

UTAH STATE BULLETIN

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

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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: Office of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3003. 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.

Office of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2017 Medicaid Rate Changes

Effective June 1, 2017, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>

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 April 15, 2017, 12:00 a.m., and May 01, 2017, 11:59 p.m. are included in this, the May 15, 2017, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least June 14, 2017. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 12, 2017, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE 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 Procurement Rule, General Procurement Provisions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41534

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the changes to this rule is to clarify the language of the rule and to bring the rule into compliance with statutory changes made by H.B. 398 which was enacted during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include correcting the use of the term "responsible", the addition of definitions of the terms "bias", "Evaluation Criteria", "Objective Criteria", and "Subjective Criteria" which are required to comply with the amendments to the Utah Procurement Code, renumbering to accommodate the additions, the correction of minor grammatical and typographical errors, and the addition of Section R33-1-2.5, which clarifies the authority of the Chief Procurement Officer or the head of a procurement unit with independent procurement authority and provides them guidance in decision making.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other

than small businesses, businesses, or local governments as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

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

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]~~responsible vendors that have submitted responsive solicitation responses.

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

(4) "Bias" means:

(a) a predisposition or a preconceived opinion that prevents an individual from impartially performing any duty or responsibility set forth in Utah Code 63G-6a or other applicable law or rule; or

(b) a prejudice in favor of or against a thing, individual, or group that results in an action or treatment that a reasonable person would consider to be unfair or have the appearance of being unfair.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

(9) "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.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "Evaluation Criteria" means the objective or subjective criteria that will be used to evaluate a vendor's response to a solicitation.

(15) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

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

(17) "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.

(18) "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.

(19)(a) "Objective Criteria" means the quantifiable requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

(b) Objective criteria is not evaluated and scored based on the personal judgement, interpretation, or opinion of evaluators. Objective criteria is evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence, and documentation provided in each vendor's solicitation response.

(c) Examples of objective criteria that may be included in a solicitation:

(i) Vendors must document that they have a minimum of five years of experience on similar projects;

(ii) Vendors must have three licensed technicians on the project; and

(iii) Vendors must certify that they have an "A" rating from an accredited rating agency.

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

([18]21) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

([19]22) "Person" means:

- (a) an individual;
- (b) an association;
- (c) an institution;
- (d) a corporation;
- (e) a company;
- (f) a trust;
- (g) a limited liability company;
- (h) a partnership;
- (i) a political subdivision;
- (j) a government office, department, division, bureau, or

other body of government; and

(k) any other organization or entity.

([20]23) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

([21]24) "Price Data" means factual information concerning prices for procurement items.

([22]25) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

([23]26) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.

([24]27) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:

- (a) Professional service;
- (b) Management and operation service;
- (c) Consulting service;
- (d) Advertising or promotional service;
- (e) Concession service;
- (f) Vending service;
- (g) Management and operation service;
- (h) Promotional service;
- (i) Banking service;
- (j) Credit card service;
- (k) Electronic benefit transfer (EBT) card service; or
- (l) Women, infants, and children (WIC) card service.

(28)(a) "Subjective Criteria" means the open-ended requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the personal judgement, interpretations, and opinions of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(b) Subjective criteria is not evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence and documentation provided in each vendor's solicitation response. Subjective criteria is also evaluated and scored based on the personal judgement, interpretation, and opinion of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(c) Examples of subjective criteria that may be included in a solicitation:

(i) Vendors must describe how they will manage the project to meet the deadline;

(ii) Vendors must demonstrate that they have the knowledge, skills, and ability to accomplish the scope of work; and

(iii) Vendors must explain how their product complies with the specifications.

([25]29) "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.

([26]30) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.

(a) Steering a contract to a favored vendor includes:

(i) Taking part in collusion or manipulation of the procurement process;

(ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;

(iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;

(iv) Involvement in a bid rigging scheme;

(v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;

(vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);

(vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;

(viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or

(ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

([27]31) "Technology" means any type of technology defined in Section 63F-1-102(8).

R33-1-2. Applicability of Rules.

(1) Title R33 shall apply to:

(a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103(~~3~~) as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and

(b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103(~~3~~) as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or ~~[to the extent]~~ a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-2.5. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent.

When making a determination and a specific law or rule pertaining to the issue does not exist, the chief procurement officer or head of a procurement unit with independent procurement authority may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard set forth in R33-1-1.

R33-1-3. Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.

(1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.

(2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:

(a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or

(b) By applying the reasonable person standard to determine:

(i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;

(ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or

(iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

(1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

R33-1-12. Mandatory Minimum Requirements in a Solicitation.

(1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:

- (a) Ability to meet delivery deadlines;
- (b) Qualifications;
- (c) Certifications;
- (d) Licensing;
- (e) Experience;
- (f) Compliance with State or Federal regulations;
- (g) Type of services provided; or
- (i) Availability of product, equipment, supplies, or services.

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

Date of Enactment or Last Substantive Amendment: [~~August 22, 2016~~2017

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services **R33-4** Supplemental Procurement Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41535

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended for clarification and to remove unnecessary language.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include modifying the language to better parallel the language used in statute, such as replacing the word "time" with "deadline" and "expired" with "passed".

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are simply to parallel the language used in statute.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are simply to parallel the language used in statute.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are simply to parallel the language used in statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are simply to parallel the language used in statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are simply to parallel the language used in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are simply to parallel the language used in 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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-4. Supplemental Procurement Procedures.

R33-4-101. Request for Statement of Qualifications.

Reserved.

R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the ~~[time]~~deadline for

~~receipt[submission]~~ of responses to a request for statement of qualifications has ~~[expired]~~passed.

(2) When submitting a response to a request for statement of qualifications electronically, vendors 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 vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.

(3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors 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 response being late.

(a) All responses 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 response not being received by the established due date and time, the response shall be accepted as being on time.

R33-4-101b. Vendors with Exclusive Authorization to Bid.

(1) The requirements of this rule shall only apply when a procurement unit issues a ~~[prequalification for potential]~~request for statements of qualification under Utah Code 63G-6a-410 to ~~[vendors as set forth in Utah Code 63G-6a-410 for all qualified, responsive and]~~responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.

(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.

(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.

(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:

- (a) cost;
- (b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
- (c) training, knowledge and experience of employees of the procurement unit and of the vendors;

(d) past performance of vendors and pertaining to the procurement item being purchased;

(e) the costs associated with transitioning from an existing procurement item to a new procurement item; or

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

(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.

(4) An exception to the requirements of this rule may be authorized 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) Subsection 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 as applicable, the head of a procurement unit with independent procurement authority.

(b) Violations of this Subsection 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 as applicable, the 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 Requirements.

(a) If only one brand can meet the requirements set forth in the specifications, the procurement unit shall solicit from as many providers of the brand as practicable; and

(b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.

(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-112;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than \$5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than \$5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than \$5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

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

Date of Enactment or Last Substantive Amendment: [~~August 22, 2016~~2017]

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-5

Other Standard Procurement Processes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41536

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is to correct references to the Utah Procurement Code and Administrative Rules, to correct spelling errors, to clarify language, and to bring this rule into compliance with changes made to the Utah Procurement Code by H.B. 398 which was enacted during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the clarification of verbiage and modifications to comply with changes to the Utah Procurement Code, such as the process for issuing a Statement of Qualifications (Section 63G-6a-410) and establishing an Approved Vendor List (Section 63G-6a-507); the deletion of Subsections R33-5-106(6) and (7) which are reorganized and incorporated into the addition of Section R33-5-106.5 which clarifies the language and brings the rule into compliance with changes made to the Utah Procurement Code; and the deletion of Section R33-5-201 to remove an unnecessary reference to the Utah Procurement Code.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with the statutory changes.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with the statutory changes.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with the statutory changes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impacts on businesses as a result of the changes to this rule. The changes are to clarify the language of the rule and the procurement processes and to bring the rule into compliance with statutory changes.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-5. Other Standard Procurement Processes.

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.

R33-5-104. Small Purchases.

(1) Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2)(a) Unless otherwise required as part of another standard procurement process being used pursuant to the small purchase rule, small purchases conducted under this rule do not require a solicitation or public notice.

(b) As set forth in the definition of "solicitation" in Utah Code 63G-6a-103, the small purchase standard procurement process does not require a solicitation to be conducted;

(i) 63G-6a-103 "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

([+]~~3~~) 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, a procurement unit may select the best source by direct award and without seeking competitive bids or quotes.

(b) 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

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

(~~2~~)⁴ Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-5-105. Small Purchases Threshold for Design Professional Services.

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

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

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall when~~when~~ using this rule in conjunction with an approved vendor list,~~the procurement unit shall~~ select a minimum of three design professional firms~~identified in Subsection (2)~~ from the approved vendor list using one or more of the following methods:

([a]~~i~~) A rotation system, organized alphabetically, numerically, or randomly;

([b]~~ii~~) Assignment of vendors to a specified geographic area;

([e]~~iii~~) Assignment of vendors based on each vendor's particular expertise or field; or

([d]~~iv~~) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms in order and begin fee negotiations, up to \$100,000, with the highest ranked firm. If an agreement cannot be reached with the highest ranked firm, the procurement unit shall move to the next highest ranked firm and so on until a fee agreement is reached;

(c) If a fee agreement cannot be reached with the first group of firms selected, the procurement unit may select additional firms from the approved vendor list using the same process set forth in subsection (3)(a) and (b) or the procurement unit may cancel the procurement;

(d) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(6) A procurement unit using this rule must comply with the following:

- (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
- (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
- (c) R33-24-104 -- Socialization with Vendors and Contractors;
- (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
- (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and
- (f) All other applicable laws and rules.

R33-5-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold per individual project is a maximum of ~~[\$2,500,000]~~ 100,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

(4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual 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 it is capable of meeting the minimum specifications of the project.

(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual 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.

~~[(6) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors and contractors identified in Subsections (4) and (5) from the approved vendor list using one or more of the following methods:~~

- ~~(a) A rotation system, organized alphabetically, numerically, or randomly;~~
- ~~(b) Assignment of vendors to a specified geographic area;~~
- ~~(c) Assignment of vendors based on each vendor's particular expertise or field;~~
- ~~(d) Invite all contractors on the approved vendor list to submit quotes, applicable to Subsection (5) only; or~~

~~(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;~~

~~(7) Under this rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than \$100,000 up to a maximum of \$2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-410 and develop an Approved Vendor List under Section 63G-6a-507. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.]~~

(8) A procurement unit using this rule must comply with the following:

- (a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;
- (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
- (c) R33-24-104 -- Socialization with Vendors and Contractors;
- (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
- (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and
- (f) All other applicable laws and rules.

R33-5-106.5. Small Purchases Threshold for Construction Projects Using An Approved Vendor List.

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

(2) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall:

(a) For individual construction projects up to a maximum of \$25,000 contract with a vendor/contractor by direct award using on of the following methods to select the vendor/contractor:

(i) A rotation system, organized alphabetically, numerically, or randomly;

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) For individual construction projects over \$25,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes from vendor/contractors on the approved vendor list;

(i) Procurement units shall use one of the following methods to select vendors from whom quotes are obtained:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) When using one of the methods listed in Subsection (2)(b) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the procurement unit using the approved vendor list;

(iii) When quotes or bids are obtained under subsection (2)(b), procurement units shall purchase the procurement item from the vendor/contractor on the approved vendor list that provides the lowest quote for the procurement item; or

(c) For individual construction projects over \$100,000 up to a maximum of \$2.5 million, by inviting all vendors/contractor on the approved vendor list to submit bids in accordance with the provisions set forth in Utah Code 63G-6a, Part 6, except public notice requirements in Part 6 are waived.

R33-5-107. 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, a procurement unit 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 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 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.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

(7)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, [When] a procurement unit shall, when using this rule in conjunction with an approved vendor list, [the procurement unit shall select vendors from] obtain a minimum of two quotes from vendors on the approved vendor list using one or more of the following methods to select vendors from whom to obtain quotes:

([a]i) A rotation system, organized alphabetically, numerically, or randomly;

([b]ii) Assignment of vendors to a specified geographic area;

([e]iii) Assignment of vendors based on each vendor's particular expertise or field; or

~~[(d) Invite all vendors on the approved vendor list to submit quotes; or~~

~~][(e)iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;~~

(b) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(c) When using one of the methods listed in Subsection (7)(a) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the procurement unit using the approved vendor list;

(d) Whenever practicable, procurement units may obtain quotes from all vendors on an approved vendor list; and

(e) Procurement units shall purchase the procurement item from the vendor on the approved vendor list that provides the lowest quote for the procurement item.

R33-5-108. Small Purchases of Professional Service 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 as applicable, the 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]~~ Professional service providers and consultants may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals.

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall, [W]when using this rule in conjunction with an approved vendor list, [the procurement unit shall]select a minimum of three professional service providers or consultants[contractors] from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

~~(d) Invite all vendors on the approved vendor list to submit quotes; or~~

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms or individuals in order and award a contract via direct award up to \$100,000 to the highest ranked firm or individual.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(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; and

(g) All other applicable laws and rules.

~~[R33-5-201. Approved Vendor List.~~

~~In accordance with the provisions set forth in Section 63G-6a-507, a procurement unit may establish an approved vendor list and award contracts using the following methods and all associated laws and rules:~~

~~(a) Section 63G-6a-113 and 507(6)(b), Contract Award Based on Established Terms;~~

~~(b) Section 63G-6a-609, Multiple Stage Bidding Process;~~

~~(c) Section 63G-6a-710, Multiple Stage RFP Process;~~

~~(d) Section 63G-6a, Part 15, Design Professional Services; or~~

~~(e) Section 63G-6a-506, Small Purchases.]~~

R33-5-202. Contract Award Based on Established Terms.

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an approved vendor list at an established price based on:

(a) A price list, rate schedule, or pricing catalog:

(i) Submitted by a vendor and accepted by the procurement unit; or

(ii) Mandated by the procurement unit or a federal agency; or

(b) A federal regulation for a health and human services program.

(2) Established terms submitted by vendors on an approved vendor list:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:

(i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;

(A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and

(B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;

(ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and

(iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).

(3) Established terms mandated by procurement unit or federal agency:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:

(i) A rotation system, organized alphabetically, numerically, or randomly;

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.

(5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list, and includes:

(a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

(2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

(iii) Explains the performance rating achieved by the disqualified vendor; and

(b) Provide a copy of the written finding to the disqualified vendor.

R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.

(1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:

(a) Section R33-5-104. Small Purchases

(b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;

(c) Section R33-5-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-5-107. Quotes for Small Purchases from \$1,001, to \$50,000;

(e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;

(2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

KEY: government purchasing, procurements, request for information

Date of Enactment or Last Substantive Amendment: [August 22, 2016]2017

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services
R33-6
Bidding**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41539

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is to bring the rule into compliance with changes to the Utah Procurement Code made by H.B. 398 which were enacted during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include minor language modifications to comply with changes to the Code such as changing the title of Section R33-6-102 to read "Bidder Solicitation Requests" and the replacement of terms such as "deadline" in place of "time" and "passed" in place of "expired". The changes also correct minor grammatical errors.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and to correct minor grammatical errors.

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 Office 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
◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

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 bidder and responsive bid[~~der~~].

(3)(a) The award of a contract shall be to the [~~lowest responsive and~~]responsible bidder with the lowest responsive bid who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

R33-6-102. Bidder Solicitation Response[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 Section 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 and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

- (i) attendance in person;
- (ii) teleconference participation;
- (iii) webinar participation; or
- (iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorized representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

- (i) the attendance log;
- (ii) minutes of the pre-bid conference or site visit;
- (iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and
- (iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-6-104. Addenda to Invitation for Bids.

Prior to the ~~[submission of bids]~~deadline for receipt of solicitation responses, 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. Rejection of a Late Bid -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the ~~[time]~~deadline for [submission of a] receipt of the solicitation responses to an invitation for bids has ~~[expired]~~ passed as set forth in Section 63G-6a-604(4).

