YR	01/06/2014	2014-3/53
R865-16R	Severance Tax	38222	5YR	01/06/2014	2014-3/54
R865-19S-30	Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104	38237	NSC	01/30/2014	Not Printed
TECHNOLOGY SERVICES					
<u>Administration</u>					
R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	38238	5YR	01/14/2014	2014-3/54
R895-4	Sub-Domain Naming Conventions for Executive Branch Agencies	38239	NSC	01/30/2014	Not Printed
R895-6	IT Plan Submission Rule for Agencies	38386	5YR	03/27/2014	2014-8/51
R895-7	Acceptable Use of Information Technology Resources	38428	5YR	04/15/2014	2014-9/60
R895-13	Access to the Identity Theft Reporting Information System Database	38480	5YR	05/05/2014	Not Printed
TRANSPORTATION					
<u>Motor Carrier</u>					
R909-3	Standards for Utah School Buses	38215	5YR	01/02/2014	2014-3/55
VETERANS' AFFAIRS					
<u>Administration</u>					
R978-1	Rules Governing Veterans' Affairs	38228	NSC	01/30/2014	Not Printed
WORKFORCE SERVICES					
<u>Employment Development</u>					
R986-100-117	Disqualification For Fraud (Intentional Program Violations or IPVs)	38158	AMD	03/01/2014	2013-24/36
R986-100-117	Disqualification For Fraud (Intentional Program Violations or IPVs)	38268	AMD	04/15/2014	2014-4/45
R986-200-204	Eligibility Requirements	38140	AMD	01/14/2014	2013-23/50
R986-700	Child Care Assistance	38159	AMD	03/01/2014	2013-24/38
R986-700	Child Care Assistance	38269	AMD	04/15/2014	2014-4/46
<u>Unemployment Insurance</u>					
R994-312-102	Examination of Employer Records: Scope and Authority	38248	AMD	04/15/2014	2014-3/41

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

RULES INDEX

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abortion</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38369	R414-1B	5YR	03/18/2014	2014-8/39
<u>acceptable use</u> Technology Services, Administration	38428	R895-7	5YR	04/15/2014	2014-9/60
<u>accidents</u> Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14
<u>acupuncture</u> Commerce, Occupational and Professional Licensing	38165	R156-72	AMD	02/10/2014	2014-1/8
<u>ADA complaint procedures</u> Crime Victim Reparations, Administration	38258 38498	R270-3 R270-3	EXT 5YR	01/27/2014 05/12/2014	2014-4/75 Not Printed
<u>adjudicative proceedings</u> Environmental Quality, Solid and Hazardous Waste	38335	R315-12	NSC	04/01/2014	Not Printed
<u>administrative law judges</u> Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129
<u>administrative procedures</u> Education, Administration Education, Rehabilitation Environmental Quality, Air Quality Labor Commission, Adjudication	38408 38538 38252 38306 38193 38327 38328	R277-102 R280-150 R307-103-1 R602-2 R602-2-5 R602-7 R602-8	5YR 5YR NSC AMD AMD 5YR 5YR	04/04/2014 05/15/2014 01/31/2014 04/22/2014 02/21/2014 03/05/2014 03/05/2014	2014-9/51 Not Printed Not Printed 2014-6/61 2014-2/7 2014-7/94 2014-7/94
<u>administrative proceedings</u> Environmental Quality, Air Quality Environmental Quality, Solid and Hazardous Waste Public Safety, Driver License	38252 38335 38406	R307-103-1 R315-12 R708-22	NSC NSC 5YR	01/31/2014 04/01/2014 04/03/2014	Not Printed Not Printed 2014-9/59
<u>adoptions</u> Human Services, Child and Family Services	38263 38217	R512-41 R512-43	5YR AMD	01/28/2014 03/10/2014	2014-4/72 2014-3/15
<u>air medical services</u> Health, Family Health and Preparedness, Emergency Medical Services	38079	R426-100	REP	01/06/2014	2013-22/119
<u>air pollution</u> Environmental Quality, Air Quality	38494 38252 38061 38261 38104 38105 38166 38332 37833 37833 38260	R307-101 R307-103-1 R307-110-17 R307-150 R307-210-2 R307-214-3 R307-302 R307-357-4 R307-401-19 R307-401-19 R307-405	5YR NSC AMD 5YR AMD AMD AMD AMD AMD CPR 5YR	05/08/2014 01/31/2014 01/09/2014 01/28/2014 03/06/2014 03/06/2014 03/06/2014 05/08/2014 01/06/2014 01/06/2014 01/28/2014	Not Printed Not Printed 2013-21/8 2014-4/70 2013-23/17 2013-23/18 2014-1/20 2014-7/16 2013-15/29 2013-23/55 2014-4/70
<u>air travel</u> Administrative Services, Finance	38175	R25-7	AMD	02/07/2014	2014-1/4
<u>alcoholic beverages</u> Alcoholic Beverage Control, Administration	38274 38323	R81-1-16 R81-1-32	AMD AMD	03/25/2014 04/29/2014	2014-4/10 2014-6/7

	38275	R81-7	AMD	03/25/2014	2014-4/11
	38276	R81-10b	AMD	03/25/2014	2014-4/14
<u>alternative licensing</u>					
Education, Administration	38240	R277-503	AMD	03/10/2014	2014-3/4
<u>annuity disclosure</u>					
Insurance, Administration	38090	R590-229	AMD	03/11/2014	2013-22/139
	38090	R590-229	CPR	03/11/2014	2014-3/44
<u>annuity insurance filings</u>					
Insurance, Administration	38365	R590-227	5YR	03/18/2014	2014-8/45
	38291	R590-227-5	AMD	04/09/2014	2014-5/49
	38424	R590-227-5	NSC	05/01/2014	Not Printed
<u>annuity replacement</u>					
Insurance, Administration	38413	R590-93	5YR	04/07/2014	2014-9/56
<u>APCD</u>					
Health, Center for Health Data, Health Care Statistics	38144	R428-15	AMD	01/07/2014	2013-23/43
<u>appeals</u>					
Education, Administration	38187	R277-481	AMD	02/07/2014	2014-1/15
<u>approval orders</u>					
Environmental Quality, Air Quality	37833	R307-401-19	AMD	01/06/2014	2013-15/29
	37833	R307-401-19	CPR	01/06/2014	2013-23/55
<u>ARC</u>					
Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14
<u>archaeological resources</u>					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	38354	R807-1	5YR	03/14/2014	2014-7/95
<u>attorney exemption application process</u>					
Insurance, Title and Escrow Commission	38246	R592-8-5	AMD	03/10/2014	2014-3/20
<u>autism spectrum</u>					
Health, Family Health and Preparedness, Children with Special Health Care Needs	38339	R398-10	5YR	03/12/2014	2014-7/92
	38340	R398-10	NSC	04/01/2014	Not Printed
<u>awards</u>					
Education, Administration	38242	R277-528	NEW	03/10/2014	2014-3/12
Public Education Job Enhancement Program, Job Enhancement Committee	38243	R690-100	REP	03/10/2014	2014-3/37
<u>ballots</u>					
Lieutenant Governor, Elections	38384	R623-2	5YR	03/26/2014	2014-8/47
<u>banking</u>					
Commerce, Corporations and Commercial Code	38320	R154-2	R&R	04/21/2014	2014-6/9
<u>bed allocations</u>					
Human Services, Substance Abuse and Mental Health	38297	R523-1	REP	04/07/2014	2014-5/27
	38292	R523-4	NEW	04/07/2014	2014-5/36
<u>big game seasons</u>					
Natural Resources, Wildlife Resources	38168	R657-5	AMD	02/10/2014	2014-1/44
	38232	R657-43	AMD	03/11/2014	2014-3/30
<u>bison</u>					
Agriculture and Food, Animal Industry	38294	R58-3	AMD	04/16/2014	2014-5/4

RULES INDEX

<u>boilers</u>						
Labor Commission, Boiler and Elevator Safety	38226	R616-2-3	AMD	03/10/2014	2014-3/22	
<u>boxing</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	38033	R359-1-604	AMD	01/24/2014	2013-20/25	
<u>breast cancer screening</u>						
Health, Disease Control and Prevention, Health Promotion	38178	R384-200	NEW	03/21/2014	2014-1/22	
<u>broad scope</u>						
Environmental Quality, Radiation Control	38145	R313-22-34	AMD	02/14/2014	2013-23/19	
<u>brucellosis</u>						
Agriculture and Food, Animal Industry	38294	R58-3	AMD	04/16/2014	2014-5/4	
<u>budgeting</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38317	R414-304-5	AMD	04/21/2014	2014-6/30	
<u>building board</u>						
Administrative Services, Facilities Construction and Management	38247	R23-33	NEW	03/10/2014	2014-3/2	
<u>buildings</u>						
Administrative Services, Facilities Construction and Management	38404	R23-29	5YR	04/03/2014	2014-9/49	
<u>buses</u>						
Education, Administration	38410	R277-601	5YR	04/04/2014	2014-9/52	
<u>camp</u>						
Regents (Board Of), University of Utah, Administration	38355	R805-3	5YR	03/14/2014	2014-7/95	
<u>campfire</u>						
Regents (Board Of), University of Utah, Administration	38355	R805-3	5YR	03/14/2014	2014-7/95	
<u>camping</u>						
Regents (Board Of), University of Utah, Administration	38355	R805-3	5YR	03/14/2014	2014-7/95	
<u>cancer</u>						
Health, Disease Control and Prevention, Health Promotion	38367	R384-100	5YR	03/18/2014	2014-8/38	
<u>capital improvements</u>						
Administrative Services, Facilities Construction and Management	38247	R23-33	NEW	03/10/2014	2014-3/2	
<u>capital investments</u>						
Governor, Economic Development	38154	R357-7	NEW	01/24/2014	2013-24/22	
<u>career and technical education</u>						
Education, Administration	38241	R277-518	AMD	03/10/2014	2014-3/8	
<u>case managers</u>						
Human Services, Substance Abuse and Mental Health	38293	R523-5	NEW	04/07/2014	2014-5/42	
<u>cattle</u>						
Agriculture and Food, Animal Industry	38294	R58-3	AMD	04/16/2014	2014-5/4	