(2) When submitting a bid 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 procurement unit will stop the process and the bid will not be accepted.

(3) When submitting 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 being late.

(a) All 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 not being received by the established due date and time, the bid shall be accepted as being on time.

R33-6-106. Voluntary Withdrawal of a Bid.

A bidder may voluntarily withdraw a bid at any time before a contract is awarded with respect to the invitation for bids for which the bid was submitted provided the bidder is not engaged

in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

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 from a responsible bidder in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the chief procurement officer or head of a procurement unit with independent procurement authority determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, 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; or
- (b) the procurement canceled.

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.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction

Date of Enactment or Last Substantive Amendment: [~~August 22, 2016~~2017]

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services**

R33-7

Request for Proposals

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41540

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the changes to this rule is to clarify language and to bring it into compliance with statutory changes made by H.B. 398 and S.B. 204 which were enacted during the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include language clarifications including updating some terms such as "deadline" instead of "time" and "passed" instead of "expired"; some grammatical and typographical corrections; some corrections of outdated or incorrect statutory references; renumbering and relettering to accommodate additions and deletions; deletion of duplicative language already found in Code or in rule; and the addition of Section R33-7-900 to comply with changes to the RFP process in the Utah Code.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons as a result of the changes to this rule. The changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impacts on businesses because the changes are grammatical, typographical, or for the purposes of statutory compliance and clarifying language or processes.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-7. Request for Proposals.

R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

The [Request for Proposals]request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in [~~Sections 63G-6a-701 through 63G-6a-744~~], Utah Procurement Code 63G-6a, Part 7. The request for proposal process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. 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-110(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.

R33-7-103a. Multiple Stage Cost Qualification RFP Process.

In accordance with Section 63G-6a-710, [authorizes] a procurement unit[s-to] may use a multiple stage RFP process to assist the procurement unit in selecting the proposal that provides the best value or is the most advantageous to the procurement unit. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

(a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.

(b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:

- (i) The lowest cost proposal submitted;
- (ii) The conducting procurement's stated budget; or
- (iii) A combination of (i) and (ii).

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

(a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;

(b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;

(c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and

(d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

(4) Except as provided in Section 63G-6a-707[(8)], the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

(a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:

(i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;

(ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;

(b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;

(ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;

(iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;

(iv) Cost shall be evaluated in accordance with Section 63G-6a-707[(5)(b)(i)]; and

(v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707[(5)(a) through (e)];

(e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and

(f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

(5) Maximum cost differential percentage thresholds include the following examples:

(a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:

(i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;

(b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and

(a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.

(6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

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)(a) 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 Section 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 Section 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. Section 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 and Site Visits.

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-7-301. Addenda to Request for Proposals.

(1) 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.

R33-7-402. Rejection of Late Proposals -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the [time]deadline for [submission of a]receipt of solicitation responses to a request for proposals has [expired]passed as set forth in Section 63G-6a-704(2).

(2) When submitting 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 procurement unit will stop the process and the proposal will not be accepted.

(3) When submitting 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 being late.

(a) All 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 not being received by the established due date and time, the proposal shall be accepted as being on time.

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.

(3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

(b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

(c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

R33-7-501.5. Minimum Score Thresholds.

(1) [An executive branch conducting]A procurement unit [shall]may establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) If used, minimum[Minimum] score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.

(3)(a) Thresholds may be based on:

(i) Minimum scores for each evaluation category;

(ii) The total of each minimum score in each evaluation category based on the total points available; or

(iii) A combination of (i) and (ii).

(b) Thresholds may not be based on:

(i) A natural break in scores that was not defined and set forth in the RFP; or

(ii) A predetermined number of offerors.

R33-7-502. Voluntary Withdrawal of a Proposal.

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the RFP for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5[,-or]of the Utah Procurement Code. Rule R33-7 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

[-----] (a) An evaluation committee may request best and final offers when:

----- (i) no single proposal addresses all the specifications;

----- (ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

----- (iii) additional information is needed in order for the evaluation committee to make a decision;

----- (iv) the differences between proposals in one or more categories are too slight to distinguish;

----- (v) all cost proposals are too high or over the budget;

----- (vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

----- (2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

----- (3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

----- (a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

----- (4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

----- (a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

----- (b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.]

([5]2) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

([6]3) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

~~[(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.]~~

~~[(8) A request for best and final offers issued by a procurement unit shall:~~

~~(a) comply with all public notice requirements provided in Section 63G-6a-112;~~

~~(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;~~

~~(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;~~

~~[(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;~~

~~[(10) Unsolicited best and final offers will not be accepted from offerors.]~~

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.

R33-7-701.1. Cost-Benefit Analysis.

(1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract, excluding any renewal periods.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and:

- (a) conduct a review to determine if:
 - (i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; 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 shall issue a justification statement as set forth in 63G-6a-708 and 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.

R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.

Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.

(1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:

- (i) the person submitting the proposal is responsible;
- (ii) the proposal is responsive; and
- (iii) the proposal meets the mandatory minimum requirements set forth in the RFP.

(b) An evaluation committee may not evaluate proposals deemed non-responsive~~[-not responsible]~~ or not meeting the mandatory minimum requirements of the RFP, or vendors determined to be not responsible.

(2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:

- (i) Explain the evaluation and scoring process;
- (ii) Discuss requirements and prohibitions pertaining to:
 - (A) socialization with vendors as set forth in Section R33-24-104;
 - (B) financial conflicts of interest as set forth in Section R33-24-~~[2]~~105;
 - (C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;
 - (D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and
 - (E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

(iii) review the scoring sheet and evaluation criteria set forth in the RFP; and

(iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(b) Prior to participating in any phase of the RFP process, all members of the evaluation committee must sign a written

statement certifying that they do not have a conflict of interest as set forth in Section 63G-6a-707 and Section R33-24-107.

(i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(A) do not have a conflict of interest with any of the offerors;

(B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.

(4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive proposal submitted by a~~and~~ responsible offeror~~proposal~~ that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.

(b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.

(d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).

(e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).

(5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that:

 (i) a proposal be rejected for;

 (A) being non-responsive, [~~not responsible,~~]

 (B) not meeting the mandatory minimum requirements, or

 (C) not meeting any applicable minimum score threshold[-], or

 (ii) an offeror be rejected for not being responsible.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.

(7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.

(8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

(10) The evaluation committee and the conducting procurement unit shall prepare a justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708.

(11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.

(12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:

- (i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;
- (ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;
- (iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;
- (iv) having inappropriate contact or communication with a person responding to a solicitation;
- (v) socializing inappropriately with a person responding to a solicitation;
- (vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or
- (vii) any other violation of a law, rule, or policy.

(b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12) (a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals ~~[Meeting Mandatory Minimum Requirements] in the RFP Process.~~

(1) ~~[The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.]~~ The scoring of evaluation criteria, other than cost, for proposals in the RFP process shall be:

- (a) based on a one through five point scoring system;
- (b) used to determine which proposals meet mandatory minimum requirements or score thresholds set forth in the RFP for proposals to move on to a subsequent stage in the RFP process; and
- (c) used to assist the procurement unit in selecting which proposal provides the best value or is the most advantageous to the procurement unit.

(2) Points shall be awarded to each applicable evaluation ~~[category]~~ criteria as set forth in the RFP, including but not limited to:

- (a) Technical specifications;
- (b) Qualifications and experience;
- (c) Programming;
- (d) Design;
- (e) Time, manner, or schedule of delivery;
- (f) Quality or suitability for a particular purpose;
- (g) Financial solvency;
- (h) Management and methodological plan; ~~and~~
- (i) Performance ratings or references; and
- (j) Other requirements specified in the RFP.

(3) Scoring Methodology:

(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements or criteria described in the RFP;

(b) Four points (~~Very~~ Good): The proposal addresses all of the requirements or criteria described in the RFP and, in some respects, exceeds them;

(c) Three points (~~Good~~ Satisfactory): The proposal addresses all of the requirements or criteria described in the RFP in a satisfactory manner;

(d) Two points (~~Fair~~ Unsatisfactory): The proposal addresses the requirements or criteria described in the RFP in an unsatisfactory manner; or

~~(e) One point (Poor): The proposal fails to address the requirements described in the RFP or it addresses the requirements inaccurately or poorly.~~ One point (Fail): The proposal fails to:

- (i) address some or all of the requirements or criteria described in the RFP;
- (ii) accurately address some or all of the requirements or criteria described in the RFP; or
- (iii) Demonstrate that the vendor can perform the scope of work or supply the procurement items.

R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.

(1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.

(b) Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.

(c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(2)(a) The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

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 Section R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section 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 Section 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.

R33-7-900. Public-Private Partnerships.

(1) Except as provided in Section 63G-6a-802, a procurement unit shall award a contract for a public-private partnership, as defined in Section 63G-6a-103, by the request for proposals standard procurement process set forth in Section 63G-6a, Part 7.

KEY: government purchasing, request for proposals, standard procurement process

Date of Enactment or Last Substantive Amendment: [August 22, 2016]2017

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-8

Exceptions to Standard Procurement Process

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41544

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the changes to this rule is to clarify the language of the rule and to bring the rule into compliance with current statutes.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the correction of an inaccurate reference to the Utah Procurement Code, the removal of "membership dues" from the list of procurement items eligible for public notice waivers as membership dues were determined not to be a procurement item, and the renumbering of the following subsections to accommodate the deletion.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are to clarify the language of the rule or are technical in nature.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-8. Exceptions to Standard Procurement Process.

R33-8-101. Award of Contract Without Engaging in a Standard Procurement Process.

(1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:

- (a) There is only one source for the procurement item;
- (b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or
- (c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

R33-8-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

(2) Circumstances for which a sole source contract award may be justified include procurements for:

- (a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;
 - (b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or
 - (c) An exclusive maintenance, service, or warranty agreement.
- (3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.

(4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.

(1) For the purpose of this section, the following definitions shall apply:

(a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:

- (i) performance;
- (ii) specifications;
- (iii) scope of work; and
- (iv) provider qualifications, certifications, and licensing.

(b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.

(c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

- (i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and
- (ii) provides a compelling justification for not conducting a competitive standard procurement process.

(2) Transitional costs that must be considered in a cost-benefit analysis include:

(a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.

(3) Transitional costs that may be considered in a cost-benefit analysis include:

(a) Costs identified in Subsection 63G-6a-103[(95)(b)];

(b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;

(c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted prior to the most recent 12 months, updated using an applicable price index;

(d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and

(e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:

(a) Costs prohibited in Subsection 63G-6a-103[(95)(e)];

(b) Data provided by the existing provider for the purpose of establishing:

(i) the market value of the existing type of procurement item; or

(ii) a competing provider's price for a competing type of procurement item;

(c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

(e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.

(6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-8-101c. Other Circumstances That May Make Awarding a Contract Through a Standard Procurement Process Impractical.

(1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with

independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract 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;

(b) public utility services, when only one public utility service is available in an area;

(c) an item where compatibility is the overriding consideration; or

(d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:

(i) a description of the procurement item, including, when applicable, the proposed scope of work;

(ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(iii) the duration of the proposed contract;

(iv) the signature of an authorized official of the conducting procurement unit; and

(v) research completed by the conducting procurement unit documenting that:

(A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;

(B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.

(b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).

(c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

R33-8-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard

procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds \$50,000.

(2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

- (i) procurements of \$50,000 or less;
- (ii) public utility services;
- (iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;
- (iv) conference fees, including materials;
- ~~(v) membership dues;~~
- ~~(vi) speakers or trainers with unique or proprietary presentations or training materials;~~
- ~~(vii) hosting of in-state, out-of-state, and international dignitaries;~~
- ~~(viii) international, national, or local promotion of the state or a public entity,~~
- ~~(ix) an award when the Legislature identifies the intended recipient of a contract;~~
- ~~(x) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;~~
- ~~(xi) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or~~
- ~~(xii) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.~~

(b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 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 that:
 - (i) there are other competing sources for the procurement item;
 - (ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or
 - (iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.

(2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the 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.

(a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;

(b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.

(3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, is not waived by a vendor's actions to contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-8-101f.

R33-8-102. Reserved.

Reserved.

R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

(2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:

(a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or

(b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.

(3) The following do not justify an extension of a contract under Section 63G-6a-802.7:

(a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.

(4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.

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-802.3, Utah Procurement Code.

R33-8-301. Reserved.

Reserved.

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 as applicable, the 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 procurements

Date of Enactment or Last Substantive Amendment: [February 2], 2017

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services**

R33-9

**Cancellations, Rejections, and
Debarment**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41545

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is the clarification of language and to bring the rule into compliance with statutory changes made by H.B. 398 which was enacted in the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the updating of terms to be consistent with changes to the Code; the deletion of Section R33-9-203 which is now unnecessary due to changes to the Code; and the addition of Section R33-9-105 which was created to clarify changes to the Code; and to clarify the process for cancelling contracts, as well as to comply with code changes.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are regarding processes or are language clarifications.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are regarding processes or are language clarifications.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are regarding processes or are language clarifications.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local governmental entities as a result of the changes to this rule. The changes are regarding processes or are language clarifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are regarding processes or are language clarifications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impacts on businesses because the changes are regarding processes or are language clarifications.

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 Office 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

◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org

◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-9. Cancellations, Rejections, and Debarment.

R33-9-101. ~~[General Provisions]~~Cancellation Before Opening.

(1) ~~[An Invitation for Bids, a Request for Proposals, or other solicitation.]~~ A solicitation under a standard procurement process may be canceled prior to the deadline for receipt of ~~[bids, proposals, or other submissions;]~~ a solicitation response when it is in the best interests of the procurement unit as determined by the issuing 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]~~ responses to a solicitation using a standard procurement process 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).

~~(3) An executive branch procurement unit may not reissue a canceled solicitation unless:~~

~~(a) The chief procurement officer determines that all of the issues identified in the written justification for canceling the solicitation set forth in R33-9-103 have been resolved.~~

R33-9-103. Cancellation Before Award But After Opening.

~~(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)]A solicitation under a standard procurement process may be cancelled before award but after the opening [all bids or offers]of solicitation responses when the issuing procurement unit determines in writing that: [an infraction of code, rule, or policy has occurred or that there is other good cause including:]~~

~~(a) the scope of work or other requirements contained in the solicitation documents were not met by any person and all solicitation responses have been determined to be either nonresponsive or not responsible;~~

~~(b) an infraction of code, rule, or policy has occurred;~~

~~(c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;~~

~~(b)d) the specifications in the solicitation have been or must be revised;~~

~~(e)e) the procurement item(s) being solicited are no longer required;~~

~~(d)f) 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)g) [bids or offers]solicitation responses 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)h) except as provided in Section 63G-6a-607, all otherwise acceptable [bids or offers]solicitation responses received are at unreasonable prices, or only one [bid or offer]solicitation response 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;~~

~~(i) other reasons specified in 63G-6a or Administrative Rule; or~~

~~(j) other circumstances deemed to constitute reasonable cause by the chief procurement officer or head of a procurement unit with independent procurement authority.~~

~~(3) Notwithstanding the above, a procurement unit may not cancel and reissue a solicitation:~~

~~(a) To steer a contract to a favored vendor; or~~

~~(b) Except as permitted under the protest and appeal provisions set forth in Utah Code 63G-6a, Parts 16 and 17, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.~~

R33-9-104. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for ~~submissions~~ receipt of ~~solicitation responses~~ that may delay award beyond the bidders', ~~or~~ offerors', or person's acceptance periods, the bidders, ~~or~~ offerors, or persons should be requested, before expiration of their ~~[bids or offers]solicitation responses~~, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

~~(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first twelve months of the contract term and the procurement item is still needed by the procurement unit, the chief procurement officer or head of a procurement unit with independent procurement authority shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:~~

~~(a) the responsible vendor with a responsive solicitation response, meeting all minimum score thresholds set forth in the solicitation;~~

~~(i) having the next lowest bid in an invitation for bids procurement process and in accordance with the provisions set forth in Utah Code 63G-6a, Part 6 and Administrative Rule R33; or~~

~~(ii) with the next highest total score or other authorized method to award a contract in accordance with the provisions of:~~

~~(A) the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 and Administrative Rule R33;~~

~~(B) the approved vendor list procurement process set forth in Utah Code 63G-6a-507 and R33; or~~

~~(C) the design professional procurement process set forth in Utah Code 63G-6a, Part 15 and Administrative Rule R33; or~~

~~(b) issue a new solicitation for the procurement item.~~

~~(2) The chief procurement officer or head of a procurement unit with independent procurement authority shall consider the following when making a determination under Subsection (1):~~

~~(a) the fair and equitable treatment of all persons currently involved or that may be involved in the procurement process pertaining to the procurement item;~~

~~(b) the length of time that has passed between the initial procurement and cancellation of the awarded contract;~~

~~(c) the applicability and competitiveness of prices submitted in response to the initial procurement;~~

~~(d) the willingness of the vendor to maintain prices submitted in the vendor's initial response to the solicitation for the full scope of work or, as applicable, remaining proportionate scope of work;~~

~~(e) the vendor's availability and ability to perform the work;~~

~~(f) the existence of additional or new vendors who may be available and willing to submit responses to a new solicitation for the procurement item;~~

~~(g) costs and time delays to the procurement unit associated with conducting a new procurement; and~~

~~(h) other applicable issues unique to the solicitation or procurement item.~~

~~(3) This rule may not be used:~~

~~(a) If a contract is cancelled by a procurement unit for convenience;~~

~~(b) To extend the contract beyond the contract period identified in the solicitation; or~~

~~(c) If a contract is cancelled after the first twelve months of the contract period.~~

R33-9-201. Rejection[s and Debarments] of a Solicitation Response.

An issuing procurement unit may reject any or all ~~[bids, offers or other submissions]solicitation responses~~, 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]~~solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any ~~[bid or offer]~~solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate ~~[bids or offers]~~solicitation responses and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any ~~[bid or offer]~~solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A ~~[bid or offer]~~solicitation response 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]for~~ the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to ~~[other bidders or offerors]~~another person. For example, ~~[bids or offers]~~solicitation responses shall be rejected in which the ~~[bidder or offeror]~~person:

(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 subline 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 subline 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 nonresponsive. A responsible bidder or offeror is defined in Section 63G-6a-103(42).]The chief procurement officer or head of a procurement unit with independent procurement authority:~~

~~(a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsive;~~

~~(b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsive; and~~

~~(c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.~~

~~(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)3] [The originals of a]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;]Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the [due date]deadline for receipt of [bids, proposals, or other submissions]solicitation responses shall be rejected.~~

KEY: government purchasing, cancellations, rejections, debarment

Date of Enactment or Last Substantive Amendment: [~~August 22, 2016~~2017]

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-11

Form of Bonds

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41546

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the changes to this rule is to correct references to the Utah Procurement Code and administrative rules; to correct spelling errors; to clarify language; and to bring this rule into compliance with changes made to the Utah Procurement Code by H.B. 398 which was enacted in the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include modifications to correct typos; the removal of terms already defined in the Code; the clarification of verbiage to bring this rule into compliance with changes made to the Utah Procurement Code; and the removal of incorrect references to the administrative rules.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other

than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are typographical or grammatical, and clarify the language of the rule and bring the rule into compliance with the statutory changes.

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 Office 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
- ♦ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ♦ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

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 R33-11-30~~[4]3(1)(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]~~ responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

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]~~ if the chief procurement officer or head of a procurement unit with independent procurement authority deems it necessary to guarantee the satisfactory completion of a contract, provided:

(a) The ~~[Invitation for Bids or Request for Proposals]~~ solicitation contains a statement that a surety or performance bond is required in an amount:

(i) equal to the amount of the bid, ~~[or]~~ offer, or other response;

(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]~~ solicitation 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.

~~(1)~~ (1) 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]~~ responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

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 R33-11-30~~[4]3(1)(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)2~~ (1)2 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]3) If the conducting procurement unit fails to obtain a payment bond it [~~may~~ shall be subject Utah Code Title 14, Chapter 1.

KEY: bid security, performance bonds, payment bonds, procurement procedures

Date of Enactment or Last Substantive Amendment: [~~July 8, 2014~~2017]

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services
R33-12
Terms and Conditions, Contracts,
Change Orders and Costs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41547

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule are to remove duplicate language, to clarify language, to correct grammatical errors, and to bring the rule into compliance with changes made by H.B. 398 which was enacted in the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the clarification of language; the correction of incorrect citations; the correction of grammatical errors; the rewriting of Section R33-12-605 which describes auditing rights and procedures; the removal of Section R33-12-606 which duplicates retention information already found in Section 63G-6a-1206.3; the removal of Section R33-12-301a which was not in compliance with Code; and the updating of terms such as "responsible bidder" to comply with changes to the Code.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this

rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are to clarify and remove redundant, confusing, or non-compliant language, and to bring the rule into compliance with the statutory changes.

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 Office 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

◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org

◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Division of Purchasing and General Services.

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-110(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. Awarding Multiple Award Contracts.

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on multiple award contract pursuant to the procedures established in R33-12-301.2, ordering from a multiple award contract.

(2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.

(3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:

(a) Coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:

- (i) delivery;
- (ii) service;
- (iii) product availability; or
- (iv) Compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth 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:

(a) Indicates that contracts may be awarded to more than one bidder or offeror;

(b) Specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and

(c) Describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) Multiple award contracts in an invitation for bids shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 6 to the lowest responsive and responsible bidder(s) who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

(a) lowest bids for all procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by the following methods:

(i) all bids within a specified percentage, not to exceed five percent, of the lowest responsive and responsible bid, unless otherwise approved in writing by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) all responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or

(iii) other methodology described in the solicitation to award contracts;

(b) lowest bid by Category provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per category;

(ii) only one bidder may be awarded a contract per category;

(c) lowest bid by line item provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task or service;

(ii) only one bidder may be awarded a contract per line item, task or service; or

(d) Other specific objective methodology described in the solicitation, such as R33-12-302 for primary and secondary contracts, approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 7 and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.

(1) An unidentified procurement item is defined as a procurement item that at the time the solicitation is issued:

(a) Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list;

(b) Does not have a clearly defined project or procurement specific scope of work; and

(c) Does not have a clearly defined project or procurement specific budget.

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-4-102.

(3) An RFP, request for statements of qualifications, or multi stage solicitation issued for a multiple award contract for unidentified procurement item(s) must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.

(a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.

(b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:

(i) a rotation system, organized alphabetically, numerically, or randomly;

(ii) assigning a potential vendor or contractor to a specified geographical area;

(iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or

(iv) obtaining quotes or bids from two or more vendors or contractors.

R33-12-301b. Ordering From A Multiple Award Contract.

(1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in R33-12-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(c);

(b) The requirement to obtain two or more quotes in section (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.

(2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.

(3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors that have been awarded a contract under a multiple award.

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.

(2) The standard contract term for executive branch procurement units is five years, unless the chief procurement officer or head of a procurement unit with independent procurement authority determines that a shorter or longer term contract is in the best interest of the procurement unit after considering:

- (a) the cost associated with conducting more than one procurement within a five-year period if a shorter term is required;
- (b) the impact on competition if a longer term is required;
- (c) standard practices for the industry; and
- (d) the needs of the procurement unit.

R33-12-404.1. Contracts With Renewal Options.

(1) In order to ensure fair and open competition in the procurement process and to avoid costs associated with administering contracts with renewal options, executive branch procurement units shall document in writing why renewal options are in the best interest of the procurement unit taking into consideration:

- (a) federal funding requirements;
- (b) the cost associated with administering renewal options;

(c) how the cost of the procurement item will be established during any renewal periods; and

(d) how the principle of upholding fair and open competition will be maintained.

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 Section 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 Subsection R33-8-401(3) and is subject to Section 63G-6a-803.

(2) Any contract change order authorized by a procurement unit under Subsection 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. Contract Modifications for New Technology and Technological Upgrades.

A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:

(1) The solicitation contains a statement indicating that:

(a) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:

- (i) systems;
- (ii) apparatuses;
- (iii) modules;
- (iv) components; and
- (v) other supplementary items;

(b) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and

(c) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.

(2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.

(3) Prior to executing a contract modification incorporating new technology or technological upgrades, executive

branch procurement units shall obtain the approval of the Executive Director of the Department of Technology Services.

(4) A contract modification for new technology or technology upgrades may not extend the term of the contract 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 vendors, bidders or offerors;

(b) awarding a sole source or other contract without engaging in a standard procurement process; or

(c) identifying price that are significantly lower or higher than other vendors, bidders, or offerors.

(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. Right to Audit.

~~(1) [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.]~~ As used in this rule:

(a) "Authorized representative" includes:

(i) A purchasing procurement unit;

(ii) An internal auditor or other employee of the procurement unit;

(iii) An audit firm, consultant or examiner under contract with the procurement unit;

(iv) The State Auditor;

(v) The Legislative Auditor General; or

(vi) Federal auditors.

(b) "Books and records" mean all written or electronic information pertaining to the applicable contract between the procurement unit and the contractor including:

(i) Accounting information, financial statements, files, invoices, reports, and statements;

(ii) Pricing data;

(iii) Usage reports;

(iv) Transaction histories;

(v) Delivery logs;

(vi) Contracts, contract amendments, and other legal documents; and

(vii) Performance evaluations.

(2) Any contract between a contractor and a procurement unit which involves the expenditure of public funds may include or incorporate by reference a right to audit clause that may contain the following provisions:

(a) A statement indicating that the procurement unit or its authorized representative has the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract;

(b) Notification procedures for initiating an audit and reporting audit findings;

(c) Dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;

(d) A statement requiring the contractor and its subcontractors to:

(i) maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later;

~~(ii) Establish and maintain an accounting and record-keeping system that enables the procurement unit or its authorized representative to readily have access to the contractor's books and records in both written and electronic format;~~

~~(iii) Upon request, provide to the procurement unit or its authorized representative an electronic copy of the contractor's books and records within thirty (30) days of the request;~~

~~(iv) Allow the procurement unit or its authorized representative to interview the contractor's employees, agents, subcontractors, partners, resellers, and any other person who might reasonably have information related to the contractor's performance of of the contract.~~

~~(v) Correct errors and repay overcharges to the contracting procurement unit within thirty days of receiving written notice of the errors or overcharges documented in an audit finding;~~

~~(A) all payments relating to overcharges or other audit findings involving state cooperative contracts shall be repaid to the Utah Division of Purchasing; and~~

~~(vi) If contract errors or overcharges are in dispute, correct errors and repay overcharges within thirty days of receipt of a notice of decision issued by the chief procurement officer, the head of a procurement unit with independent procurement authority after a hearing has been conducted to attempt to resolve the dispute, or a court order.~~

~~(e) A statement indicating that:~~

~~(i) the procurement unit or its authorized representative have the right to audit the contract at any time during or after the term of the contract between the contractor and the procurement unit, including the right to examine, make copies of, or extract data from any record required to be maintained by the contractor;~~

~~(ii) An audit or other request shall:~~

~~(A) Be limited to records or other information related to or pertaining to the applicable contract;~~

~~(B) Include access to all records necessary to properly account for the contractor's performance under the contract and the payments made by the procurement unit to the contractor; and~~

~~(C) Be carried out at a reasonable time and place.~~

~~(f) A notice that if a contractor fails to maintain or provide records in accordance with the provisions of the contract, the procurement unit may:~~

~~(i) Deem the contractor to be in breach of its contract with the procurement unit;~~

~~(ii) Enter into negotiations with the contractor to initiate a corrective action plan to bring the contractor into compliance; or~~

~~(iii) Cancel the contract.~~

~~(g) A notice that the procurement unit may initiate debarment or suspension proceedings against a contractor under Section 63G-6a-904, or pursue other legal action, for any of the following:~~

~~(i) Failure to respond to an audit;~~

~~(ii) Failure to correct errors or repay overcharges;~~

~~(iii) An illegal act or fraud documented in an audit; or~~

~~(iv) Other reasons as determined by the chief procurement officer or head of a procurement unit with independent procurement authority.~~

~~[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 contract negotiations.

(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] is 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 Section 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: terms and conditions, contracts, change orders, costs
Date of Enactment or Last Substantive Amendment: [February 23, 2016]2017

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
 and General Services
 R33-13
 General Construction Provisions**

**NOTICE OF PROPOSED RULE
 (Amendment)**

**DAR FILE NO.: 41548
 FILED: 04/27/2017**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to correct

typographical errors, to remove an unnecessary rule reference, and to remove a duplicate definition.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the correction of typographical errors, the removal of an unnecessary rule reference, and the deletion of the definitions "contractor" and "subcontractor" as these terms are already defined in Section 63G-6a-103.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are typographical and remove unnecessary language.

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 Office 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
 ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

♦ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
 ♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
 ♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

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]5-106 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 ~~Prime~~ Prime 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.
 - (c) **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.

(d) 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.

(e) 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 R33-13-301 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.

([e]b) "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.

([e]c) "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]d) 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.

([e]e) "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: [July 8, 2014]2017

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

**Administrative Services, Purchasing
and General Services
R33-15
Procurement of Design Profession
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41549

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is the correction of a spelling error and to correct an inaccurate reference to the Utah Administrative Code.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the correction of the spelling of the word "personnel" where it incorrectly reads "personal", and the

correction of the citation to "R33-4-109" where it inaccurately reads "R33-4-105".

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the change to this rule. The changes simply correct a spelling error and an Administrative code citation.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the change to this rule. The changes simply correct a spelling error and an Administrative Code citation.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the change to this rule. The changes simply correct a spelling error and an Administrative Code citation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to small businesses, businesses, or local government entities as a result of the change to this rule. The changes simply correct a spelling error and an Administrative Code citation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the change to this rule. The changes simply correct a spelling error and an Administrative Code citation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule and I believe that there are no anticipated costs or savings to the state budget as a result of the change to this rule. The changes simply correct a spelling error and an Administrative Code citation.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017
THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-15. Procurement of Design Professional 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 Section R33-4-10[5]2. 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 ~~personnel~~ personnel 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: ~~July 8, 2014~~ 2017

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

**Administrative Services, Purchasing
and General Services
R33-16
Protests**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41550

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes is to bring the rule

into compliance with the code. This rule is being updated in response to H.B. 398 which was enacted during the 2017 General Session. This bill amended part of the protest procedures and processes in Part 16 of the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the removal of redundant or confusing language; the correction of citations to the Utah Procurement Code; clarification of language including updating terms used in the Procurement Code such as "relevant facts and evidence" and "deadlines"; the reorganization of and addition of subsections that explain the criteria of what does not constitute grounds for a protest; and the addition of the provision that a person without legal authority does not have standing to file a protest.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to the local government as a result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments as a result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule and I believe that there is no potential for fiscal impact on businesses as a

result of the changes to this rule. The changes are to clarify and to remove redundant or confusing language, to clarify the procurement processes, and to bring the rule into compliance with the statutory changes.

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 Office 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
- ♦ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ♦ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Division of Purchasing and General Services.

R33-16. Protests.

R33-16-101. Conduct.

[~~Controversies and protests~~]Protests shall be conducted in accordance with the requirements set forth in [~~Sections 63G-6a-1601 through 13G-6a-604~~]Utah Code 63G-6a, Part 16. 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.

R33-16-101a. Grounds for a Protest.

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602.