<u>certifications</u>						
Agriculture and Food, Conservation Commission	38071	R64-3	NEW	05/08/2014	2013-22/15	
	38071	R64-3	CPR	05/08/2014	2014-7/82	
Labor Commission, Boiler and Elevator Safety	38226	R616-2-3	AMD	03/10/2014	2014-3/22	
<u>certified medical language interpreter</u>						
Commerce, Occupational and Professional Licensing	38388	R156-80a	5YR	03/31/2014	2014-8/37	
<u>certified nurse midwife</u>						
Commerce, Occupational and Professional Licensing	38249	R156-44a	5YR	01/16/2014	2014-4/69	
<u>cervical cancer screening</u>						
Health, Disease Control and Prevention, Health Promotion	38178	R384-200	NEW	03/21/2014	2014-1/22	
<u>charities</u>						
Tax Commission, Auditing	38237	R865-19S-30	NSC	01/30/2014	Not Printed	
<u>charter schools</u>						
Education, Administration	38186	R277-470-6	AMD	02/07/2014	2014-1/14	
	38187	R277-481	AMD	02/07/2014	2014-1/15	
<u>chickens</u>						
Agriculture and Food, Regulatory Services	38315	R70-410	AMD	05/08/2014	2014-6/5	
<u>child care</u>						
Workforce Services, Employment Development	38159	R986-700	AMD	03/01/2014	2013-24/38	
	38269	R986-700	AMD	04/15/2014	2014-4/46	
<u>child care facilities</u>						
Health, Family Health and Preparedness, Child Care Licensing	38453	R430-8	5YR	04/25/2014	2014-10/113	
<u>child support</u>						
Human Services, Recovery Services	38277	R527-38	5YR	02/05/2014	2014-5/61	
	38336	R527-275	5YR	03/06/2014	2014-7/93	
<u>child welfare</u>						
Human Services, Child and Family Services	38263	R512-41	5YR	01/28/2014	2014-4/72	
	38217	R512-43	AMD	03/10/2014	2014-3/15	
<u>children's health benefits</u>						
Health, Children's Health Insurance Program	38102	R382-3	NEW	01/13/2014	2013-23/23	
<u>CHIP</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38322	R414-320	AMD	04/21/2014	2014-6/42	
<u>claims</u>						
Health, Center for Health Data, Health Care Statistics	38144	R428-15	AMD	01/07/2014	2013-23/43	
<u>Class I area</u>						
Environmental Quality, Air Quality	38260	R307-405	5YR	01/28/2014	2014-4/70	
<u>clinical health information exchanges</u>						
Health, Administration	38256	R380-70	5YR	01/24/2014	2014-4/71	
<u>CMV</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	38139	R398-4	NEW	01/17/2014	2013-23/25	
<u>colleges</u>						
Public Safety, Administration	38310	R698-4	5YR	02/21/2014	2014-6/78	
<u>colorectal cancer screening</u>						
Health, Disease Control and Prevention, Health Promotion	38178	R384-200	NEW	03/21/2014	2014-1/22	

RULES INDEX

<u>conduct committee</u>						
Human Resource Management, Administration	38091	R477-101	NEW	01/14/2014	2013-22/129	
<u>confidentiality</u>						
Education, Administration	38295	R277-117	5YR	02/13/2014	2014-5/59	
	38299	R277-117	AMD	04/07/2014	2014-5/16	
<u>confidentiality of information</u>						
Workforce Services, Unemployment Insurance	38248	R994-312-102	AMD	04/15/2014	2014-3/41	
<u>conservation permits</u>						
Natural Resources, Wildlife Resources	38171	R657-41	AMD	02/10/2014	2014-1/68	
<u>consumer hearing panel</u>						
Human Services, Child and Family Services	38264	R512-75	5YR	01/28/2014	2014-4/72	
<u>consumer products</u>						
Environmental Quality, Air Quality	38332	R307-357-4	AMD	05/08/2014	2014-7/16	
<u>consumer rights</u>						
Human Services, Substance Abuse and Mental Health	38298	R523-6	NEW	04/07/2014	2014-5/45	
<u>consumers</u>						
Commerce, Consumer Protection	38266	R152-21	5YR	01/29/2014	2014-4/67	
	38125	R152-26	AMD	01/07/2014	2013-23/4	
<u>contractors</u>						
Capitol Preservation Board (State), Administration	38476	R131-13	5YR	05/01/2014	2014-10/113	
Commerce, Occupational and Professional Licensing	38151	R156-55a	AMD	01/21/2014	2013-24/10	
	38380	R156-55a-301	NSC	04/14/2014	Not Printed	
<u>contracts</u>						
Capitol Preservation Board (State), Administration	38476	R131-13	5YR	05/01/2014	2014-10/113	
<u>controlled substances</u>						
Health, Disease Control and Prevention, Health Promotion	38081	R384-203	NEW	03/01/2014	2013-22/68	
<u>corrections</u>						
Corrections, Administration	38255	R251-111	NEW	03/26/2014	2014-4/25	
<u>cougar</u>						
Natural Resources, Wildlife Resources	38231	R657-10	AMD	03/11/2014	2014-3/23	
<u>credit insurance filings</u>						
Insurance, Administration	38366	R590-228	5YR	03/18/2014	2014-8/46	
<u>credit services</u>						
Commerce, Consumer Protection	38266	R152-21	5YR	01/29/2014	2014-4/67	
<u>criminal records</u>						
Corrections, Administration	38255	R251-111	NEW	03/26/2014	2014-4/25	
<u>curation</u>						
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	38354	R807-1	5YR	03/14/2014	2014-7/95	
<u>custody</u>						
Education, Administration	38352	R277-735	5YR	03/14/2014	2014-7/91	
	38360	R277-735	AMD	05/08/2014	2014-7/11	
<u>Cytomegalovirus</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	38139	R398-4	NEW	01/17/2014	2013-23/25	

<u>decommissioning</u>						
Environmental Quality, Radiation Control	38145	R313-22-34	AMD	02/14/2014	2013-23/19	
<u>definitions</u>						
Environmental Quality, Air Quality	38494	R307-101	5YR	05/08/2014	Not Printed	
	38330	R307-840	5YR	03/06/2014	2014-7/92	
<u>delegation</u>						
Administrative Services, Facilities Construction and Management	38404	R23-29	5YR	04/03/2014	2014-9/49	
<u>demonstration</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38321	R414-310	AMD	04/21/2014	2014-6/32	
<u>dental</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38135	R414-51	REP	01/10/2014	2013-23/33	
<u>dental hygienists</u>						
Commerce, Occupational and Professional Licensing	38149	R156-69	AMD	01/21/2014	2013-24/20	
<u>dentists</u>						
Commerce, Occupational and Professional Licensing	38149	R156-69	AMD	01/21/2014	2013-24/20	
<u>depleted uranium</u>						
Environmental Quality, Radiation Control	38082	R313-25	AMD	04/03/2014	2013-22/49	
	38082	R313-25	CPR	04/03/2014	2014-4/53	
<u>design</u>						
Administrative Services, Facilities Construction and Management	38405	R23-3	5YR	04/03/2014	2014-9/49	
<u>designated examiners</u>						
Human Services, Substance Abuse and Mental Health	38293	R523-5	NEW	04/07/2014	2014-5/42	
<u>disabilities</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	37984	R398-20	AMD	01/28/2014	2013-19/61	
Pardons (Board Of), Administration	38324	R671-102	AMD	05/08/2014	2014-7/76	
<u>disabled persons</u>						
Education, Rehabilitation	38353	R280-202	5YR	03/14/2014	2014-7/91	
	38361	R280-202	AMD	05/08/2014	2014-7/14	
Natural Resources, Wildlife Resources	38169	R657-12	AMD	02/10/2014	2014-1/52	
<u>disasters</u>						
Education, Administration	38296	R277-400	5YR	02/13/2014	2014-5/59	
	38300	R277-400	AMD	04/07/2014	2014-5/17	
	38426	R277-400-5	NSC	04/29/2014	Not Printed	
<u>discretionary funds</u>						
Education, Administration	38357	R277-119	NEW	05/08/2014	2014-7/7	
<u>discrimination</u>						
Labor Commission, Adjudication	38327	R602-7	5YR	03/05/2014	2014-7/94	
<u>diversion programs</u>						
Commerce, Occupational and Professional Licensing	38157	R156-1-501	AMD	01/21/2014	2013-24/6	
	38253	R156-1-501	NSC	01/31/2014	Not Printed	
<u>drinking water</u>						
Environmental Quality, Drinking Water	38013	R309-511	AMD	01/21/2014	2013-19/48	
	38012	R309-515	AMD	01/21/2014	2013-19/51	