(2) In accordance with the requirements set forth in Section 63G-6a-1602[~~(3)(a)(ii)~~], a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest [should]must include the relevant facts and evidence leading the protestor to contend that a grievance has occurred, including but not limited to[~~specifically referencing~~]:

(i) An alleged violation of Utah Procurement Code 63G-6a;

(ii) An alleged violation of Title R33 or other applicable rule;

(iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Relevant Facts and Evidence" as referred to in Section 63G-6a-1602[(3)(a)(ii)], must be specific enough to enable the protest officer to determine, if such facts and evidence are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the ~~[opening of bids or closing date of proposals]~~ applicable deadlines set forth in law, rule, or the solicitation document, that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated claims or allegations that do not reference specific facts and evidence including, but not limited to, vague or unsubstantiated claims or allegations ~~[by a bidder, offeror, or prospective contractor that]~~ such as:

(A) ~~[a bidder, offeror, or prospective contractor]~~ the protestor should have received a higher score;

(B) ~~[or that]~~ another ~~[bidder, offeror, or prospective contractor]~~ vendor should have received a lower score;

(~~[B]~~C) a service or product provided by a ~~[bidder, offeror, or prospective contractor]~~ protestor is better than another ~~[bidder's, offeror's, or prospective contractor's]~~ vendor's service or product;

(~~[E]~~D) another ~~[bidder, offeror, or prospective contractor]~~ vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation; ~~[or]~~

(E) the procurement unit's eProcurement system or other electronic procurement system;

(i) was slow, not operating properly, or was difficult to use or understand;

(ii) could not be accessed or did not allow documents to be downloaded;

(iii) did not allow a response to be submitted after the deadline for receiving responses expired;

(F) the protestor did not receive individual notice of a solicitation or was otherwise unaware of a solicitation when a procurement unit has complied with the public notice requirement in Section 63G-6a-112; or

(G) officials representing the procurement unit or the evaluation committee or an individual committee member acted in a biased or discriminatory manner against the protestor.

~~[_____ (D) any item listed in Section 63G-6a-1602(3)(a)(ii) of this Rule has occurred that is not specific;]~~

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708[;]

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(3) Each of the claims and allegations listed in Subsection (2)(c)(ii) could serve as legitimate grounds for filing a protest if properly supported by relevant facts and evidence.

(~~[d]~~4) In accordance with Section 63G-6a-1603[~~(+)~~], a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with Utah Code 63G-6a Part 16 or this Rule.

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. A person without legal authority shall be deemed to not have standing to file a protest.

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.

R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests
Date of Enactment or Last Substantive Amendment: [January 20], 2017

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

**Administrative Services, Purchasing
 and General Services**

R33-17

Procurement Appeals Board

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41551

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is to bring the rule into compliance with changes made by H.B. 398 which was enacted during the 2017 General Session. This bill amended part of the appeals procedures and processes in Part 17 of the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include the addition of definitions such as "administrative review", and "appeal"; the addition of Section R33-17-101.8 which describes the procedures for conducting an administrative review, the changing of the title of Section R33-17-13 and addition of language to clarify that hearings are informal, and the removal of Section R33-17-104 because the appeals process has been shortened to 30 days, making the expedited process unnecessary. These changes are necessary because of the amendments to the Utah Procurement Code.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes clarify the language in the rule and explain the appeals processes, as well as bring the rule into compliance with the statutory changes.

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 Office 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
- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
- ◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-17. Procurement Appeals [Board]Panel.

R33-17-101. Statutory Requirements.

Appeals ~~to~~ of a protest decision shall be conducted in accordance with the requirements set forth in ~~[Section 63G-6a-1701 through 63G-6a-1706]~~ 63G-6a, Part 17, 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.]~~

R33-17-101.1. Definitions.

(1) "Administrative review" as used in this rule means, in accordance with the provisions set forth in Utah Code 63G-6a-1702, an examination conducted by a procurement appeals panel of:

- (a) The notice of appeal;
- (b) The protest appeal record pertaining to a protest officer's written decision;
- (c) If an optional informal hearing was held, responses to questions asked by a procurement appeals panel to assist the panel in understanding the basis of the appeal and information contained in the protest appeal record, but otherwise without taking any additional evidence or any additional ground for the appeal.

(2)(a) "Appeal" as used in this rule means: a protestor filing a notice of appeal requesting an administrative review of the protest appeal record pertaining to a protest officer's decision in accordance with all provisions set forth in Utah Code 63G-6a, Part 17; and

- (b) Does not include the appeal of a debarment or suspension under 63G-6a-904.

(3) "Protestor" as used in this rule means: a person who files a protest under Utah Code 63G-6a, Part 16, including any intervening party authorized under Utah Code 63G-6a-1603 and Rule R33-16-301.

(4) "Uphold the Decision of the Protest Officer" as used in this rule means: to support and maintain the decision of the protest officer, including giving deference to the protest officer's decision on questions of fact because the protest officer stands in a superior position, in terms of understanding the procurement, the needs of the agency, applicable laws, rules, ordinances, and policies, from which to evaluate and weigh the evidence and assess the credibility and accuracy of the facts, evidence, laws, and, if applicable, witnesses.

R33-17-101.5. Procedures for Filing a Notice of Appeal.

(1) When filing a notice of appeal, a protestor shall:

(a) File the notice of appeal in accordance with the requirements set forth in Utah Code 63G-6a, Part 17 and the following procedures:

(b) File the notice of appeal with the chair of the procurement policy board by the deadline for filing and include:

(i) The address of record and email address of record of the party filing the notice of appeal;

(ii) A statement indicating that:

(A) The protestor is filing a notice of appeal; and

(B) Requesting an administrative review of the protest officer's decision;

(iii) A copy of the written protest decision;

(iv) If applicable, the required security deposit or bond; and

(v) Any other requirement set forth in Utah Code 63G-6a, Part 17;

(c) Not base a notice of appeal on a ground not specified in the person's protest under Section 63G-6a-1602 or new or additional evidence not considered by the protest officer.

(2) Any part of a notice of appeal that fails to comply with each of the requirements set forth in Utah Code 63G-6a, Part 17, this rule, a ground not specified in the person's protest under Section 63G-6a-1602, or new or additional evidence not considered by the protest officer shall be dismissed by the chair of the procurement policy board or the procurement appeals panel appointed to conduct the administrative review.

(3) The protest appeal record is restricted to the following:

(a) A copy of the protest officer's written decision;

(b) All documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;

(c) The recording of the hearing, if the protest officer held a hearing;

(d) A copy of the protestor's written protest; and

(e) All documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.

R33-17-101.8. Procedures for Conducting an Administrative Review.

(1) When conducting an administrative review of a protest officer's decision, a procurement appeals panel:

(a) shall:

 (i) Comply with all requirements set forth in Utah Code 63G-6a, Part 17 and this rule:

 (ii) Conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later agreed to date, unless the appeal is dismissed by the chair of the procurement policy board:

 (iii) Consider and decide the appeal based solely on:

 (A) Without conducting a hearing:

 (I) the notice of appeal; and

 (II) the protest appeal record; or

 (B) If an informal hearing is held:

 (I) responses received during the informal hearing,

 (II) the notice of appeal; and

 (III) the protest appeal record; and

 (iv) Not otherwise take any additional evidence or consider any additional ground for the appeal:

 (v) Not consider any claim in the notice of appeal dismissed by the chair of the procurement policy board in consultation with the attorney general's office for noncompliance with Sections 63G-6a-1702(2)(3)(4), or 1703;

 (vi) Uphold a protest officer's decision unless the procurement appeals panel determines that the protest officer's decision is arbitrary and capricious or clearly erroneous; and

 (vii) Within seven days after the day on which the procurement appeals panel concludes the administrative review:

 (A) issue a written decision of the appeal; and

 (B) mail, email, or had deliver the written decision on the appeal to the parties to the appeal and to the protest officer; and

 (b) May:

 (i) Consult with the assistant attorney general assigned to the appeal;

 (ii) Conduct the administrative review without conducting a hearing;

 (iii) At the sole discretion of the procurement appeals panel, conduct an informal hearing if the procurement appeals panel considers a hearing to be necessary:

 (A) ask questions and receive responses during the informal hearing to assist the procurement appeals panel in understanding the basis of the appeal and information contained in the protest appeal record;

 (B) not take any additional evidence or consider any additional ground for the appeal; and

 (iv) Dismiss an appeal if the appeal does not comply with the requirements of Utah Code 63G-6a.

R33-17-101.10. Determination Regarding Arbitrary and Capricious.

 (1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

 (a) There is a reasonable basis for the decision made by the protest officer and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not arbitrary and capricious and shall uphold the decision of the protest officer; or

 (b) There is no reasonable basis for the protest officer's decision and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was arbitrary and capricious and shall remand the matter to the protest officer to cure the problem or render a new decision.

 (2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was arbitrary and capricious.

R33-17-101.13. Determination Regarding Clearly Erroneous.

 (1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

 (a) There is a reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not clearly erroneous and shall uphold the decision of the protest officer; or

 (b) There is no reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was clearly erroneous and shall remand the matter to the protest officer to cure the problem or render a new decision.

 (2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was clearly erroneous.

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. A person without legal authority shall be deemed to not have standing to file a notice of appeal.

R33-17-103. [Conduct of the] Informal Hearing.

[The Chair of the panel shall conduct the hearing, including:](1) A hearing conducted under Part 17 shall be an informal procedure wherein the rules of evidence and civil procedures do not apply.

(2) A procurement appeals panel shall establish procedures for conducting an informal hearing including:

(a) establishing time limits and deadlines;

(b) determining who may address the procurement appeals panel; and [who may ask a question;

(c) requiring legal memorandum or points and authorities; and]

([d]c) determining other procedural matters.

~~(3) All communication during the informal hearing shall be directed to the coordinator of the procurement appeals panel.~~

~~(a) A recording shall be made of each informal hearing held on an appeal under Utah Code 63G-6a, Part 17.~~

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.]~~

~~A party to a protest having standing may submit a written request to the coordinator of the procurement appeals panel requesting that the administrative review be expedited. The coordinator of the procurement appeals panel shall consider the request and, if possible and practical, accommodate the request.~~

R33-17-105. Electronic Participation.

Any panel member or, if applicable, participant may participate electronically [by]if:

(a) [notifying]a request to participate electronically is submitted to the [Chair]coordinator of the [P]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]electronic participation, by phone, computer or otherwise, is available at the location; and

(c) the electronic means allows other members of the [P]panel and, if applicable, 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: ~~[July 8, 2014]~~2017

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

Administrative Services, Purchasing and General Services

R33-18

Appeals to Court and Court Proceedings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41552

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change to this rule is to correct an inaccurate citation to the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: The change to this rule corrects a citation which read "Section 63G-6a-1801 through 63G-6a-1803" where it should have read "Utah Code 63G-6a, Part 18".

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the change to this rule. The change is technical in nature.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the change to this rule. The change is technical in nature.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the change to this rule. The change is technical in nature.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments as a result of the change to this rule. The change is technical in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The change is technical in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the change, and I believe that there is no potential for fiscal impact on businesses as a result of the change to this rule. The change is technical in nature.

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 Office 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

◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov

◆ Jared Gardner by phone at 385-646-4561, or by Internet E-mail at jbgardner@graniteschools.org

◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-18. Appeals to Court and Court Proceedings.

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]Utah Code 63G-6a[-], Part 18[03]. 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: ~~July 8, 2014~~ 2017

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

Administrative Services, Purchasing and General Services

R33-19-101

Encouraged to Obtain Legal Advice From Legal Counsel

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41553

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to remove an unnecessary code reference.

SUMMARY OF THE RULE OR CHANGE: The change to this rule removes an unnecessary reference to specific sections of Part 19 of the Utah Procurement Code because Part 19 is already referenced in the rule.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the change to this rule. The change simply removes a redundant code citation.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the change to this rule. The change simply removes a redundant code citation.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the change to this rule. The change simply removes a redundant code citation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local governments as a result of the change to this rule. The change simply removes a redundant code citation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the change to this rule. The change simply removes a redundant code citation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the change to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the change to this rule. The change simply removes a redundant code citation.

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

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◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

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~~] contains 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: [July 8, 2014] 2017
Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services
R33-21-201e**

**Division May Charge Administrative
Fees on State Cooperative Contracts -
Prohibition Against Other Procurement
Units Charging Fees on State
Contracts**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41554

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to correct code references.

SUMMARY OF THE RULE OR CHANGE: References to the Utah Administrative Services Code and the Utah Procurement Code are being amended to broaden the scope of the references to include other relevant subsections.

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

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes simply correct code citations.
- ♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes simply correct code citations.
- ♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes simply correct code citations.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to small businesses, businesses, or local governments as a result of the changes to this rule. The changes simply correct code citations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes simply correct code citations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes simply correct code citations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

**Administrative Services, Purchasing
 and General Services
 R33-25
 Executive Branch Insurance
 Procurement**

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
 ♦ Fay Tan by phone at 801-538-3524, or by Internet E-mail at ftan@utah.gov
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 ♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 41555
 FILED: 04/27/2017**

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

RULE ANALYSIS
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule is to clarify the language of the rule and to bring the rule into compliance with the current Utah Procurement Code.

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

SUMMARY OF THE RULE OR CHANGE: The changes to this rule include correcting the use of the phrase "responsible solicitation response"; the addition of the provision that a procurement unit may use the standard procurement methods for insurance agents, brokers, and underwriting companies; the addition of the specification of what criteria a procurement unit should consider; the addition of the provision for procurement units to establish minimum requirements and score thresholds to qualify insurance agents, brokers, and underwriting companies; and the addition of the provision for the evaluation committee to make a recommendation for rejection of an agent, broker, or underwriting company based on certain conditions. The additional provisions are required by changes made to the Utah Procurement Code.

AUTHORIZED BY: Kent Beers, Director

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

R33. Administrative Services, Purchasing and General Services.

**R33-21. Interaction Between Procurement Units.
 R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts -- Prohibition Against Other Procurement Units Charging Fees on State Contracts.**

(1) In accordance with Section 63A-1-109.5, 63A-2-103[(3)], 63G-6a-303(2)[(b)], and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.
 ♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.
 ♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.

KEY: cooperative purchasing, state contracts, procurement units
Date of Enactment or Last Substantive Amendment: [August 22, 2016] 2017
Authorizing, and Implemented or Interpreted Law: 63G-6a

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the changes to this rule, and I believe that there is no potential for fiscal impact on businesses as a result of the changes to this rule. The changes are to clarify the language of the rule, to bring the rule into compliance with the statutory changes, and correct minor grammatical errors.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

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,-]~~

(3) A procurement unit may use the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 to award a contract for insurance agents, brokers, and underwriting companies.

(4) A procurement unit may consider the following ~~shall be considered~~ criteria to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in a request for proposals procurement process:

- (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~~ criteria ~~which~~ that will help to ensure ~~provide~~ the best possible coverage and service to the ~~purchasing agency~~ procurement unit.

(5) A procurement unit may establish minimum requirements and score thresholds to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in the request for proposals procurement process.

(6) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that an agent, broker, or underwriting company be rejected for being deemed not responsible, not meeting the mandatory minimum requirements, not meeting any applicable minimum score threshold or whose proposal is not responsive.

R33-25-102. Alternate Multiple Stage Bid Process.

(1) This rule only applies to executive branch procurement units.

(2) 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)3~~ (3)4 ~~[All interested agents-]Agents, [and] brokers, and underwriting companies~~ must be qualified according to the evaluation criteria described in R33-25-101.

~~(3)4~~ (3)4 ~~[No more than the]The three highest ranked agents, brokers, or [agents,]underwriting companies, as determined by the evaluation committee, will be [eligible]deemed qualified to proceed to the final stage.~~

~~(4)5~~ (4)5 ~~[Those]Agents, brokers or underwriting companies who are [eligible]qualified 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)6~~ (5)6 ~~[Eligible]Qualified agents, brokers or [agents]underwriting companies~~ must then submit a responsive ~~[and responsible-]bid for each assigned market.~~

~~(6)7~~ (6)7 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: ~~July 8, 2014~~ 2017
Authorizing, and Implemented or Interpreted Law: 63G-6a

Corrections, Administration
R251-706
Inmate Visiting

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 41500
 FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language is clarified to reduce specific examples and provides a general definition of appropriate attire.