RULES INDEX

<u>drip irrigation</u>						
Environmental Quality, Water Quality	38481	R317-401	5YR	05/06/2014	Not Printed	
<u>driver license restrictions</u>						
Public Safety, Driver License	38370	R708-10	5YR	03/18/2014	2014-8/48	
<u>dual enrollment</u>						
Education, Administration	38347	R277-438	5YR	03/14/2014	2014-7/89	
<u>due process</u>						
Human Services, Substance Abuse and Mental Health	38297	R523-1	REP	04/07/2014	2014-5/27	
	38298	R523-6	NEW	04/07/2014	2014-5/45	
<u>early intervention</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	37984	R398-20	AMD	01/28/2014	2013-19/61	
<u>economic development</u>						
Governor, Economic Development	38154	R357-7	NEW	01/24/2014	2013-24/22	
<u>economics</u>						
Education, Administration	38113	R277-704	AMD	01/08/2014	2013-23/11	
<u>education</u>						
Education, Administration	38186	R277-470-6	AMD	02/07/2014	2014-1/14	
	38116	R277-709	AMD	01/14/2014	2013-23/13	
	38359	R277-709-11	AMD	05/08/2014	2014-7/10	
Health, Family Health and Preparedness, Children with Special Health Care Needs	37984	R398-20	AMD	01/28/2014	2013-19/61	
<u>educational administration</u>						
Education, Administration	38183	R277-116	AMD	02/07/2014	2014-1/10	
<u>educator licensing</u>						
Education, Administration	38241	R277-518	AMD	03/10/2014	2014-3/8	
<u>educators</u>						
Education, Administration	38289	R277-510-4	NSC	02/27/2014	Not Printed	
	38242	R277-528	NEW	03/10/2014	2014-3/12	
Public Education Job Enhancement Program, Job Enhancement Committee	38243	R690-100	REP	03/10/2014	2014-3/37	
<u>effective date</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38129	R414-306-5	AMD	01/10/2014	2013-23/35	
<u>effluent standards</u>						
Environmental Quality, Water Quality	38235	R317-1-7	AMD	03/27/2014	2014-3/13	
<u>eggs</u>						
Agriculture and Food, Regulatory Services	38315	R70-410	AMD	05/08/2014	2014-6/5	
<u>elections</u>						
Lieutenant Governor, Elections	38384	R623-2	5YR	03/26/2014	2014-8/47	
	38385	R623-3	5YR	03/26/2014	2014-8/48	
<u>electronic devices</u>						
Education, Administration	38301	R277-495	AMD	04/07/2014	2014-5/20	
<u>electronic high school</u>						
Education, Administration	38411	R277-725	5YR	04/04/2014	2014-9/52	
<u>emergency medical services</u>						
Health, Family Health and Preparedness, Emergency Medical Services	38272	R426-8	AMD	03/24/2014	2014-4/42	
	38079	R426-100	REP	01/06/2014	2013-22/119	

<u>emergency preparedness</u>					
Education, Administration	38296	R277-400	5YR	02/13/2014	2014-5/59
	38300	R277-400	AMD	04/07/2014	2014-5/17
	38426	R277-400-5	NSC	04/29/2014	Not Printed
<u>employee benefit plans</u>					
Human Resource Management, Administration	38092	R477-6-9	AMD	01/14/2014	2013-22/125
<u>employment</u>					
Human Resource Management, Administration	38077	R477-4-4	AMD	01/14/2014	2013-22/124
<u>employment support procedures</u>					
Workforce Services, Employment Development	38158	R986-100-117	AMD	03/01/2014	2013-24/36
	38268	R986-100-117	AMD	04/15/2014	2014-4/45
<u>energy</u>					
Governor, Energy Development (Office of)	38163	R362-2	AMD	01/22/2014	2013-24/23
<u>enforcement</u>					
Environmental Quality, Radiation Control	38076	R313-14	AMD	04/03/2014	2013-22/45
	38076	R313-14	CPR	04/03/2014	2014-4/50
<u>engineering</u>					
Environmental Quality, Water Quality	38271	R317-5	R&R	03/26/2014	2014-4/26
<u>enrollment options</u>					
Education, Administration	38185	R277-437	AMD	02/07/2014	2014-1/12
<u>environment</u>					
Agriculture and Food, Conservation Commission	38071	R64-3	NEW	05/08/2014	2013-22/15
	38071	R64-3	CPR	05/08/2014	2014-7/82
Tax Commission, Auditing	38223	R865-7H	5YR	01/06/2014	2014-3/53
<u>equipment leasing</u>					
Commerce, Corporations and Commercial Code	38320	R154-2	R&R	04/21/2014	2014-6/9
<u>evaluation cycles</u>					
Judicial Performance Evaluation Commission, Administration	38304	R597-3	5YR	02/17/2014	2014-6/77
<u>evidentiary restrictions</u>					
Commerce, Occupational and Professional Licensing	38157	R156-1-501	AMD	01/21/2014	2013-24/6
	38253	R156-1-501	NSC	01/31/2014	Not Printed
<u>exiting provider</u>					
Public Service Commission, Administration	38234	R746-350	5YR	01/13/2014	2014-3/52
<u>facilities</u>					
Education, Administration	38351	R277-724	5YR	03/14/2014	2014-7/90
<u>fair employment practices</u>					
Human Resource Management, Administration	38077	R477-4-4	AMD	01/14/2014	2013-22/124
<u>family employment program</u>					
Workforce Services, Employment Development	38140	R986-200-204	AMD	01/14/2014	2013-23/50
<u>family involvement</u>					
Human Services, Substance Abuse and Mental Health	38298	R523-6	NEW	04/07/2014	2014-5/45
<u>federal election reform</u>					
Lieutenant Governor, Elections	38385	R623-3	5YR	03/26/2014	2014-8/48
<u>fees</u>					
Environmental Quality, Radiation Control	38146	R313-70-5	AMD	02/18/2014	2013-23/22

RULES INDEX

Human Services, Substance Abuse and Mental Health	38297	R523-1	REP	04/07/2014	2014-5/27
<u>filing documents</u> Commerce, Corporations and Commercial Code	38320	R154-2	R&R	04/21/2014	2014-6/9
<u>financial</u> Education, Administration	38113	R277-704	AMD	01/08/2014	2013-23/11
<u>financial disclosures</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38317	R414-304-5	AMD	04/21/2014	2014-6/30
<u>fire</u> Regents (Board Of), University of Utah, Administration	38355	R805-3	5YR	03/14/2014	2014-7/95
<u>fireplaces</u> Environmental Quality, Air Quality	38166	R307-302	AMD	03/06/2014	2014-1/20
<u>fish</u> Natural Resources, Wildlife Resources	38167 38316 38236	R657-13 R657-13 R657-60	AMD AMD AMD	02/10/2014 04/21/2014 03/11/2014	2014-1/54 2014-6/66 2014-3/32
<u>fishing</u> Natural Resources, Wildlife Resources	38167 38316	R657-13 R657-13	AMD AMD	02/10/2014 04/21/2014	2014-1/54 2014-6/66
<u>fleet expansion</u> Administrative Services, Fleet Operations	38312	R27-4-13	AMD	04/22/2014	2014-6/4
<u>food</u> Agriculture and Food, Regulatory Services	38262	R70-530	R&R	03/27/2014	2014-4/5
<u>food inspections</u> Agriculture and Food, Regulatory Services	38315	R70-410	AMD	05/08/2014	2014-6/5
<u>food program</u> Education, Administration	38351	R277-724	5YR	03/14/2014	2014-7/90
<u>food services</u> Health, Disease Control and Prevention, Environmental Services	38229	R392-101	5YR	01/10/2014	2014-3/49
<u>forced medication hearings and treatment procedures for children</u> Human Services, Substance Abuse and Mental Health	38298	R523-6	NEW	04/07/2014	2014-5/45
<u>foreign deposits</u> Money Management Council, Administration	38179	R628-20	NEW	02/18/2014	2014-1/41
<u>foster care</u> Human Services, Child and Family Services	38217	R512-43	AMD	03/10/2014	2014-3/15
<u>fraud</u> Commerce, Consumer Protection	38125	R152-26	AMD	01/07/2014	2013-23/4
<u>freedom of information</u> Natural Resources, Parks and Recreation	38343	R651-102	NSC	04/01/2014	Not Printed
<u>freedom of religion</u> Education, Administration	38409	R277-105	5YR	04/04/2014	2014-9/51
<u>funding formula</u> Human Services, Substance Abuse and Mental Health	38292	R523-4	NEW	04/07/2014	2014-5/36