SUMMARY OF THE RULE OR CHANGE: The change in language reduces specific examples of modest or gang affiliated attire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 64-13-10 and Section 64-13-17

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost since this amendment defines modest attire for visitors.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost since this amendment defines modest attire for visitors.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost since this amendment defines modest attire for visitors.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost since this amendment defines modest attire for visitors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost since this amendment slightly alters the attire requirements for visitors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No costs anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER, UT 84020-9549
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Lucy Ramirez by phone at 801-545-5616, or by Internet E-mail at lramirez@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Rollin Cook, Executive Director

R251. Corrections, Administration.

R251-706. Inmate Visiting.

R251-706-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17, of the Utah Code.

(2) The purpose of this rule is to provide the Department's policies, procedures and requirements for inmate visitation at the Division of ~~Institutional~~ Prison Operations.

R251-706-2. Definitions.

- (1) "abusive" means insulting or harmful.
- (2) "adult" means anyone eighteen years of age or older.
- (3) "approved adult" means an individual eighteen years of age or older, cleared through background checks and approved by the facility visiting staff to visit an inmate.
- (4) "approved visitor" means an individual cleared through BCI and approved by the facility visiting staff to visit an inmate.
- (5) "barrier visit" means a non-contact visit where the visitor and inmate are separated by glazing, screen, or other partition.
- (6) "BCI" means Bureau of Criminal Identification.
- (7) "contraband, illegal" means any item in the possession of an inmate or visitor which violates a federal or state law.
- (8) "contraband, nuisance" means any item in the possession of an inmate or visitor which does not violate a federal or state law but does violate a prison policy.
- (9) "~~DI~~DPO" means Division of ~~Institutional~~ Prison Operations.
- (10) "DMV" means Department of Motor Vehicles.
- (11) "emergency visit" means visit occasioned by a verifiable emergency, such as serious illness, accident, or death of an inmate's immediate family member.
- (12) "foul" means offensive to the senses; vulgar.
- (13) "immediate family" means spouse, children, stepchildren, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, half-sister, grandmother, grandfather and grandchildren.
- (14) "inmate visiting request form" means a form given to inmates during the Reception and Orientation process or at a later time to add persons to their approved visitor lists.
- (15) "Minor" means any person under the age of 18 years old.
- (16) "NCIC" means National Crime Information Center.

(17) "NLETS" means National Law Enforcement Teletype System.

(18) "OMR" means Offender Management Review team.

(19) "positive identification" means document containing a photograph and date of birth, including but not limited to a valid driver's license, federal or state identification card, military identification or passport; does not include credit cards, social security card, employment card, or student identification card.

(20) "R and O" means reception and orientation process for new inmates and parole violators committed to the institution.

(21) "special visits" means visits authorized by the warden/designee for circumstances other than normal visiting procedures.

(22) "UDC" means Utah Department of Corrections.

(23) "Uinta" means housing unit for maximum security inmates.

(24) "USP" means Utah State Prison, including Draper and CUCF.

(25) "visit" means a short meeting with an approved visitor; a privilege, not a right, afforded to inmates/visitors at the Utah State Prison.

(26) "visitor's consent form" means a form given to an approved visitor requiring the visitor's signature indicating that the visitor has received, understands, and shall adhere to the visitor rules.

R251-706-3. Visiting Policies.

(1) Visitors shall complete a visitor's consent form prior to the initial visit.

(2) Visitors shall receive a copy of the visitor rules and regulations which are distributed at the time of the initial visit. Prior to the first visit, visitors shall read the rules and regulations and shall sign that they understand and will comply with the visiting rules.

(3) Any employee, contractor, volunteer or student who has terminated employment or services with the Department may not be cleared for visits until one year has elapsed from the time of termination of employment or services.

(4) Visitors are to be appropriately attired per staff discretion (i.e. modest attire, no gang-affiliated attire or accessories, etc.) ~~shall be modestly dressed to be permitted to visit. Bare midriffs, hooded sweat shirts, sleeveless, or see-through blouses or shirts, shorts, tube tops, halters, extremely tight or revealing clothing, dresses or skirts more than three inches above the knees, or sexually revealing attire are not allowed. Children under the age of twelve may wear shorts and sleeveless shirts.~~

(5) Upon reasonable suspicion, visitors shall be subject to search, and visitation may be denied for failure to submit to the search request.

(6) Prior to entering the Utah State Prison visiting room, visitors may be screened with a metal detector.

(7) If contraband is discovered, the duty officer shall be notified, and:

(a) visitors attempting to introduce nuisance contraband, which is in violation of ~~DO~~DPO policies and procedures, onto prison property may have their visiting privileges suspended, restricted or revoked; or

(b) visitors attempting to introduce illegal contraband onto prison property may be subject to criminal prosecution and suspension of visiting privileges.

(8) Visitors shall not be permitted to bring pets or other animals, except for seeing-eye dogs, onto prison property.

(9) Food items from outside the prison shall not be allowed.

(10) Visits should not exceed two hours. Visiting hours may be reduced or extended on any day based on facility visiting conditions or special holiday schedules. On special visits, conditions including the length of the visit are approved based on an assessment of the request and capabilities of the facility.

(11) Personal property such as purses, wallets, keys, blankets, coats and sweaters worn as outer garments, and money (except for vending machine change in facilities which allow them) are not allowed in the visiting room.

(12) Visitors with babies may bring into the visiting area infant care items that are reasonably needed during the visit. Staff shall accommodate personal need items that do not present a threat to the safety and security of the inmates, staff, and the institution.

(13) The UDC shall not be responsible for loss of personal property. Visitors may secure items in UDC lockers where available.

(14) Visitors shall not be permitted to visit during any scheduled visiting period if less than 30 minutes remain in the visiting period.

R251-706-4. Uinta Visiting.

Visitors to the Uinta facility may be required to have additional clearances by the warden/designee or unit manager, prior to visiting the facility.

R251-706-5. Processing Visiting Application.

(1) A visiting application shall be completed by inmates who wish to have a visitor. It is the inmate's responsibility to ensure that the visiting application information is complete and approved by facility visiting staff prior to the first visit.

(2) Visiting applications shall be checked by facility visiting staff through BCI, NLETS, DMV and local warrants prior to the applicant being considered for visitation privileges.

(3) Visiting applications shall be denied by the captain/designee if there is reason to believe that visits would jeopardize the safety, security, management or control of the Institution.

(4) Applications may be denied when an extensive or recent history of criminal activity exists, or the visitor has:

(a) transported contraband into or out of a correctional facility;

(b) aided or attempted to aid in an escape from a jail or correctional facility;

(c) been a crime partner of the inmate applicant; or

(d) been under the supervision of UDC for a felony offense.

(5) Visiting application denials may be challenged by visitor applicants through the deputy warden/designee. If the visitor applicant is not satisfied with the deputy warden/designee decision, a second appeal may be made to the warden/designee.

(6) Except for spouses, visitors under 18 years of age shall be accompanied by their parent or legal guardian on the inmate's approved visiting list.

(7) Visitors 16 years of age and older shall present positive identification prior to being permitted to visit.

(8) An individual may not be on more than one inmate's visiting list unless that individual is a member of the immediate family of all inmates involved and is approved as a visitor by the warden/designee.

(9) Adoptions, marriages, or other methods of claiming legal relationships, performed for the purpose of circumventing existing visiting policies shall be considered invalid.

(10) Visitors may have their names removed from any visiting list by sending a written request to the facility visiting staff.

(11) Visitors removed from a visiting list at the written request of an inmate or visitor shall not be reinstated for a 90-day period without prior approval of the facility visiting staff.

(12) Except for members of the inmate's immediate family, only one single adult visitor of the opposite sex shall be permitted to be on the visiting list of any one inmate at any given time.

(13) Divorced visitors shall provide proof of divorce to the facility visiting staff before being allowed to visit an inmate of the opposite sex.

(14) Except for members of the inmate's immediate family, married persons visiting inmates of the opposite sex shall be accompanied by one or more of the following, who shall remain with the visitor for the duration of the visit:

- (a) visitor's spouse who is on approved visiting list;
- (b) inmate's spouse;
- (c) inmate's parent or
- (d) other persons approved by the facility visiting staff.

R251-706-6. Visitor Suspensions.

(1) A visit may be suspended, restricted or revoked for dress code violation, foul and abusive language/conduct, or refusal to comply with ~~[DIO]~~DPO policies or procedures, or when necessary to meet safety, security, management or control requirements of the Utah State Prison.

(2) The facility visiting staff may suspend, restrict or revoke visits if the behavior of the visitor or inmate jeopardizes the safety, security, management or control of the institution.

(3) If a visit is suspended, restricted, or revoked the facility visiting staff shall document the action by providing notification of the rules infraction to the inmate, visitor, inmate's OMR, and duty officer. The inmate's OMR may review the documentation and make decisions regarding visiting to the visiting staff members for modification of the suspension, restriction, or revocation. The inmate may appeal suspensions, restrictions, or revocations by submitting a written request to the warden/designee.

(4) Visiting privileges may be permanently revoked or altered as follows:

- (a) visitors who bring drugs into the institution may be permanently barred from visiting; and
- (b) inmates guilty of attempting to introduce drugs, weapons or contraband money to the institution through the visiting process may be placed on barrier visits.

(5) Barrier visits may be required for inmates when:

(a) visitors have not been in compliance with visiting regulations on prior occasions and have been warned or required to leave the visiting area;

(b) inmates are classified as Level 1 or 2;

(c) inmates or visitors have been suspected or attempted to introduce contraband into a correctional facility;

(d) inmates have been convicted of disciplinary infraction A13 (Possession, introduction or use of any unauthorized intoxicants, unauthorized drugs or drug paraphernalia, positive urinalysis, breath analysis, blood test, or refusal to submit to the same; or

(e) inmate or visitor behavior, or a recent history of behavior is a threat to the safety and security of the inmates, visitors, staff and the institution.

R251-706-7. Sex Offender Visiting.

(1) Inmates identified as sex offenders by R and O or visiting staff members may be restricted from visits with minors as follows:

(a) inmates shall not visit with minors identified as the victim of the inmate;

(b) inmates with a documented history of sexual misconduct with a child under the age of 18 years shall not visit with any minor while incarcerated;

(c) court orders or Board of Pardons and Parole orders regarding contact or non-contact between inmates and minors will be enforced;

(d) inmates may appeal visiting restrictions with minors by written appeal to the warden/designee; or

(e) visits between inmates and minors for therapeutic or clinical reasons may be approved on an individual visit basis by the warden/designee.

R251-706-8. Special Visits.

Requests for special visits or emergency visits from individuals not on an approved visiting list may be approved or denied for reasonable cause by the warden/designee.

KEY: corrections, prisons, inmates, inmate visiting

Date of Enactment or Last Substantive Amendment: ~~[April 9, 2012]~~2017

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 64-13-10; 64-13-17

Financial Institutions, Nondepository Lenders

R343-11

Rule Designating Applicable Federal
Law for a Mortgage Lender, Broker, or
Servicer Subject to the Jurisdiction of
the Department of Financial Institutions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41480

FILED: 04/17/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Under Subsection 70D-2-502(2)(b), the department shall by rule "designate which one or more federal laws are applicable to a person described in Subsection (2)(a)."

SUMMARY OF THE RULE OR CHANGE: The proposed new rule designates which one or more federal laws are applicable to a mortgage lender, broker, or servicer subject to the jurisdiction of the department. The new rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 70D and the applicable chapters set forth in Subsection 70D-2-502(2)(b).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 70D-2-502(2)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No impact on the state budget as compliance to the rule affects mortgage lenders, brokers, or servicers and not the department.

◆ **LOCAL GOVERNMENTS:** Local governments are not involved in the regulation of mortgage lenders, brokers, or servicers and are, therefore, not subject to this rule.

◆ **SMALL BUSINESSES:** Mortgage lenders, brokers, and servicers are currently required to comply with the designated federal laws. Therefore, compliance to the rule will not impact their costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Mortgage lenders, brokers, and servicers are currently required to comply with the designated federal laws. Therefore, compliance to the rule will not impact their costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Mortgage lenders, brokers, and servicers are currently required to comply with the designated federal laws. Therefore, compliance to the rule will not impact their costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Mortgage lenders, brokers, and servicers are currently required to comply with the designated federal laws. Therefore, compliance to the rule will not impact their costs.

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

FINANCIAL INSTITUTIONS
NONDEPOSITORY LENDERS
ROOM 201
324 S STATE ST

SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Edward Leary, Commissioner

R343. Financial Institutions, Nondepository Lenders.**R343-11. Rule Designating Applicable Federal Law for a Mortgage Lender, Broker, or Servicer Subject to the Jurisdiction of the Department of Financial Institutions.****R343-11-1. Authority, Scope and Purpose.**

(1) This rule is issued pursuant to Section 70D-2-502(2)(b).

(2) Violations of federal law designated by this rule may only be enforced by the department by taking action permitted under Title 70D and the applicable chapters set forth in Section 70D-2-502(2).

(3) This rule designates which one or more federal laws the department may enforce and are applicable to mortgage lenders, brokers, or servers subject to the jurisdiction of the department.

R343-11-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Federal Law" means:

(a) a statute passed by the Congress of the United States;

or

(b) a final regulation:

(i) adopted by an administrative agency of the United States government; and

(ii) published in the code of federal regulations or the federal register.

R343-11-3. Applicable Federal Law.

In accordance with Section 70D-2-502(2)(b), the following federal laws are applicable to mortgage lenders, brokers, or servers subject to the jurisdiction of the department:

(1) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;

(2) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;

(3) Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq., and its implementing federal regulations;

(4) Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq., and its implementing federal regulations;

(5) Home Mortgage Disclosure Act, 12 U.S.C. Sec. 2801 et seq., and its implementing federal regulations.

KEY: financial institutions, federal law
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, Implemented, or Interpreted Law: 70D-2-502(2)
(b)

**Health, Disease Control and
Prevention, Environmental Services**
R392-600
**Illegal Drug Operations
Decontamination Standards**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41486
FILED: 04/21/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule has been amended to provide clarification in defining what non-confirmation and composite sampling is and how the results shall be calculated. The amended rule further explains how non-confirmation and confirmation sampling should be performed for a preliminary assessment, adds equipment that can be used for wipe sampling, and provides additional analytical methods for detecting methamphetamine. The name of the agency that issues standards for certification for a decontamination specialist has changed.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment adds the definitions for non-confirmation and confirmation sampling and how the results shall be calculated; and describes what needs to occur during a preliminary assessment in regards to non-confirmatory and confirmation sampling. In addition, it provides information on equipment that can be used for wipe sampling and other analytical methods for methamphetamine detection, which are based on updated procedures. In addition, the name of the agency that issues standards for certification for a decontamination specialist has changed, and therefore, this amendment includes this change.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-906

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level. Any costs will come out of existing budgets.
- ◆ **LOCAL GOVERNMENTS:** There may be some revenue lost because fewer homes may be unnecessarily determined to be contaminated because of how composite sampling was calculated prior to this amendment. The loss is estimated to be \$400 (with a wide range among the local health departments) per home in clean up review and permit fees.

Approximately 5% of homes previously requiring mitigation are thought to be erroneously determined to be contaminated.