<u>game laws</u>						
Natural Resources, Wildlife Resources	38168	R657-5	AMD	02/10/2014	2014-1/44	
	38231	R657-10	AMD	03/11/2014	2014-3/23	
	38172	R657-67	NEW	02/10/2014	2014-1/70	
<u>geothermal natural bathing places</u>						
Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60	
	38176	R392-303	AMD	02/24/2014	2014-1/25	
<u>geothermal pools</u>						
Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60	
	38176	R392-303	AMD	02/24/2014	2014-1/25	
<u>geothermal spas</u>						
Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60	
	38176	R392-303	AMD	02/24/2014	2014-1/25	
<u>government access management</u>						
Crime Victim Reparations, Administration	38499	R270-4	5YR	05/12/2014	Not Printed	
<u>government documents</u>						
Attorney General, Administration	38245	R105-2	NSC	01/30/2014	Not Printed	
Environmental Quality, Administration	38244	R305-1	NSC	01/30/2014	Not Printed	
Natural Resources, Parks and Recreation	38343	R651-102	NSC	04/01/2014	Not Printed	
<u>government purchasing</u>						
Administrative Services, Purchasing and General Services	38218	R33-6	EXT	01/02/2014	2014-3/57	
	38446	R33-6	5YR	04/17/2014	2014-10/111	
	38219	R33-7	EXT	01/02/2014	2014-3/57	
	38447	R33-7	5YR	04/17/2014	2014-10/111	
	38220	R33-9	EXT	01/02/2014	2014-3/57	
	38448	R33-9	5YR	04/17/2014	2014-10/112	
<u>government records</u>						
Corrections, Administration	38255	R251-111	NEW	03/26/2014	2014-4/25	
<u>government records access</u>						
Crime Victim Reparations, Administration	38259	R270-4	EXT	01/27/2014	2014-4/75	
<u>Governmental Immunity Act caps</u>						
Administrative Services, Risk Management	38250	R37-4	AMD	04/30/2014	2014-4/4	
<u>grading system</u>						
Education, Administration	38111	R277-497	AMD	01/08/2014	2013-23/8	
<u>GRAMA</u>						
Attorney General, Administration	38245	R105-2	NSC	01/30/2014	Not Printed	
Corrections, Administration	38255	R251-111	NEW	03/26/2014	2014-4/25	
Environmental Quality, Administration	38244	R305-1	NSC	01/30/2014	Not Printed	
Regents (Board Of), Salt Lake Community College	38362	R784-1	5YR	03/17/2014	2014-8/50	
<u>grants</u>						
Education, Administration	38295	R277-117	5YR	02/13/2014	2014-5/59	
	38299	R277-117	AMD	04/07/2014	2014-5/16	
Health, Family Health and Preparedness, Primary Care and Rural Health	38305	R434-40	NEW	05/08/2014	2014-6/53	
<u>graywater</u>						
Environmental Quality, Water Quality	38481	R317-401	5YR	05/06/2014	Not Printed	
<u>great seal</u>						
Lieutenant Governor, Administration	38379	R622-2	5YR	03/24/2014	2014-8/46	

RULES INDEX

<u>greenhouse gases</u>					
Environmental Quality, Air Quality	37833	R307-401-19	AMD	01/06/2014	2013-15/29
	37833	R307-401-19	CPR	01/06/2014	2013-23/55
	38260	R307-405	5YR	01/28/2014	2014-4/70
<u>grievance procedures</u>					
Human Services, Child and Family Services	38264	R512-75	5YR	01/28/2014	2014-4/72
<u>hazardous air pollutant</u>					
Environmental Quality, Air Quality	38105	R307-214-3	AMD	03/06/2014	2013-23/18
<u>hazardous waste</u>					
Environmental Quality, Solid and Hazardous Waste	38334	R315-8-14	NSC	04/01/2014	Not Printed
	38335	R315-12	NSC	04/01/2014	Not Printed
<u>health care facilities</u>					
Health, Family Health and Preparedness, Licensing	38086	R432-2-5	AMD	01/24/2014	2013-22/123
	38173	R432-3	AMD	02/27/2014	2014-1/37
	38391	R432-7	5YR	04/01/2014	2014-8/40
	38392	R432-8	5YR	04/01/2014	2014-8/41
	38393	R432-9	5YR	04/01/2014	2014-8/41
	38394	R432-10	5YR	04/01/2014	2014-8/42
	38395	R432-11	5YR	04/01/2014	2014-8/42
	38396	R432-12	5YR	04/01/2014	2014-8/43
	38397	R432-13	5YR	04/01/2014	2014-8/43
	38422	R432-14	5YR	04/10/2014	2014-9/54
	38398	R432-30	5YR	04/01/2014	2014-8/44
	38399	R432-32	5YR	04/01/2014	2014-8/44
	38423	R432-270	5YR	04/10/2014	2014-9/54
<u>health facility administrators</u>					
Commerce, Occupational and Professional Licensing	38337	R156-15	AMD	05/08/2014	2014-7/5
<u>health insurance</u>					
Capitol Preservation Board (State), Administration	38476	R131-13	5YR	05/01/2014	2014-10/113
<u>health insurance exclusions</u>					
Insurance, Administration	38286	R590-249-1	NSC	02/27/2014	Not Printed
<u>health insurance filings</u>					
Insurance, Administration	38311	R590-220	5YR	02/24/2014	2014-6/75
<u>hearing aids</u>					
Commerce, Occupational and Professional Licensing	38155	R156-46a	AMD	01/21/2014	2013-24/7
	38257	R156-46a	5YR	01/27/2014	2014-4/69
<u>hearing instrument interns</u>					
Commerce, Occupational and Professional Licensing	38155	R156-46a	AMD	01/21/2014	2013-24/7
	38257	R156-46a	5YR	01/27/2014	2014-4/69
<u>hearing instrument specialists</u>					
Commerce, Occupational and Professional Licensing	38155	R156-46a	AMD	01/21/2014	2013-24/7
	38257	R156-46a	5YR	01/27/2014	2014-4/69
<u>hearings</u>					
Environmental Quality, Air Quality	38252	R307-103-1	NSC	01/31/2014	Not Printed
Environmental Quality, Solid and Hazardous Waste	38335	R315-12	NSC	04/01/2014	Not Printed
Labor Commission, Adjudication	38306	R602-2	AMD	04/22/2014	2014-6/61
	38193	R602-2-5	AMD	02/21/2014	2014-2/7
	38327	R602-7	5YR	03/05/2014	2014-7/94
	38328	R602-8	5YR	03/05/2014	2014-7/94
Pardons (Board Of), Administration	38325	R671-201	AMD	05/08/2014	2014-7/78
	38314	R671-201-1	EMR	03/01/2014	2014-6/73
<u>Help America Vote Act</u>					
Lieutenant Governor, Elections	38384	R623-2	5YR	03/26/2014	2014-8/47

<u>higher education</u>						
Money Management Council, Administration	38179	R628-20	NEW	02/18/2014	2014-1/41	
<u>highly qualified</u>						
Education, Administration	38289	R277-510-4	NSC	02/27/2014	Not Printed	
<u>hiring practices</u>						
Human Resource Management, Administration	38077	R477-4-4	AMD	01/14/2014	2013-22/124	
<u>holidays</u>						
Human Resource Management, Administration	38084	R477-7	AMD	01/14/2014	2013-22/126	
<u>hospitals</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38369	R414-1B	5YR	03/18/2014	2014-8/39	
<u>hot springs</u>						
Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60	
	38176	R392-303	AMD	02/24/2014	2014-1/25	
<u>hunter education</u>						
Natural Resources, Wildlife Resources	38172	R657-67	NEW	02/10/2014	2014-1/70	
<u>hunting</u>						
Natural Resources, Wildlife Resources	38170	R657-38	AMD	02/10/2014	2014-1/61	
<u>hydraulic modeling</u>						
Environmental Quality, Drinking Water	38013	R309-511	AMD	01/21/2014	2013-19/48	
<u>identity theft</u>						
Technology Services, Administration	38480	R895-13	5YR	05/05/2014	Not Printed	
<u>ignition interlock systems</u>						
Public Safety, Driver License	38196	R708-31	AMD	02/21/2014	2014-2/8	
	38374	R708-31	5YR	03/18/2014	2014-8/49	
<u>in-service training</u>						
Public Safety, Peace Officer Standards and Training	38377	R728-502	5YR	03/19/2014	2014-8/50	
<u>incidents</u>						
Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14	
<u>income</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38317	R414-304-5	AMD	04/21/2014	2014-6/30	
<u>individual open enrollment period</u>						
Insurance, Administration	38088	R590-269	NEW	01/13/2014	2013-22/144	
<u>industrial waste</u>						
Environmental Quality, Water Quality	38235	R317-1-7	AMD	03/27/2014	2014-3/13	
<u>information technology resources</u>						
Technology Services, Administration	38428	R895-7	5YR	04/15/2014	2014-9/60	
<u>inmates</u>						
Education, Administration	38352	R277-735	5YR	03/14/2014	2014-7/91	
	38360	R277-735	AMD	05/08/2014	2014-7/11	
Pardons (Board Of), Administration	38325	R671-201	AMD	05/08/2014	2014-7/78	
	38314	R671-201-1	EMR	03/01/2014	2014-6/73	
<u>inspections</u>						
Agriculture and Food, Animal Industry	38251	R58-20	5YR	01/17/2014	2014-4/67	
Agriculture and Food, Regulatory Services	38262	R70-530	R&R	03/27/2014	2014-4/5	

RULES INDEX

instructor certification

Commerce, Real Estate	38270	R162-2g	AMD	03/31/2014	2014-4/16
Public Safety, Peace Officer Standards and Training	38377	R728-502	5YR	03/19/2014	2014-8/50

insurance

Human Resource Management, Administration	38092	R477-6-9	AMD	01/14/2014	2013-22/125
Insurance, Administration	38417	R590-166	5YR	04/07/2014	2014-9/57
	38283	R590-170	5YR	02/11/2014	2014-5/62
	38273	R590-186-8	AMD	03/26/2014	2014-4/43
	38090	R590-229	AMD	03/11/2014	2013-22/139
	38090	R590-229	CPR	03/11/2014	2014-3/44

insurance email address requirements

Insurance, Administration	38284	R590-258-1	NSC	02/27/2014	Not Printed
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insurance law

Insurance, Administration	38069	R590-96	AMD	01/21/2014	2013-22/137
	38414	R590-98	5YR	04/07/2014	2014-9/56
	38416	R590-190	5YR	04/07/2014	2014-9/57
	38415	R590-191	5YR	04/07/2014	2014-9/58

insurance licensing

Insurance, Administration	38307	R590-195	5YR	02/20/2014	2014-6/75
	38308	R590-195	REP	04/22/2014	2014-6/59

intellectual disability

Health, Family Health and Preparedness, Children with Special Health Care Needs	38340	R398-10	NSC	04/01/2014	Not Printed
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international guest teachers

Education, Administration	38190	R277-527	AMD	02/07/2014	2014-1/18
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inventories

Environmental Quality, Air Quality	38261	R307-150	5YR	01/28/2014	2014-4/70
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investment advisers

Money Management Council, Administration	38281	R628-19	5YR	02/10/2014	2014-5/63
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involuntary commitment

Human Services, Substance Abuse and Mental Health	38293	R523-5	NEW	04/07/2014	2014-5/42
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IRIS

Technology Services, Administration	38480	R895-13	5YR	05/05/2014	Not Printed
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IT planning

Technology Services, Administration	38386	R895-6	5YR	03/27/2014	2014-8/51
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judges

Judicial Performance Evaluation Commission, Administration	38303	R597-1	5YR	02/17/2014	2014-6/77
	38304	R597-3	5YR	02/17/2014	2014-6/77

judicial evaluations

Judicial Performance Evaluation Commission, Administration	38303	R597-1	5YR	02/17/2014	2014-6/77
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judicial performance evaluations

Judicial Performance Evaluation Commission, Administration	38303	R597-1	5YR	02/17/2014	2014-6/77
	38304	R597-3	5YR	02/17/2014	2014-6/77

judiciary

Judicial Performance Evaluation Commission, Administration	38303	R597-1	5YR	02/17/2014	2014-6/77
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<u>juvenile courts</u>						
Education, Administration	38116	R277-709	AMD	01/14/2014	2013-23/13	
	38359	R277-709-11	AMD	05/08/2014	2014-7/10	
<u>landowner permits</u>						
Natural Resources, Wildlife Resources	38232	R657-43	AMD	03/11/2014	2014-3/30	
<u>large underground wastewater</u>						
Environmental Quality, Water Quality	38271	R317-5	R&R	03/26/2014	2014-4/26	
<u>law enforcement officer certification</u>						
Public Safety, Administration	38310	R698-4	5YR	02/21/2014	2014-6/78	
<u>law enforcement officers</u>						
Public Safety, Peace Officer Standards and Training	38377	R728-502	5YR	03/19/2014	2014-8/50	
<u>lead-based paint</u>						
Environmental Quality, Air Quality	38330	R307-840	5YR	03/06/2014	2014-7/92	
<u>learner permits</u>						
Public Safety, Driver License	38373	R708-26	5YR	03/18/2014	2014-8/49	
	38372	R708-26	NSC	04/14/2014	Not Printed	
<u>leave benefits</u>						
Human Resource Management, Administration	38084	R477-7	AMD	01/14/2014	2013-22/126	
<u>licensing</u>						
Commerce, Occupational and Professional Licensing	38157	R156-1-501	AMD	01/21/2014	2013-24/6	
	38253	R156-1-501	NSC	01/31/2014	Not Printed	
	38337	R156-15	AMD	05/08/2014	2014-7/5	
	38254	R156-42a	5YR	01/21/2014	2014-4/68	
	38313	R156-42a	AMD	04/21/2014	2014-6/24	
	38249	R156-44a	5YR	01/16/2014	2014-4/69	
	38155	R156-46a	AMD	01/21/2014	2013-24/7	
	38257	R156-46a	5YR	01/27/2014	2014-4/69	
	38151	R156-55a	AMD	01/21/2014	2013-24/10	
	38380	R156-55a-301	NSC	04/14/2014	Not Printed	
	38421	R156-60	5YR	04/08/2014	2014-9/50	
	38233	R156-61	5YR	01/13/2014	2014-3/49	
	38106	R156-67	AMD	01/07/2014	2013-23/5	
	38107	R156-68	AMD	01/07/2014	2013-23/6	
	38149	R156-69	AMD	01/21/2014	2013-24/20	
	38165	R156-72	AMD	02/10/2014	2014-1/8	
	38388	R156-80a	5YR	03/31/2014	2014-8/37	
	38382	R156-81	5YR	03/25/2014	2014-8/37	
Governor, Economic Development, Pete Suazo Utah Athletic Commission	38033	R359-1-604	AMD	01/24/2014	2013-20/25	
Natural Resources, Wildlife Resources	38230	R657-27	AMD	03/11/2014	2014-3/26	
Public Safety, Driver License	38370	R708-10	5YR	03/18/2014	2014-8/48	
	38407	R708-24	5YR	04/03/2014	2014-9/59	
<u>life insurance</u>						
Insurance, Administration	38413	R590-93	5YR	04/07/2014	2014-9/56	
<u>life insurance filings</u>						
Insurance, Administration	38364	R590-226	5YR	03/18/2014	2014-8/45	
	38290	R590-226-5	NSC	02/27/2014	Not Printed	
<u>lifeline rates</u>						
Public Service Commission, Administration	38198	R746-341	AMD	02/24/2014	2014-2/9	
<u>limitation on judgments</u>						
Administrative Services, Risk Management	38250	R37-4	AMD	04/30/2014	2014-4/4	
<u>literacy</u>						
Education, Administration	38113	R277-704	AMD	01/08/2014	2013-23/11	

RULES INDEX

<u>lobbyist regulations</u>						
Lieutenant Governor, Elections	38383	R623-1	5YR	03/26/2014	2014-8/47	
<u>Local Mental Health Authority</u>						
Human Services, Substance Abuse and Mental Health	38292	R523-4	NEW	04/07/2014	2014-5/36	
<u>Local Substance Abuse Authority</u>						
Human Services, Substance Abuse and Mental Health	38292	R523-4	NEW	04/07/2014	2014-5/36	
<u>lt. governor</u>						
Lieutenant Governor, Administration	38379	R622-2	5YR	03/24/2014	2014-8/46	
<u>MACT</u>						
Environmental Quality, Air Quality	38105	R307-214-3	AMD	03/06/2014	2013-23/18	
<u>Medicaid</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38191	R414-1-5	AMD	05/01/2014	2014-1/32	
	38369	R414-1B	5YR	03/18/2014	2014-8/39	
	38371	R414-11	5YR	03/18/2014	2014-8/39	
	38130	R414-14	AMD	01/10/2014	2013-23/26	
	38132	R414-21	AMD	01/10/2014	2013-23/28	
	38133	R414-49	AMD	01/10/2014	2013-23/30	
	38201	R414-49	NSC	01/23/2014	Not Printed	
	38134	R414-50	REP	01/10/2014	2013-23/32	
	38135	R414-51	REP	01/10/2014	2013-23/33	
	38227	R414-54	5YR	01/07/2014	2014-3/50	
	38318	R414-61	AMD	04/21/2014	2014-6/29	
	38368	R414-90	5YR	03/18/2014	2014-8/40	
	38321	R414-310	AMD	04/21/2014	2014-6/32	
	38322	R414-320	AMD	04/21/2014	2014-6/42	
	38418	R414-401	5YR	04/07/2014	2014-9/53	
	38141	R414-503	R&R	01/07/2014	2013-23/37	
	38103	R414-511	NEW	01/13/2014	2013-23/42	
<u>medical examiner</u>						
Health, Disease Control and Prevention, Medical Examiner	38419	R448-10	5YR	04/07/2014	2014-9/55	
	38420	R448-20	5YR	04/07/2014	2014-9/55	
<u>medical language interpreter</u>						
Commerce, Occupational and Professional Licensing	38388	R156-80a	5YR	03/31/2014	2014-8/37	
<u>medical transportation</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38129	R414-306-5	AMD	01/10/2014	2013-23/35	
<u>medically underserved</u>						
Health, Family Health and Preparedness, Primary Care and Rural Health	38305	R434-40	NEW	05/08/2014	2014-6/53	
<u>mental health</u>						
Commerce, Occupational and Professional Licensing	38421	R156-60	5YR	04/08/2014	2014-9/50	
<u>mental retardation</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	38339	R398-10	5YR	03/12/2014	2014-7/92	
<u>midwifery</u>						
Commerce, Occupational and Professional Licensing	38249	R156-44a	5YR	01/16/2014	2014-4/69	
<u>mineral resources</u>						
Tax Commission, Auditing	38222	R865-16R	5YR	01/06/2014	2014-3/54	