◆ **SMALL BUSINESSES:** There may be a cost savings to small businesses that would have been required to mitigate homes that were unnecessarily determined to be contaminated by local health departments because of how composite sampling was calculated prior to this amendment. The savings are estimated by industry to be about \$10,000 (with a wide range) per home. Approximately 5% of homes previously requiring mitigation are thought to be erroneously determined to be contaminated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There may be a cost savings to those in this category who would have been required to mitigate homes that were unnecessarily determined to be contaminated by local health departments because of how composite sampling was calculated prior to this amendment. The savings are estimated by industry to be about \$10,000 (with a wide range) per home. Approximately 5% of homes previously requiring mitigation are thought to be erroneously determined to be contaminated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be a cost to local health departments due to fewer homes being unnecessarily labeled as contaminated. The loss is estimated to be \$400 (with a wide range among the local health departments) per home in clean up review and permit fees. Approximately 5% of homes previously requiring mitigation are thought to be erroneously determined to be contaminated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment reduces the risk of erroneous determinations of contamination resulting in a cost savings to business responsible for mitigation.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Sam LeFevre by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at slefevre@utah.gov or mail at PO Box 142104, Salt Lake City, UT 84114-2104

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.

R392-600. Illegal Drug Operations Decontamination Standards.

R392-600-1. Authority and Purpose.

(1) This rule is authorized under Section 19-6-906.

(2) This rule sets decontamination and sampling standards and best management practices for the inspection and decontamination of property contaminated by illegal drug operations.

R392-600-2. Definitions.

The following definitions apply in this rule:

(1) "Background concentration" means the level of a contaminant in soil, groundwater or other media up gradient from a facility, practice or activity that has not been affected by the facility, practice or activity; or other facility, practice or activity.

(2) "Decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has a currently valid certificate issued by the ~~[Solid and Hazardous Waste Control Board]~~ Waste Management and Radiation Control, as defined under Utah Code Subsection 19-6-906(2).

(3) "Chain-of-custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.

(4) "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.

(5) "Combustible" means vapor concentration from a liquid that has a flash point greater than 100 degrees F.

(6) "Composite sample" means the combination of up to 3 individual wipe (grab) samples into one submission for analysis by a laboratory. The composite sample result will be the average or standardized result in units of micrograms of methamphetamine per 100 square centimeters.

(~~[6]~~7) "Confirmation sampling" means collecting samples by a certified decontamination specialist during a preliminary assessment or upon completion of decontamination activities. ~~[to]~~ Only confirmation sampling can be used to confirm that contamination is below the decontamination standards outlined in this rule.

(~~[7]~~8) "Contaminant" means a hazardous material.

(~~[8]~~9) "Contamination" or "contaminated" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards.

(~~[9]~~10) "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalychloride, perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus

pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, thionyl chloride or any other substance that increases or decreases the pH of a material and may cause degradation of the material.

(~~[10]~~11) "Decontamination" means treatment or removal of contamination by a decontamination specialist or owner of record to reduce concentrations of contaminants below the decontamination standards.

(~~[11]~~12) "Decontamination standards" means the levels or concentrations of contaminants that must be met to demonstrate that contamination is not present or that decontamination has successfully removed the contamination.

(~~[12]~~13) "Delineate" means to determine the nature and extent of contamination by sampling, testing, or investigating.

(~~[13]~~14) "Easily cleanable" means an object and its surface that can be cleaned by detergent solution applied to its surface in a way that would reasonably be expected to remove dirt from the object when rinsed and to be able to do so without damaging the object or its surface finish.

(~~[14]~~15) "Ecstasy" means 3,4-methylenedioxy-methamphetamine (MDMA).

(~~[15]~~16) "EPA" means the United States Environmental Protection Agency.

(~~[16]~~17) "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector.

(~~[17]~~18) "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma.

(~~[18]~~19) "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by gas chromatograph/mass spectrometer.

(~~[19]~~20) "FID" means flame ionization detector.

(~~[20]~~21) "Flammable" means vapor concentration from a liquid that has a flash point less than 100 degree F.

(~~[21]~~22) "Grab Sample" means one sample collected from a single, defined area or media at a given time and location.

(~~[22]~~23) "Hazardous materials" has the same meaning as "hazardous or dangerous materials" as defined in Section 58-37d-3; and includes any illegally manufactured controlled substances.

(~~[23]~~24) "Hazardous waste" means toxic materials to be discarded as directed in 40 CFR 261.3.

(~~[24]~~25) "HEPA" means high-efficiency particulate air and indicates the efficiency of an air filter or air filtration system.

(~~[25]~~26) "Highly suggestive of contamination" means the presence of visible or olfactory signs indicative of contamination, locations in and around where illegal drug production occurred, where hazardous materials were stored or suspected of being used to manufacture illegal drugs, or areas that tested positive for contamination or other portions of the property that may be linked to processing and storage areas by way of the ventilation system or other activity that may cause contamination to be distributed across the property.

(~~[26]~~27) "Impacted groundwater" means water present beneath ground surface that contains concentrations of a contaminant above the UGWQS.

(~~[27]~~28) "Impacted soil" means soil that contains concentrations of a contaminant above background or EPA

residential Risk Based Screening Concentrations as contained in the document listed in R392-600-8.

(~~28~~29) "LEL/O₂" means lower explosive limit/oxygen.

(~~29~~30) "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.

(~~30~~31) "Non-porous" means resistant to penetration of liquids, gases, powders and includes non-permeable substance or materials, that are sealed such as, concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.

(~~31~~32) "Not Highly Suggestive of Contamination" means areas outside of the main location(s) where illegal drugs were produced and hazardous materials were stored or suspected of being used that do not reveal obvious visual or olfactory signs of contamination, but may, however, be contaminated by residue from the manufacture or storage of illegal drugs or hazardous materials.

(33) "Non-confirmation sampling" means collecting samples by any party other than a certified decontamination specialist.

(~~32~~34) "Owner of record" means (a) The owner of property as shown on the records of the county recorder in the county where the property is located; and (b) may include an individual, financial institution, company, corporation, or other entity.

(~~33~~35) "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as facemasks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.

(~~34~~36) "PID" means photo ionization detector.

(~~35~~37) "Porous" means material easily penetrated or permeated by gases, liquids, or powders such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiber-board ceiling panels, cork paneling, blankets, towels, clothing, and cardboard or any other material that is worn or not properly sealed.

(~~36~~38) "Preliminary assessment" means an evaluation of a property to define all areas that are highly suggestive of contamination and delineate the extent of contamination. The preliminary assessment consists of an on-site evaluation conducted by the decontamination specialist or owner of record to gather information to demonstrate that contamination is not present above the decontamination standards or to enable development of a workplan outlining the most appropriate method to decontaminate the property.

(~~37~~39) "Properly disposed" means to discard at a licensed facility in accordance with all applicable laws and not reused or sold.

(~~38~~40) "Property" means: (a) any property, site, structure, part of a structure, or the grounds, surrounding a structure; and (b) includes single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(~~39~~41) "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.

(~~40~~42) "Sample location" means the actual place where an environmental sample was obtained, including designation of the room, the surface (wall, ceiling, appliance, etc), and the direction and distance from a specified fixed point (corner, door, light switch, etc).

(~~41~~43) "Services" means the activities performed by decontamination specialist in the course of decontaminating residual contamination from the manufacturing of illegal drugs or from the storage of chemicals used in manufacturing illegal drugs and includes not only the removal of any contaminants but inspections and sampling.

(~~42~~44) "Toxic" means hazardous materials in sufficient concentrations that they can cause local or systemic detrimental effects to people.

(~~43~~45) "UGWQS" means the Utah Ground Water Quality Standards established in R317-6-2.

(~~44~~46) "VOA" means volatile organic analyte.

(~~45~~47) "VOCs" means volatile organic compounds or organic chemicals that can evaporate at ambient temperatures used in the manufacture illegal drugs such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical that may be used to manufacture illegal drugs.

(~~46~~48) "Waste" means refuse, garbage, or other discarded material, either solid or liquid.

R392-600-3. Preliminary Assessment Procedures.

(1) The local health department shall notify owner of record of tests results reported to the local health department indicating that a property is potentially contaminated.

(a) If the test results were from non-confirmation sampling, the owner of record may obtain confirmation sampling, performed by a certified decontamination specialist, within 10 days of receipt of the notice and provide the local health department with the confirmation sampling test results.

(b) If the test results were from confirmation sampling, the local health department shall direct the owner of record to decontaminate the property as outlined in the following sections.

(~~1~~2) The decontamination specialist or owner of record shall determine the nature and extent of damage and contamination of the property from illegal drug operations by performing a preliminary assessment prior to decontamination activities. Contamination may be removed prior to approval of the work plan as necessary to abate an imminent threat to human health or the environment. If there was a fire or an explosion in the contaminated portion of the property that appears to have compromised its structural integrity, the decontamination specialist or owner of record shall obtain a structural assessment of the contaminated portion of the property prior to initiating the preliminary assessment.

([2]3) To conduct the preliminary assessment, the decontamination specialist or owner of record shall:

(a) request and review copies of any law enforcement, state agency or other report regarding illegal drug activity or suspected illegal drug activity at the property;

(b) evaluate all information obtained regarding the nature and extent of damage and contamination;

(c) determine the method of illegal drug manufacturing used;

(d) determine the chemicals involved in the illegal drug operation;

(e) determine specific locations where processing and illegal drug activity took place or was suspected and where hazardous materials were stored and disposed;

(f) use all available information to delineate areas highly suggestive of contamination;

(g) develop procedures to safely enter the property in order to conduct a preliminary assessment;

(h) wear appropriate personal protective equipment for the conditions assessed;

(i) visually inspect all portions of the property, including areas outside of any impacted structure to document where stained materials or surfaces are visible, drug production took place, hazardous materials were stored, and burn pits or illegal drug operation trash piles may have been or are currently present;

(j) determine whether the property contains a septic system on-site and if there has been a release to the system as a result of the illegal drug operations;

(k) determine the locations of the ventilation system components in the areas highly suggestive of contamination;

(l) conduct and document appropriate testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property using instruments such as a LEL/O₂ meter, pH paper, PID, FID, or equivalent equipment; and

(m) if decontamination is not anticipated due to the lack of supporting evidence of decontamination, ~~collect~~ obtain confirmation samples to demonstrate compliance with the decontamination standards using the methodology specified in this rule.

([3]4) If the preliminary assessment does not reveal the presence of contamination above the decontamination standards specified in this rule, the decontamination specialist or owner of record may request that the property be removed from the list of contaminated properties as specified in 19-6-903 provided that:

(a) a final report documenting the preliminary assessment is submitted to the local health department by the owner of record and decontamination specialist if one was involved in conducting the preliminary assessment; and

(b) the local health department concurs with the recommendations contained in the report specified in (a).

([4]5) If the preliminary assessment reveals the presence of contamination, the decontamination specialist or owner of record shall proceed according to R392-600-4 through R392-600-7. The contaminated portions of the property shall be kept secure against un-authorized access until the work plan has been submitted, any required permit is issued, and the property has been decontaminated to the standards established in this rule.

R392-600-4. Work Plan.

(1) Prior to performing decontamination of the property, the decontamination specialist or owner of record shall prepare a written work plan that contains:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home, trailer or boat;

(b) if applicable, the certification number of the decontamination specialist who will be performing decontamination services on the contaminated portion of the property;

(c) copies of the decontamination specialist's current certification;

(d) photographs of the property;

(e) a description of the areas highly suggestive of contamination, and areas that are considered not highly suggestive of contamination, including any information that may be available regarding locations where illegal drug processing was performed, hazardous materials were stored and stained materials and surfaces were observed;

(f) a description of contaminants that may be present on the property;

(g) results of any testing conducted for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property, such as by a LEL/O₂ meter, pH paper, PID, FID, or equivalent equipment;

(h) a description of the personal protective equipment to be used while in or on the contaminated portion of the property;

(i) the health and safety procedures that will be followed in performing the decontamination of the contaminated portion of the property;

(j) a detailed summary of the decontamination to be performed based on the findings and conclusions of the Preliminary Assessment, which summary shall include:

(i) all surfaces, materials or articles to be removed;

(ii) all surfaces, materials and articles to be cleaned on-site;

(iii) all procedures to be employed to remove or clean the contamination, including both areas highly suggestive of contamination as well as those areas that are not highly suggestive of contamination;

(iv) all locations where decontamination will commence;

(v) all containment and negative pressure enclosure plans; and

(vi) personnel decontamination procedures to be employed to prevent the spread of contamination;

(k) the shoring plan, if an assessment of the structural integrity was conducted and it was determined that shoring was necessary, including a written description or drawing that shows the structural supports required to safely occupy the building during decontamination;

(l) a complete description of the proposed post-decontamination confirmation sampling locations, parameters, techniques and quality assurance requirements;

(m) the names of all individuals who gathered samples, the analytical laboratory performing the testing, and a copy of the standard operating procedures for the analytical method used by the analytical laboratory;

(n) a description of disposal procedures and the anticipated disposal facility;

(o) a schedule outlining time frames to complete the decontamination process; and

(p) all available information relating to the contamination and the property based on the findings and conclusions of the preliminary assessment.

(2) Prior to implementing the work plan, it must first be:

(a) approved in writing by the owner of record and, if one is involved, the decontamination specialist who will execute the work plan; and

(b) submitted to the local health department with jurisdiction over the county in which the property is located.

(3) The owner of record, and any decontamination specialist involved in executing the work plan shall retain the work plan for a minimum of three years after completion of the work plan and the removal of the property from the contaminated-properties list.

(4) All information required to be included in the work plan shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-5. Decontamination Procedures.

(1) The decontamination specialists, and owner of record shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations in decontaminating the property.

(2) The decontamination specialist or owner of record shall be present on the property during all decontamination activities.

(3) The decontamination specialist or owner of record shall conduct the removal of the contamination from the property, except for porous materials from areas not highly suggestive of contamination that may be cleaned as outlined in sub-section R392-600-5(12).

(4) The decontamination specialist or owner of record shall see that doors or other openings from areas requiring decontamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent before beginning decontamination to prevent contamination of portions of the property that have not been impacted by illegal drug operations.

(5) Ventilation Cleaning Procedures.

(a) Air registers shall be removed and cleaned as outlined in subsection R392-600-5(12).

(b) All air register openings shall be covered by temporary filter media.

(c) A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.

(d) Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other materials.

(e) The air handler units, including the return air housing, coils, fans, systems, and drip pan shall be cleaned as required in subsection R392-600-5(12).

(f) All porous linings or filters in the ventilation system shall be removed and properly disposed.

(g) The ventilation system shall be sealed off at all openings with at least 4-mil plastic sheeting, or other barrier of

equivalent strength and effectiveness, to prevent recontamination until the contaminated portion of the property meets the decontamination standards in R392-600-6(2) and(3).

(6) Procedures for Areas Highly Suggestive of Contamination.

(a) All porous materials shall be removed and properly disposed. On site cleaning of this material is not allowed.

(b) All stained materials from the illegal drug operations shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable drug operation material surfaces may be decontaminated on site and only in accordance with R392-600-5(12).

(c) All non-porous surfaces may be cleaned to the point of stain removal and left in place or removed and properly disposed. Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392-600-6(2) and (3).

(d) All exposed concrete surfaces shall be thoroughly cleaned as outlined in R392-600-5(12) and tested to meet the decontamination standards contained in R392-600-6(2) and (3) or may be removed and properly disposed.

(e) All appliances shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392-600-6(2) and (3). Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392-600-5(12). After on-site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392-600-6(2) and (3). For appliances such as ovens that have insulation, a 100 square centimeter portion of the insulation shall also be tested. If the insulation does not meet the decontamination standards contained in R392-600-6(2) and R392-600-6(3), the insulated appliances shall be removed and properly disposed.

(7) Structural Integrity and Security Procedures.

If, as a result of the decontamination, the structural integrity or security of the property is compromised, the decontamination specialist or owner of record shall take measures to remedy the structural integrity and security of the property.

(8) Procedures for Plumbing, Septic, Sewer, and Soil.