<u>monitoring</u>						
Education, Administration	38187	R277-481	AMD	02/07/2014	2014-1/15	
<u>NCLB</u>						
Education, Administration	38349	R277-524	5YR	03/14/2014	2014-7/90	
	38358	R277-524	AMD	05/08/2014	2014-7/8	
<u>NESHAP</u>						
Environmental Quality, Air Quality	38105	R307-214-3	AMD	03/06/2014	2013-23/18	
<u>new source review</u>						
Environmental Quality, Air Quality	38104	R307-210-2	AMD	03/06/2014	2013-23/17	
<u>newborn hearing screening</u>						
Health, Family Health and Preparedness, Children with Special Health Care Needs	38139	R398-4	NEW	01/17/2014	2013-23/25	
<u>notification requirements</u>						
Commerce, Real Estate	38213	R162-2f	AMD	02/25/2014	2014-2/4	
<u>nursing facility</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38418	R414-401	5YR	04/07/2014	2014-9/53	
<u>occupational licensing</u>						
Commerce, Occupational and Professional Licensing	38151	R156-55a	AMD	01/21/2014	2013-24/10	
	38380	R156-55a-301	NSC	04/14/2014	Not Printed	
<u>occupational safety and health</u>						
Labor Commission, Adjudication	38328	R602-8	5YR	03/05/2014	2014-7/94	
<u>occupational therapy</u>						
Commerce, Occupational and Professional Licensing	38254	R156-42a	5YR	01/21/2014	2014-4/68	
	38313	R156-42a	AMD	04/21/2014	2014-6/24	
<u>off-highway vehicles</u>						
Natural Resources, Parks and Recreation	38216	R651-411	5YR	01/02/2014	2014-3/51	
<u>operational requirements</u>						
Commerce, Real Estate	38213	R162-2f	AMD	02/25/2014	2014-2/4	
<u>orthodontia</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38135	R414-51	REP	01/10/2014	2013-23/33	
<u>osteopathic physician</u>						
Commerce, Occupational and Professional Licensing	38107	R156-68	AMD	01/07/2014	2013-23/6	
<u>osteopaths</u>						
Commerce, Occupational and Professional Licensing	38107	R156-68	AMD	01/07/2014	2013-23/6	
<u>out-of-home care</u>						
Human Services, Child and Family Services	38265	R512-306	5YR	01/28/2014	2014-4/73	
<u>oversight</u>						
Education, Administration	38187	R277-481	AMD	02/07/2014	2014-1/15	
<u>ozone</u>						
Environmental Quality, Air Quality	38061	R307-110-17	AMD	01/09/2014	2013-21/8	
<u>paint</u>						
Environmental Quality, Air Quality	38330	R307-840	5YR	03/06/2014	2014-7/92	
<u>paleontological resources</u>						
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	38354	R807-1	5YR	03/14/2014	2014-7/95	

RULES INDEX

<u>paraeducators</u>						
Education, Administration	38302	R277-526	AMD	04/07/2014	2014-5/23	
<u>paraprofessional qualifications</u>						
Education, Administration	38349	R277-524	5YR	03/14/2014	2014-7/90	
	38358	R277-524	AMD	05/08/2014	2014-7/8	
<u>parental rights</u>						
Human Services, Administration	38280	R495-882	5YR	02/10/2014	2014-5/61	
<u>parks</u>						
Natural Resources, Parks and Recreation	38225	R651-636	5YR	01/06/2014	2014-3/51	
<u>parole</u>						
Pardons (Board Of), Administration	38325	R671-201	AMD	05/08/2014	2014-7/78	
	38314	R671-201-1	EMR	03/01/2014	2014-6/73	
<u>passport</u>						
Human Services, Recovery Services	38336	R527-275	5YR	03/06/2014	2014-7/93	
<u>payers</u>						
Health, Center for Health Data, Health Care Statistics	38144	R428-15	AMD	01/07/2014	2013-23/43	
<u>PCN</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38322	R414-320	AMD	04/21/2014	2014-6/42	
<u>penalties</u>						
Environmental Quality, Radiation Control	38076	R313-14	AMD	04/03/2014	2013-22/45	
	38076	R313-14	CPR	04/03/2014	2014-4/50	
<u>per diem allowances</u>						
Administrative Services, Finance	38175	R25-7	AMD	02/07/2014	2014-1/4	
<u>permits</u>						
Environmental Quality, Air Quality	37833	R307-401-19	AMD	01/06/2014	2013-15/29	
	37833	R307-401-19	CPR	01/06/2014	2013-23/55	
Natural Resources, Wildlife Resources	38427	R657-62	5YR	04/14/2014	2014-9/58	
<u>personnel management</u>						
Human Resource Management, Administration	38092	R477-6-9	AMD	01/14/2014	2013-22/125	
<u>physically impaired</u>						
Public Service Commission, Administration	38278	R746-343-15	AMD	05/01/2014	2014-5/51	
<u>physicians</u>						
Commerce, Occupational and Professional Licensing	38106	R156-67	AMD	01/07/2014	2013-23/5	
Health, Health Care Financing, Coverage and Reimbursement Policy	38369	R414-1B	5YR	03/18/2014	2014-8/39	
<u>planning</u>						
Administrative Services, Facilities Construction and Management	38405	R23-3	5YR	04/03/2014	2014-9/49	
<u>PM10</u>						
Environmental Quality, Air Quality	38061	R307-110-17	AMD	01/09/2014	2013-21/8	
<u>PM2.5</u>						
Environmental Quality, Air Quality	38061	R307-110-17	AMD	01/09/2014	2013-21/8	
<u>policy</u>						
Education, Administration	38301	R277-495	AMD	04/07/2014	2014-5/20	
<u>pools</u>						
Health, Disease Control and Prevention, Environmental Services	38089	R392-302	AMD	02/14/2014	2013-22/69	

<u>prescription drug database</u> Health, Disease Control and Prevention, Health Promotion	38081	R384-203	NEW	03/01/2014	2013-22/68
<u>primary care</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38321	R414-310	AMD	04/21/2014	2014-6/32
<u>prioritization</u> Administrative Services, Facilities Construction and Management	38247	R23-33	NEW	03/10/2014	2014-3/2
<u>procurement</u> Administrative Services, Facilities Construction and Management	38405	R23-3	5YR	04/03/2014	2014-9/49
<u>professional education</u> Education, Administration	38241	R277-518	AMD	03/10/2014	2014-3/8
<u>professional engineers</u> Commerce, Occupational and Professional Licensing	38279	R156-22	AMD	04/08/2014	2014-5/7
<u>professional land surveyors</u> Commerce, Occupational and Professional Licensing	38279	R156-22	AMD	04/08/2014	2014-5/7
<u>professional staff</u> Education, Administration	38348 38356	R277-486 R277-486	5YR NSC	03/14/2014 04/01/2014	2014-7/89 Not Printed
<u>professional structural engineers</u> Commerce, Occupational and Professional Licensing	38279	R156-22	AMD	04/08/2014	2014-5/7
<u>program benefits</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38129	R414-306-5	AMD	01/10/2014	2013-23/35
<u>prohibited items and devices</u> Human Services, Substance Abuse and Mental Health	38297	R523-1	REP	04/07/2014	2014-5/27
<u>promotions</u> Agriculture and Food, Marketing and Development	38287	R65-12	NEW	04/16/2014	2014-5/5
<u>property</u> Natural Resources, Parks and Recreation	38224	R651-700	5YR	01/06/2014	2014-3/52
<u>property casualty insurance filings</u> Insurance, Administration	38309	R590-225	5YR	02/20/2014	2014-6/76
<u>protection</u> Commerce, Consumer Protection	38266	R152-21	5YR	01/29/2014	2014-4/67
<u>PSD</u> Environmental Quality, Air Quality	38260	R307-405	5YR	01/28/2014	2014-4/70
<u>psychologists</u> Commerce, Occupational and Professional Licensing	38233	R156-61	5YR	01/13/2014	2014-3/49
<u>public assistance</u> Public Service Commission, Administration	38278	R746-343-15	AMD	05/01/2014	2014-5/51
<u>public buildings</u> Administrative Services, Facilities Construction and Management	38405	R23-3	5YR	04/03/2014	2014-9/49
<u>public education</u> Education, Administration	38409	R277-105	5YR	04/04/2014	2014-9/51

RULES INDEX

	38185	R277-437	AMD	02/07/2014	2014-1/12
	38347	R277-438	5YR	03/14/2014	2014-7/89
	38352	R277-735	5YR	03/14/2014	2014-7/91
	38360	R277-735	AMD	05/08/2014	2014-7/11
<u>public funds</u>					
Money Management Council, Administration	38281	R628-19	5YR	02/10/2014	2014-5/63
	38179	R628-20	NEW	02/18/2014	2014-1/41
	38180	R628-21	NEW	04/15/2014	2014-1/42
	38180	R628-21	CPR	04/15/2014	2014-6/70
<u>public health</u>					
Health, Disease Control and Prevention, Environmental Services	38229	R392-101	5YR	01/10/2014	2014-3/49
	38177	R392-200-4	AMD	02/19/2014	2014-1/24
<u>public records</u>					
Attorney General, Administration	38245	R105-2	NSC	01/30/2014	Not Printed
Environmental Quality, Administration	38244	R305-1	NSC	01/30/2014	Not Printed
Natural Resources, Parks and Recreation	38343	R651-102	NSC	04/01/2014	Not Printed
<u>public schools</u>					
Education, Administration	38412	R277-916	5YR	04/04/2014	2014-9/53
<u>qualified depository</u>					
Money Management Council, Administration	38180	R628-21	NEW	04/15/2014	2014-1/42
	38180	R628-21	CPR	04/15/2014	2014-6/70
<u>radiation</u>					
Environmental Quality, Radiation Control	38082	R313-25	AMD	04/03/2014	2013-22/49
	38082	R313-25	CPR	04/03/2014	2014-4/53
<u>radioactive materials</u>					
Environmental Quality, Radiation Control	38145	R313-22-34	AMD	02/14/2014	2013-23/19
	38147	R313-38-3	AMD	04/07/2014	2013-23/20
	38147	R313-38-3	CPR	04/07/2014	2014-5/56
	38146	R313-70-5	AMD	02/18/2014	2013-23/22
<u>radioactive waste disposal</u>					
Environmental Quality, Radiation Control	38082	R313-25	AMD	04/03/2014	2013-22/49
	38082	R313-25	CPR	04/03/2014	2014-4/53
<u>rates</u>					
Public Service Commission, Administration	38278	R746-343-15	AMD	05/01/2014	2014-5/51
<u>real estate appraisals</u>					
Commerce, Real Estate	38270	R162-2g	AMD	03/31/2014	2014-4/16
<u>real estate business</u>					
Commerce, Real Estate	38213	R162-2f	AMD	02/25/2014	2014-2/4
<u>reciprocal deposits</u>					
Money Management Council, Administration	38180	R628-21	NEW	04/15/2014	2014-1/42
	38180	R628-21	CPR	04/15/2014	2014-6/70
<u>records</u>					
Health, Disease Control and Prevention, Medical Examiner	38420	R448-20	5YR	04/07/2014	2014-9/55
<u>records access</u>					
Attorney General, Administration	38245	R105-2	NSC	01/30/2014	Not Printed
<u>recreation</u>					
Natural Resources, Wildlife Resources	38170	R657-38	AMD	02/10/2014	2014-1/61
<u>registration</u>					
Environmental Quality, Radiation Control	38146	R313-70-5	AMD	02/18/2014	2013-23/22

<u>rehabilitation</u>					
Education, Rehabilitation	38353	R280-202	5YR	03/14/2014	2014-7/91
	38361	R280-202	AMD	05/08/2014	2014-7/14
<u>religious activities</u>					
Tax Commission, Auditing	38237	R865-19S-30	NSC	01/30/2014	Not Printed
<u>renewable</u>					
Governor, Energy Development (Office of)	38163	R362-2	AMD	01/22/2014	2013-24/23
<u>replacement providers</u>					
Public Service Commission, Administration	38234	R746-350	5YR	01/13/2014	2014-3/52
<u>reporting</u>					
Health, Family Health and Preparedness, Children with Special Health Care Needs	38339	R398-10	5YR	03/12/2014	2014-7/92
	38340	R398-10	NSC	04/01/2014	Not Printed
<u>reporting deaths</u>					
Health, Disease Control and Prevention, Medical Examiner	38419	R448-10	5YR	04/07/2014	2014-9/55
<u>reporting requirements and procedures</u>					
Health, Disease Control and Prevention, Health Promotion	38367	R384-100	5YR	03/18/2014	2014-8/38
<u>reports</u>					
Environmental Quality, Air Quality	38261	R307-150	5YR	01/28/2014	2014-4/70
<u>RFPs</u>					
Education, Administration	38295	R277-117	5YR	02/13/2014	2014-5/59
	38299	R277-117	AMD	04/07/2014	2014-5/16
<u>risk management</u>					
Administrative Services, Risk Management	38250	R37-4	AMD	04/30/2014	2014-4/4
<u>rules and procedures</u>					
Education, Administration	38408	R277-102	5YR	04/04/2014	2014-9/51
Education, Rehabilitation	38538	R280-150	5YR	05/15/2014	Not Printed
Natural Resources, Wildlife Resources	38230	R657-27	AMD	03/11/2014	2014-3/26
Public Service Commission, Administration	38198	R746-341	AMD	02/24/2014	2014-2/9
<u>safety</u>					
Education, Administration	38296	R277-400	5YR	02/13/2014	2014-5/59
	38300	R277-400	AMD	04/07/2014	2014-5/17
	38426	R277-400-5	NSC	04/29/2014	Not Printed
Labor Commission, Boiler and Elevator Safety	38226	R616-2-3	AMD	03/10/2014	2014-3/22
Transportation, Motor Carrier	38215	R909-3	5YR	01/02/2014	2014-3/55
<u>safety education</u>					
Education, Administration	38296	R277-400	5YR	02/13/2014	2014-5/59
	38300	R277-400	AMD	04/07/2014	2014-5/17
	38426	R277-400-5	NSC	04/29/2014	Not Printed
<u>salaries</u>					
Human Resource Management, Administration	38092	R477-6-9	AMD	01/14/2014	2013-22/125
<u>sales tax</u>					
Tax Commission, Auditing	38237	R865-19S-30	NSC	01/30/2014	Not Printed
<u>scholarships</u>					
Education, Administration	38302	R277-526	AMD	04/07/2014	2014-5/23
Health, Family Health and Preparedness, Primary Care and Rural Health	38305	R434-40	NEW	05/08/2014	2014-6/53
Public Education Job Enhancement Program, Job Enhancement Committee	38243	R690-100	REP	03/10/2014	2014-3/37

RULES INDEX

<u>school</u> Education, Administration	38410	R277-601	5YR	04/04/2014	2014-9/52
<u>school buses</u> Transportation, Motor Carrier	38215	R909-3	5YR	01/02/2014	2014-3/55
<u>school certification</u> Commerce, Real Estate	38270	R162-2g	AMD	03/31/2014	2014-4/16
<u>school reports</u> Education, Administration	38111	R277-497	AMD	01/08/2014	2013-23/8
<u>school transportation</u> Education, Administration	38410	R277-601	5YR	04/04/2014	2014-9/52
<u>schools</u> Education, Administration	38326	R277-477-3	NSC	04/01/2014	Not Printed
Health, Disease Control and Prevention, Environmental Services	38177	R392-200-4	AMD	02/19/2014	2014-1/24
<u>scoring</u> Administrative Services, Facilities Construction and Management	38247	R23-33	NEW	03/10/2014	2014-3/2
<u>securities</u> Money Management Council, Administration	38281	R628-19	5YR	02/10/2014	2014-5/63
<u>senior-specific insurance designations</u> Insurance, Administration	38282	R590-252	5YR	02/11/2014	2014-5/62
<u>services</u> Public Service Commission, Administration	38234	R746-350	5YR	01/13/2014	2014-3/52
<u>settlements</u> Labor Commission, Adjudication	38306 38193 38327 38328	R602-2 R602-2-5 R602-7 R602-8	AMD AMD 5YR 5YR	04/22/2014 02/21/2014 03/05/2014 03/05/2014	2014-6/61 2014-2/7 2014-7/94 2014-7/94
<u>sewerage</u> Environmental Quality, Water Quality	38271	R317-5	R&R	03/26/2014	2014-4/26
<u>shooting range</u> Regents (Board Of), University of Utah, Administration	38018	R805-6	NEW	02/11/2014	2013-20/46
<u>single event permits</u> Alcoholic Beverage Control, Administration	38275	R81-7	AMD	03/25/2014	2014-4/11
<u>SLCC</u> Regents (Board Of), Salt Lake Community College	38362	R784-1	5YR	03/17/2014	2014-8/50
<u>small employer stop-loss</u> Insurance, Administration	38087 38087	R590-268 R590-268	NEW CPR	03/13/2014 03/13/2014	2013-22/142 2014-3/45
<u>solar</u> Governor, Energy Development (Office of)	38163	R362-2	AMD	01/22/2014	2013-24/23
<u>solid fuel burning</u> Environmental Quality, Air Quality	38166	R307-302	AMD	03/06/2014	2014-1/20
<u>source development</u> Environmental Quality, Drinking Water	38012	R309-515	AMD	01/21/2014	2013-19/51