(a) All plumbing inlets to the septic or sewer system, including sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other observable residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID in accordance with Section R392-600-6(7). All plumbing traps shall be assessed for mercury vapors in accordance with Section R392-600-6(10) by using a mercury vapor analyzer unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred. If VOC concentrations or mercury vapor concentrations exceed the decontamination standards contained in R392-600-6(2) and (3), the

accessible plumbing and traps where the excess levels are found shall be removed and properly disposed, or shall be cleaned and tested to meet the decontamination standards contained in R392-600-6(2) and (3).

(b) The decontamination specialist or owner of record shall obtain documentation from the local health department or the local waste water company describing the sewer disposal system for the dwelling and include it in the final report. If the dwelling is connected to an on-site septic system, a sample of the septic tank liquids shall be obtained and tested for VOC concentrations unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred.

(c) If VOCs are not found in the septic tank sample or are found at concentrations less than UGWQS and less than 700 micrograms per liter for acetone, no additional work is required in the septic system area, unless requested by the owner of the property.

(d) If VOCs are found in the septic tank at concentrations exceeding the UGWQS or exceeding 700 micrograms per liter for acetone the following applies:

(i) The decontamination specialist or owner of record shall investigate the septic system discharge area for VOCs, lead, and mercury unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operation;

(ii) The horizontal and vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated relative to background or EPA residential risk based screening concentrations contained in the document listed in R392-600-8.

(iii) If any of the VOCs, mercury, and lead used in the illegal drug operations migrated down to groundwater level, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination.

(iv) After complete characterization of the release, the decontamination specialist or owner of record shall remediate the impacted soils to concentrations below background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8 and any impacted groundwater to concentrations below the UGWQS and below 700 micrograms per liter for acetone.

(v) The contents of the septic tank shall be removed and properly disposed.

(e) The decontamination specialist or owner of record shall also notify the Utah Department of Environmental Quality, Division of Water Quality, if a release has occurred as a result of illegal drug operations to a single family septic system or a multiple family system serving less than 20 people.

(f) All sampling and testing pursuant to this section shall be performed in accordance with EPA sampling and testing protocol.

(9) Procedures for burn areas, trash piles and bulk wastes.

(a) The decontamination specialist or owner of record shall characterize, remove, and properly dispose of all bulk wastes remaining from the activities of the illegal drug operations or other wastes impacted by compounds used by the illegal drug operations.

(b) The decontamination specialist or owner of record shall examine the property for evidence of burn areas, burn or trash pits, debris piles, and stained areas suggestive of contamination. The decontamination specialist or owner of record shall test any

burn areas, burn or trash pits, debris piles or stained areas with appropriate soil sampling and testing equipment, such as a LEL/O₂ meter, pH paper, PID, FID, mercury vapor analyzer, or equivalent equipment to determine if the area is contaminated.

(c) If the burn areas, burn or trash pits, debris piles, or stained areas are not in a part of the property that has otherwise been determined to be highly suggestive of contamination, the decontamination specialist shall recommend to the owner of the property that these areas be investigated.

(d) If the burn areas, burn or trash pits, debris piles or stained areas are part of the contaminated portion of the property, the decontamination specialist or owner of record shall investigate and remediate these areas.

(e) The decontamination specialist or owner of record shall investigate burn areas, burn or trash pits, debris piles, or stained areas for the VOCs used by the illegal drug operations and lead and mercury, unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operations.

(f) The decontamination specialist or owner of record shall delineate the horizontal and vertical extent of any VOCs, lead, or mercury detected in the soil samples relative to background concentrations or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8.

(g) If any of the compounds used by the illegal drug operation migrated into groundwater, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination relative to the UGWQS and relative to the maximum contaminant level of 700 micrograms per liter for acetone.

(h) After complete characterization of the release, the decontamination specialist or owner of record shall remediate contaminated soils to background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8, and contaminated groundwater to concentrations at or below the UGWQS and at or below 700 micrograms per liter for acetone.

(i) All sampling and testing conducted under this section shall be performed in accordance with current EPA sampling and testing protocol.

(10) Procedures for areas not highly suggestive of contamination.

(a) Porous materials with no evidence of staining or contamination may be cleaned by HEPA vacuuming and one of the following methods:

(i) Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.

(ii) Detergent and water solution: porous materials shall be washed in a washing machine with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.

(b) All non-porous surfaces such as floors, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture shall be cleaned as outlined in subsection R392-600-5(12).

(c) Doors or other openings to areas with no visible contamination shall be partitioned from all other areas with at least

4-mil plastic sheeting or equivalent after being cleaned to avoid re-contamination.

(d) Spray-on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos and for contamination to determine whether ceilings meet the decontamination standards contained in R392-600-6(2) and (3), and if in need of removal, whether asbestos remediation protocols are applicable. If the materials exceed the standards, the decontamination specialist or owner of record shall properly remove and dispose of them.

(e) All exposed concrete surfaces shall be thoroughly cleaned as outlined in subsection R392-600-5(12).

(11) Decontamination procedures for motor vehicles.

If an illegal drug operation is encountered in a motor vehicle, the decontamination specialist or owner of record shall conduct a Preliminary Assessment in the manner described in this rule to determine if the vehicle is contaminated. If it is determined that the motor vehicle is contaminated and the vehicle cannot be cleaned in a manner consistent with this rule, the motor vehicle may no longer be occupied. The vehicle shall also be properly disposed.

(12) Cleaning Procedure.

For all items, surfaces or materials that are identified as easily cleanable and for which the work plan indicates they will be decontaminated on site, the decontamination specialist or owner of record shall wash them with a detergent and water solution and then thoroughly rinse them. This procedure shall be repeated at least two additional times using new detergent solution and rinse water. The decontamination specialist or owner of record shall test all surfaces where decontamination on site has been attempted to verify compliance with the decontamination standards in R392-600-6(2) and R392-600-6(3).

(13) Waste Characterization and Disposal Procedures.

The Hazardous Waste Rules of R315-1 through R315-101, the Solid Waste Rules of R315-301 through R315-320 and the Illegal Drug Operations Decontamination Standards regulate the management and disposal of hazardous waste and contaminated debris generated during decontamination of an illegal drug operations. The decontamination specialist and owner of record shall comply with these rules and meet the following criteria.

(a) No waste, impacted materials or contaminated debris from the decontamination of illegal drug operations may be removed from the site or waste stream for recycling or reuse without the written approval of the local Health Department.

(b) All items removed from the illegal drug operations and waste generated during decontamination work shall be properly disposed.

(c) All liquid waste, powders, pressurized cylinders and equipment used during the production of illegal drugs shall be properly characterized by sampling or testing prior to making a determination regarding disposal or the waste shall simply be considered hazardous waste and properly disposed, except the waste shall not be deemed to be household hazardous waste.

(d) All impacted materials and contaminated debris that are not determined by the decontamination specialist or owner of record to be a hazardous waste may be considered a solid waste and properly disposed.

(e) All Infectious Waste shall be managed in accordance with Federal, State and local requirements.

(f) The disturbance, removal and disposal of asbestos must be done in compliance with all Federal, State, and local

requirements including the requirements for Asbestos Certification, Asbestos Work Practices and Implementation of Toxic Substances Control Act, Utah Administrative Code R307-801.

(g) The removal and disposal of lead based paint must be done in compliance with all Federal, State, and local requirements including the requirements for Lead-Based Paint Accreditation, Certification and Work Practice Standards, Utah Administrative Code R307-840.

(h) The decontamination specialist and owner of record shall comply with all Federal, State, Municipal, County or City codes, ordinances and regulations pertaining to waste storage, manifesting, record keeping, waste transportation and disposal.

R392-600-6. Confirmation Sampling and Decontamination Standards.

(1) The decontamination specialist [~~or owner of record~~] shall [~~take and test~~ conduct] confirmation [~~samples~~ sampling] after decontamination to verify that concentrations are below the decontamination standards prior to the submittal of a final report. Samples are not required if a contaminated surface has been removed and replaced, unless there is evidence that the area has been re-contaminated. All decontaminated areas and materials, areas not highly suggestive of contamination, and surfaces that have not been removed shall be sampled for compliance with the standards in Table 1.

(2) If the decontamination standards are not achieved, the decontamination specialist or owner of record shall perform additional decontamination and re-sample to confirm the surface or area meets the decontamination standards specified in Table 1.

TABLE 1

COMPOUND	DECONTAMINATION STANDARD
Red Phosphorus	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Iodine Crystals	Removal of stained material or cleaned as specified in this rule such that there is no remaining visible residue.
Methamphetamine	Less than or equal to 1.0 microgram Methamphetamine per 100 square centimeters
Ephedrine	Less than or equal to 0.1 microgram Ephedrine per 100 square centimeters
Pseudoephedrine	Less than or equal to 0.1 microgram Pseudoephedrine per 100 square centimeters]
VOCs in Air	Less than or equal to 1 ppm
Corrosives	Surface pH between 6 and 8
Ecstasy	Less than or equal to 0.1 microgram Ecstasy per 100 square centimeters

(3) The decontamination specialist or owner of record shall also conduct sampling and testing for all of the metals listed in Table 2 unless there is clear evidence that these metals were not used in the illegal drug operations. If Table 2 contaminants are

present, the decontamination specialist or owner of record shall decontaminate the affected areas and sample until they meet the decontamination standards in Table 2.

TABLE 2

COMPOUND	DECONTAMINATION STANDARD
Lead	Less than or equal to 4.3 micrograms Lead per 100 square centimeters
Mercury	Less than or equal to 3.0 micrograms Mercury per cubic meter of air

(4) Confirmation sampling procedures.

(a) All sample locations shall be photographed.

(b) All samples shall be obtained from areas representative of the materials or surfaces being tested. Samples shall be collected from materials or surfaces using wipe samples and shall be biased toward areas where contamination is suspected or confirmed or was known to be present prior to decontamination.

(c) All samples shall be obtained, preserved, and handled and maintained under chain-of-custody protocol in accordance with industry standards for the types of samples and analytical testing to be conducted.

(d) The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.

(e) All reusable sampling equipment shall be decontaminated prior to sampling.

(f) All testing equipment shall be properly equipped and calibrated for the types of compounds to be analyzed.

(g) Cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages, shall be used for all wipe sampling. The cotton gauze shall be wetted with analytical grade methanol for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(h) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be refrigerated until delivered to an analytical laboratory.

(i) Each sample shall be analyzed for methamphetamine, ephedrine, pseudoephedrine, and ecstasy depending upon the type of illegal drug operations using NIOSH Manual of Analytical Method (NMAM) 9106, 9109 or 9111 [~~or the proposed 9106 method if it is not yet approved~~]-or equivalent method approved by the Utah Department of Health.

(5) Confirmation sampling from areas highly suggestive of contamination.

(a) [~~Samples collected from areas highly suggestive of contamination shall be by grab samples that are not combined with other samples.~~]Grab samples or composite samples are allowed for confirmation testing of highly suggestive contaminated areas.

(b) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from each room of the property where illegal drug operations occurred, hazardous materials were stored and where staining or contamination are or were present. The three

samples shall be obtained from a nonporous section of the floor, one wall, and the ceiling in each room or any other location where contamination is suspected.

(c) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from different areas of the ventilation system, unless the system serves more than one unit or structure. If the system serves more than one unit or structure, samples shall be collected from a representative distribution of the system as well as the corresponding areas that it serves until the contamination is delineated, decontaminated, and determined to be below the decontamination standards established in this rule.

(d) If there is a kitchen, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, or stove top, and from the floor in front of the stove top or any other location where contamination is suspected.

(e) If there is a bathroom, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, toilet, or the shower/bath tub and any other location where contamination is suspected.

(f) If there are any appliances, one 10 cm. x 10 cm. area (100 square centimeters) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 square centimeter areas on three separate appliances, provided that the surfaces most likely to be contaminated are tested.

(g) If there is any other enclosed space where illegal drug operations occurred, hazardous materials were stored, or where staining or contamination is present, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated.

(h) Each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50-mL polypropylene disposable centrifuge tubes or 40-mL VOA glass vials. Plastic bags shall not be used.

(6) Confirmation sampling from areas not highly suggestive of contamination[~~-~~

~~—Samples~~] shall be collected in a manner consistent with the confirmation sampling described in Section R392-600-6(5). The samples may be combined together to form one composite sample per room or sampling area. The composite sample result shall be the averaged or standardized result provided by the laboratory or calculated from the total recovery value.

(7) VOC sampling and testing procedures.

(a) A properly calibrated PID or FID capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the areas highly suggestive of contamination and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.

(b) At least three locations in areas highly suggestive of contamination shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(8) Testing procedures for corrosives.

(a) Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between 6 and 8. The pH reading shall be recorded for each sample location.

(b) For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(c) For vertical surfaces, a cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages, shall be wetted with deionized water and wiped over a 10 cm. x 10 cm. area at least five times in two perpendicular directions. The cotton gauze shall then be placed into a clean sample container and covered with clean deionized water. The cotton gauze and water shall stand in the container for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(d) pH testing shall be conducted on at least three locations in each room within the areas highly suggestive of contamination.

(9) Lead Sampling and Testing Procedures.

(a) Unless there is clear evidence that lead was not used in the manufacturing of methamphetamine, or ecstasy at the illegal drug operations, lead sampling shall be conducted as follows:

(i) Cotton gauze, 3" x 3" 12-ply or 4" x 4" 8-ply, in sterile packages shall be used for wipe sampling. The cotton gauze shall be wetted with analytical grade 3 per cent nanograde nitric acid for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(ii) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be sampled in each room within the areas highly suggestive of contamination; and

(b) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be delivered to an analytical laboratory that uses EPA Method 6010B or an equivalent method approved by the Utah Department of Health.

(c) The sample shall be analyzed for lead using EPA Method 6010B or equivalent.

(10) Mercury Sampling and Testing Procedures.

(a) A properly calibrated mercury vapor analyzer shall be used for evaluating the decontaminated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.

(b) At least three locations in each room within the areas highly suggestive of contamination shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(11) Septic tank sampling and testing procedures.

(a) All sampling and testing shall be performed in accordance with current EPA sampling and testing protocol.

(b) The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.

(c) The liquid shall be decanted or poured with minimal turbulence into three new VOA vials properly prepared by the analytical laboratory.

(d) The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.

(i) The sample vials shall be properly labeled with at least the date, time, and sample location.

(ii) The sample vials shall be refrigerated until delivered to the analytical laboratory.

(iii) The sample shall be analyzed using EPA Method 8260 or equivalent.

(12) Confirmation sampling by Local Health Departments.

The local health department may also conduct confirmation sampling after decontamination is completed and after the final report is submitted to verify that the property has been decontaminated to the standards outlined in this rule.

R392-600-7. Final Report.

(1) A final report shall be:

(a) prepared by the decontamination specialist or owner of record upon completion of the decontamination activities;

(b) submitted to the owner of the decontaminated property and the local health department of the county in which the property is located; and

(c) retained by the decontamination specialist and owner of record for a minimum of three years.

(2) The final report shall include the following information and documentation:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or motorized vehicle;

(b) the name and certification number of the decontamination specialist who performed the decontamination services on the property;

(c) a detailed description of the decontamination activities conducted at the property, including any cleaning performed in areas not highly suggestive of contamination;

(d) a description of all deviations from the approved work plan;

(e) photographs documenting the decontamination services and showing each of the sample locations,

(f) a drawing or sketch of the areas highly suggestive of contamination that depicts the sample locations and areas that were decontaminated;

(g) a description of the sampling procedure used for each sample;

(h) a copy of the testing results from testing all samples, including testing for VOCs, corrosives, and if applicable, lead and mercury, and testing performed by an analytical laboratory;

(i) a written discussion interpreting the test results for all analytical testing on all samples;

(j) a copy of any asbestos sampling and testing results;

(k) a copy of the analytical laboratory test quality assurance data on all samples and a copy of the chain-of-custody protocol documents;

(l) a summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading, weight tickets, and manifests for all materials removed from the property;

(m) a summary of the decontamination specialist or owner of record's observation and testing of the property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;

(n) a written discussion and tables summarizing the confirmation sample results with a comparison to the decontamination standards outlined in this rule; and

(o) an affidavit from the decontamination specialist and owner of record that the property has been decontaminated to the standards outlined in this rule.