<u>source maintenance</u> Environmental Quality, Drinking Water	38012	R309-515	AMD	01/21/2014	2013-19/51
<u>spas</u> Health, Disease Control and Prevention, Environmental Services	38089	R392-302	AMD	02/14/2014	2013-22/69
<u>special educators</u> Education, Administration	38114	R277-525	AMD	01/08/2014	2013-23/9
<u>specific licenses</u> Environmental Quality, Radiation Control	38145	R313-22-34	AMD	02/14/2014	2013-23/19
<u>speech-language pathology services</u> Health, Health Care Financing, Coverage and Reimbursement Policy	38227	R414-54	5YR	01/07/2014	2014-3/50
<u>sportsmen</u> Natural Resources, Wildlife Resources	38171	R657-41	AMD	02/10/2014	2014-1/68
<u>standards</u> Health, Administration	38256	R380-70	5YR	01/24/2014	2014-4/71
<u>State Board of Education</u> Education, Administration	38357	R277-119	NEW	05/08/2014	2014-7/7
<u>state custody</u> Human Services, Administration	38280	R495-882	5YR	02/10/2014	2014-5/61
<u>state employees</u> Administrative Services, Finance	38175	R25-7	AMD	02/07/2014	2014-1/4
<u>state flag</u> Lieutenant Governor, Administration	38379	R622-2	5YR	03/24/2014	2014-8/46
<u>state plan</u> Lieutenant Governor, Elections	38385	R623-3	5YR	03/26/2014	2014-8/48
<u>stationary sources</u> Environmental Quality, Air Quality	38104	R307-210-2	AMD	03/06/2014	2013-23/17
<u>stewardships</u> Agriculture and Food, Conservation Commission	38071 38071	R64-3 R64-3	NEW CPR	05/08/2014 05/08/2014	2013-22/15 2014-7/82
<u>stipends</u> Education, Administration	38114	R277-525	AMD	01/08/2014	2013-23/9
<u>stoves</u> Environmental Quality, Air Quality	38166	R307-302	AMD	03/06/2014	2014-1/20
<u>stream alterations</u> Natural Resources, Water Rights	38267	R655-13	5YR	01/29/2014	2014-4/73
<u>students</u> Education, Administration	38116 38359	R277-709 R277-709-11	AMD AMD	01/14/2014 05/08/2014	2013-23/13 2014-7/10
<u>substance abuse database</u> Health, Disease Control and Prevention, Health Promotion	38081	R384-203	NEW	03/01/2014	2013-22/68
<u>subsurface tracer studies</u> Environmental Quality, Radiation Control	38147 38147	R313-38-3 R313-38-3	AMD CPR	04/07/2014 04/07/2014	2013-23/20 2014-5/56

RULES INDEX

supervision

Commerce, Occupational and Professional Licensing 38157 R156-1-501 AMD 01/21/2014 2013-24/6
 38253 R156-1-501 NSC 01/31/2014 Not Printed

surveys

Environmental Quality, Radiation Control 38147 R313-38-3 AMD 04/07/2014 2013-23/20
 38147 R313-38-3 CPR 04/07/2014 2014-5/56
 Judicial Performance Evaluation Commission, 38304 R597-3 5YR 02/17/2014 2014-6/77
 Administration

tax credits

Governor, Energy Development (Office of) 38163 R362-2 AMD 01/22/2014 2013-24/23

tax exemptions

Tax Commission, Auditing 38237 R865-19S-30 NSC 01/30/2014 Not Printed

taxation

Tax Commission, Auditing 38223 R865-7H 5YR 01/06/2014 2014-3/53
 38222 R865-16R 5YR 01/06/2014 2014-3/54

teachers

Education, Administration 38240 R277-503 AMD 03/10/2014 2014-3/4

telecommunications

Public Service Commission, Administration 38198 R746-341 AMD 02/24/2014 2014-2/9
 38278 R746-343-15 AMD 05/01/2014 2014-5/51
 38234 R746-350 5YR 01/13/2014 2014-3/52

telephones

Commerce, Consumer Protection 38125 R152-26 AMD 01/07/2014 2013-23/4
 Public Service Commission, Administration 38198 R746-341 AMD 02/24/2014 2014-2/9

temporary beer event permits

Alcoholic Beverage Control, Administration 38276 R81-10b AMD 03/25/2014 2014-4/14

therapists

Commerce, Occupational and Professional Licensing 38421 R156-60 5YR 04/08/2014 2014-9/50

tickets

Administrative Services, Fleet Operations 38073 R27-7-3 AMD 03/11/2014 2013-22/14

title insurance

Insurance, Title and Escrow Commission 38156 R592-11 AMD 03/10/2014 2013-24/34
 38156 R592-11 CPR 03/10/2014 2014-4/64

Transition to Adult Living

Human Services, Child and Family Services 38265 R512-306 5YR 01/28/2014 2014-4/73

transparency

Health, Center for Health Data, Health Care Statistics 38144 R428-15 AMD 01/07/2014 2013-23/43

transportation

Administrative Services, Finance 38175 R25-7 AMD 02/07/2014 2014-1/4

trust account records

Commerce, Real Estate 38213 R162-2f AMD 02/25/2014 2014-2/4

trust lands funds

Education, Administration 38326 R277-477-3 NSC 04/01/2014 Not Printed

unarmed combat

Governor, Economic Development, Pete Suazo Utah 38033 R359-1-604 AMD 01/24/2014 2013-20/25
 Athletic Commission

unattended deaths

Health, Disease Control and Prevention, Medical 38419 R448-10 5YR 04/07/2014 2014-9/55
 Examiner

<u>unemployment compensation</u>						
Workforce Services, Unemployment Insurance	38248	R994-312-102	AMD	04/15/2014	2014-3/41	
<u>UPP</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	38322	R414-320	AMD	04/21/2014	2014-6/42	
<u>utah.gov</u>						
Technology Services, Administration	38238	R895-4	5YR	01/14/2014	2014-3/54	
	38239	R895-4	NSC	01/30/2014	Not Printed	
<u>vacations</u>						
Human Resource Management, Administration	38084	R477-7	AMD	01/14/2014	2013-22/126	
<u>vaccinations</u>						
Agriculture and Food, Animal Industry	38294	R58-3	AMD	04/16/2014	2014-5/4	
<u>vehicle replacement</u>						
Administrative Services, Fleet Operations	38312	R27-4-13	AMD	04/22/2014	2014-6/4	
<u>veterans' and military affairs</u>						
Veterans' Affairs, Administration	38228	R978-1	NSC	01/30/2014	Not Printed	
<u>victim compensation</u>						
Crime Victim Reparations, Administration	38221	R270-1-13	EMR	01/04/2014	2014-3/47	
<u>victims of crimes</u>						
Crime Victim Reparations, Administration	38221	R270-1-13	EMR	01/04/2014	2014-3/47	
<u>violations</u>						
Environmental Quality, Radiation Control	38076	R313-14	AMD	04/03/2014	2013-22/45	
	38076	R313-14	CPR	04/03/2014	2014-4/50	
<u>volunteer health care practitioner</u>						
Commerce, Occupational and Professional Licensing	38382	R156-81	5YR	03/25/2014	2014-8/37	
<u>voting</u>						
Lieutenant Governor, Elections	38384	R623-2	5YR	03/26/2014	2014-8/47	
<u>waste disposal</u>						
Environmental Quality, Water Quality	38235	R317-1-7	AMD	03/27/2014	2014-3/13	
<u>wastewater</u>						
Environmental Quality, Water Quality	38481	R317-401	5YR	05/06/2014	Not Printed	
<u>water pollution</u>						
Environmental Quality, Water Quality	38235	R317-1-7	AMD	03/27/2014	2014-3/13	
	38271	R317-5	R&R	03/26/2014	2014-4/26	
<u>water slides</u>						
Health, Disease Control and Prevention, Environmental Services	38089	R392-302	AMD	02/14/2014	2013-22/69	
<u>well logging</u>						
Environmental Quality, Radiation Control	38147	R313-38-3	AMD	04/07/2014	2013-23/20	
	38147	R313-38-3	CPR	04/07/2014	2014-5/56	
<u>white-collar contests</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	38033	R359-1-604	AMD	01/24/2014	2013-20/25	
<u>wildlife</u>						
Natural Resources, Wildlife Resources	38168	R657-5	AMD	02/10/2014	2014-1/44	
	38231	R657-10	AMD	03/11/2014	2014-3/23	
	38169	R657-12	AMD	02/10/2014	2014-1/52	
	38167	R657-13	AMD	02/10/2014	2014-1/54	

RULES INDEX

	38316	R657-13	AMD	04/21/2014	2014-6/66
	38230	R657-27	AMD	03/11/2014	2014-3/26
	38170	R657-38	AMD	02/10/2014	2014-1/61
	38171	R657-41	AMD	02/10/2014	2014-1/68
	38232	R657-43	AMD	03/11/2014	2014-3/30
	38236	R657-60	AMD	03/11/2014	2014-3/32
	38427	R657-62	5YR	04/14/2014	2014-9/58
	38172	R657-67	NEW	02/10/2014	2014-1/70
<u>wildlife conservation</u>					
Natural Resources, Wildlife Resources	38170	R657-38	AMD	02/10/2014	2014-1/61
<u>wildlife law</u>					
Natural Resources, Wildlife Resources	38169	R657-12	AMD	02/10/2014	2014-1/52
	38316	R657-13	AMD	04/21/2014	2014-6/66
	38230	R657-27	AMD	03/11/2014	2014-3/26
	38236	R657-60	AMD	03/11/2014	2014-3/32
<u>wildlife laws</u>					
Natural Resources, Wildlife Resources	38167	R657-13	AMD	02/10/2014	2014-1/54
<u>wildlife permits</u>					
Natural Resources, Wildlife Resources	38171	R657-41	AMD	02/10/2014	2014-1/68
<u>work-based learning programs</u>					
Education, Administration	38412	R277-916	5YR	04/04/2014	2014-9/53
<u>workers' compensation</u>					
Labor Commission, Adjudication	38306	R602-2	AMD	04/22/2014	2014-6/61
	38193	R602-2-5	AMD	02/21/2014	2014-2/7
<u>x-rays</u>					
Environmental Quality, Radiation Control	38146	R313-70-5	AMD	02/18/2014	2013-23/22