(3) All information required to be included in the final report shall be keyed to or contain a reference to the appropriate subsection of this rule.

R392-600-8. Reference.

The document: U.S. Environmental Protection Agency. Region 9: Superfund Preliminary Remediation Goals (PRG) Table, October 2004, is incorporated by reference.

KEY: illegal drug operations, methamphetamine decontamination

Date of Enactment or Last Substantive Amendment: ~~[May 1, 2015]~~ 2017

Authorizing, and Implemented or Interpreted Law: 19-6-906

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1
Utah Medicaid Program**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41496

FILED: 04/25/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify Medicaid policy on coverage for cosmetic procedures and reconstructive surgery.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies Medicaid policy on coverage for cosmetic procedures and reconstructive surgery and makes a technical change.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 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 clarifies Medicaid policy. It

neither affects service coverage to Medicaid clients nor reimbursement to Medicaid providers.

♦ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they neither fund nor provide cosmetic or reconstructive procedures to Medicaid clients.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid clients nor reimbursement to Medicaid providers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid clients because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid client because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule clarifies Medicaid policy and does not affect covered services or reimbursement to providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-2[9]8. Provider-Preventable Conditions.

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable

conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

R414-1-29. Medicaid Policy for Reconstructive and Cosmetic Procedures.

(1) Reconstructive or restorative services are medically necessary and performed on abnormal structures of the body to improve and restore bodily function or to correct deformity resulting from disease, trauma, congenital anomaly, or previous therapeutic intervention.

(2) Cosmetic procedures are performed with the primary intent to improve appearance, are not covered services, and include non-medically necessary procedures performed in the same episode as a covered procedure.

(3) Coverage for reconstructive breast procedures related to cancer includes:

- (a) reconstruction of the breast on which the procedure is performed; and
- (b) reconstruction of the breast on which the procedure is not performed to produce a symmetrical appearance and prostheses.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [February 15], 2017

Notice of Continuation: February 15, 2017

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

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-6
Services Available

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41563
FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule a provision of federal law, which updates parameters for the use of durable medical equipment (DME).

SUMMARY OF THE RULE OR CHANGE: This amendment implements by rule a provision of federal law related to the use of DME.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-2.3 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department of Health expects this change to result in an annual cost to the state budget. For detailed budget information, see the companion filing to this rulemaking (Rule R414-70). (EDITOR'S NOTE: The proposed amendment to Rule R414-70 is under Filing No. 41565 in this issue, May 15, 2017, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund the use of DME for Medicaid members.

◆ **SMALL BUSINESSES:** The Department expects this change to result in potential revenue to small businesses. For detailed budget information, see the companion filing to this rulemaking (Rule R414-70).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department expects this change to result in potential revenue to Medicaid providers, and out-of-pocket savings to Medicaid members. For detailed budget information, see the companion filing to this rulemaking (Rule R414-70).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this amendment can only result in increased revenue to a single Medicaid provider and out-of-pocket savings to a Medicaid member.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will fiscally impact businesses related to Medicaid providers through an increase in potential revenue.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances [~~suitable for use in the home~~];

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [February 15], 2017

Notice of Continuation: February 15, 2017

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

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

R414-1-28

Cost Sharing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41498

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement new cost-sharing policy, effective 07/01/2017, in accordance with the Affordable Care Act.

SUMMARY OF THE RULE OR CHANGE: This amendment removes the cost sharing section of the rule to defer implementation of the cost sharing policy to the Medicaid State Plan. The Department of Health will adopt the new cost sharing policy in Section R414-1-5 when it incorporates the Medicaid State Plan by reference to 07/01/2017.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 447.50 through 447.57 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department estimates annual savings of about \$410,000 to the state budget based on the new cost sharing policy that becomes effective 07/01/2017.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund Medicaid services nor receive cost sharing amounts from Medicaid members.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because the cost sharing increase projected for 07/01/2017 is offset by a decrease in reimbursement and does not affect total annual revenue.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers because the cost sharing increase projected for 07/01/2017 is offset by a decrease in reimbursement and does not affect total annual revenue. Medicaid members, however, may see an annual increase of about \$410,000 in out-of-pocket expenses with the policy's implementation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single Medicaid member may share a portion of the cost of \$410,000 with the policy's implementation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because the cost sharing increase will be offset by the decrease in reimbursement to Medicaid providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

~~**[R414-1-28. Cost Sharing:**~~

- ~~(1) An enrollee is responsible to pay the:~~
 - ~~(a) hospital a \$220 coinsurance per year;~~
 - ~~(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;~~
 - ~~(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and~~
 - ~~(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;~~
 - ~~(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.~~
 - ~~(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.~~
 - ~~(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;~~
 - ~~(a) children;~~

~~(b) pregnant women;~~
~~(c) institutionalized individuals;~~
~~(d) American Indians; and~~
~~(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [February 15], 2017

Notice of Continuation: February 15, 2017

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-1-30** Face-to-Face Requirements for Home Health Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41566

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule face-to-face requirements for home health services.

SUMMARY OF THE RULE OR CHANGE: This amendment implements by rule face-to-face requirements for home health services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 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 implements by rule ongoing policy for face-to-face encounters under the Home Health Services program.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund home health services under the Medicaid program.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only implements by rule ongoing policy for face-to-face encounters under the Home Health Services program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid

members because this change only implements by rule ongoing policy for face-to-face encounters under the Home Health Services program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because this change only implements by rule ongoing policy for face-to-face encounters under the Home Health Services program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change current Medicaid policy or practice.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-30. Face-to-Face Requirements for Home Health Services.

(1) Orders for home health services and certain durable medical equipment (DME) must be in accordance with 42 CFR 440.70.

(2) DME that requires face-to-face shall be the same as DME items required by Medicare.

(3) No home health agency or DME supplier may report services for reimbursement until they meet the face-to-face requirement.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [February 15], 2017

Notice of Continuation: February 15, 2017

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-2A-7
Limitations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41559

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update prior authorization policy for inpatient psychiatric services.

SUMMARY OF THE RULE OR CHANGE: This amendment removes from rule the prior authorization requirement in regard to inpatient psychiatric services and prepaid mental health plans. This requirement had previously been removed from policy.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no expected impact to the state budget because this change only updates ongoing prior authorization policy. It neither affects current services nor provider reimbursement.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund inpatient psychiatric services under the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no expected impact to small businesses because this change only updates ongoing prior authorization policy. It neither affects current services nor provider reimbursement.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected impact to Medicaid members and to Medicaid providers because this change only updates ongoing prior authorization policy. It neither affects current services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no expected impact to a single Medicaid member or to a Medicaid provider because this change only updates ongoing prior authorization policy. It neither affects current services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because this

amendment updates ongoing Medicaid policy and will not affect provision of Medicaid providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-2A. Inpatient Hospital Services.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

~~[(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[October 11, 2013]~~ 2017

Notice of Continuation: October 10, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-3A-6
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41497

FILED: 04/25/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify Medicaid policy on coverage for cosmetic procedures and reconstructive surgery.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies Medicaid policy on coverage for cosmetic procedures and reconstructive surgery.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 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 clarifies Medicaid policy. It neither affects service coverage to Medicaid clients nor reimbursement to Medicaid providers.

◆ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they neither fund nor provide cosmetic or reconstructive procedures to Medicaid clients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid clients nor reimbursement to Medicaid providers.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid clients because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid client because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule clarifies Medicaid policy and does not affect covered services or reimbursement to providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-3A. Outpatient Hospital Services.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic ~~or[;] reconstructive[; or plastic surgery is limited to:]~~ procedures are set forth in Section R414-1-29.

- ~~(a) correction of a congenital anomaly;~~
- ~~(b) restoration of body form following an injury; or~~
- ~~(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.]~~

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

- (a) mentally retarded persons;
- (b) cases identified through a CHEC/EPSTDT screening;

or

- (c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(11) Take home supplies and durable medical equipment are not reimbursable.

(12) Prescriptions are not a covered Medicaid service for a client who is eligible to receive emergency services only.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~December 8, 2015~~2017

Notice of Continuation: October 10, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4

DAR FILE NO.: 41567

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and implement by rule Medicaid policy for physician services.

SUMMARY OF THE RULE OR CHANGE: This amendment implements ongoing policy for physician services through its updates to definitions, access requirements, and service coverage.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Subsection 1905(a)(5)(6)of the Social Security Act

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment only implements by rule ongoing policy for physician services. It neither affects Medicaid services nor provider reimbursement.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund physician services under the Medicaid program.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only implements by rule ongoing policy for physician services. It neither affects Medicaid services nor provider reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid members and to Medicaid providers because this amendment only implements by rule ongoing policy for physician services. It neither affects Medicaid services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid member or to a Medicaid provider because this amendment only implements by rule ongoing policy for physician services. It neither affects Medicaid services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change current Medicaid policy or practice.

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 Office of Administrative Rules.

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-10
Physician Services
NOTICE OF PROPOSED RULE
(Amendment)

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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-10. Physician Services.

R414-10-1. Introduction and Authority.

(1) The Physician Services Program provides a scope of physician services to meet the basic medical needs of eligible Medicaid [~~recipients~~members]. It encompasses the art and science of caring for those who are ill through the practice of medicine or osteopathy defined in Title 58, [~~Chapter 12, UCA~~]Occupations and Professions.

(2) Physician services are a mandatory Medicaid program authorized by Section 1901 of the Social Security Act, Subsections 1861(q)(r) and 1905(a)(5)(6) of the Social Security Act, and Sections 26-1-5 and 26-18-3. [~~Physician services are a mandatory Medicaid, Title XIX, program authorized by Sections 1901 and 1905(a)(1) of the Social Security Act, 42 CFR 440.50, October 1996 edition, and Sections 26-1-5 and 26-18-3, UCA.~~]

R414-10-2. Definitions.

In addition to the definitions in Rule R414-1, the following definitions apply to this rule:

(1) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.

(2) "Global surgical procedures" means preoperative office visits and preparation, the operation itself, local infiltration, topical or regional anesthesia when used, and normal follow-up care.

(3) "Physician services", whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services performed by a Medicaid provider that meet the following standards:

(a) Services are performed within the scope of the physician's license as defined in Title 58, Occupations and Professions;

(b) Services are performed by a doctor of medicine or osteopathy, a doctor of dental surgery or of dental medicine, a doctor of podiatric medicine, a doctor of optometry, a chiropractor, or;

(c) Services include medical care, or any other type of remedial care furnished by licensed practitioners.

(4) "Practice as a physician assistant" means:

(a) acting as an agent of the supervising physician, and when under the authority of a substitute supervising physician, acting in accordance with a delegation of services agreement; and

(b) performing professional duties within the conduct of a physician assistant in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition.

(5) "Services" means the types of medical assistance specified in Subsection 1905(a) of the Social Security Act and interpreted in 42 CFR 440.

~~(1) "Childhood health evaluation and care" (CHEC) means the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment for children under the age of 21.~~

~~(2) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.~~

~~(3) "Clinical Laboratory Improvement Amendments" (CLIA) means the federal Health Care Financing Administration program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.~~

~~(4) "Cognitive services" means non-invasive diagnostic, therapeutic, or preventive office visits, hospital visits, therapy, and related nonsurgical services.~~

~~(5) "Covered Medicaid service" means service available to the eligible Medicaid client within the constraints of Medicaid policy and criteria for approval of service.~~

~~(6) "Current Procedural Terminology" (CPT) means the manual published by the American Medical Association that provides a systematic listing and coding of procedures and services performed by physicians and simplifies the reporting of services, which is adopted and incorporated by reference. Some limitations are addressed in R414-26.~~

~~(7) "Early and periodic screening, diagnosis, and treatment" (EPSDT) means the federally mandated program for children under the age of 21.~~

~~(8) "Family planning" means diagnosis, treatment, medications, supplies, devices, and related counseling in family planning methods to prevent or delay pregnancy.~~

~~(9) "Health Common Procedures Coding System" (HCPCS) means a system mandated by the Health Care Financing Administration to code procedures and services. This system utilizes the CPT Manual for physicians, and individually developed service codes and definitions for nonphysician providers. The coding system is used to provide consistency in determining payment for services provided by physicians and noninstitutional providers.~~

~~(10) "Intensive, inpatient hospital rehabilitation service" means an intense rehabilitation program provided in an acute care general hospital through the services of a multidisciplinary, coordinated, team approach directed toward improving the ability of the patient to function.~~

~~(11) "Package surgical procedures" means preoperative office visits and preparation, the operation, local infiltration, topical or regional anesthesia when used, and the normal, uncomplicated follow-up care extending up to six weeks post-surgery.~~

~~(12) "Patient" means an individual who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.~~

~~(13) "Personal supervision" means the critical observation and guidance of medical services by a physician of a nonphysician's activities within that nonphysician's licensed scope of practice.~~

~~(14) "Physician services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided:~~

~~(a) within the scope of practice of medicine or osteopathy; and~~

~~(b) by or under the personal supervision of an individual licensed to practice medicine or osteopathy.~~

~~(15) "Prior authorization" means the required approval for provision of a service, that the provider must obtain from the Department before providing that service.~~

~~(16) "Professional component" means that part of laboratory or radiology service that may be provided only by a physician capable of analyzing a procedure or service and providing a written report of findings.~~

~~(17) "Provider" means an entity or a licensed practitioner of the healing arts providing approved Medicaid services to patients under a provider agreement with the Department.~~

~~(18) "Services" means the types of medical assistance specified in Sections 1905(a)(1) through (25) of the Social Security Act and interpreted in 42 CFR 440, October 1996 edition, which are adopted and incorporated by reference.~~

~~(19) "Technical component" means that part of laboratory or radiology service necessary to secure a specimen and prepare it for analysis, or to take an x-ray and prepare it for reading and interpretation.]~~

R414-10-3. [Client]Member Eligibility Requirements.

Physician services are available to categorically and medically needy eligible individuals.

R414-10-4. Program Access Requirements.

~~(1) An eligible Medicaid member may obtain physician services from any Utah Medicaid provider.~~

~~(2) An individual who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition, as stated in Section R414-1-7.~~

~~(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.~~

~~[(1) Physician services are available only from a physician who meets all requirements necessary to participate in the Utah Medicaid Program and who has signed a provider agreement.~~

~~(2) Physician services are available only from a physician who renders medically necessary physician services in accordance with his specific provider agreement and with Department rules.~~

~~(3) An eligible Medicaid client may seek physician services from:~~

~~(a) a physician in private practice who is an enrolled Medicaid provider;~~

~~(b) a Health Maintenance Organization (HMO) that has a contract with the Department;~~

~~(c) a federally qualified community health center; or~~

~~(d) any other organized practice setting recognized by the Department for providing physician services.]~~

R414-10-5. Service Coverage and Limitations.

(1) General Information.

(a) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.

(b) Cosmetic or reconstructive procedures, see Section R414-1-30.

(c) Experimental or medically unproven physician services, see Rule R414-1A.

(d) Program limitations and non-covered services are maintained in the Coverage and Reimbursement Code Lookup and updated by notification through the Medicaid Information Bulletin. Medicaid does not cover the following types of services:

(i) Services rendered during a period in which an individual is ineligible for Medicaid;

(ii) Medically unnecessary or unreasonable services;

(iii) Services that fail to meet existing standards of professional practice;

(iv) Services rendered without required prior authorization;

(v) Services, elective in nature, based on patient request or individual preference rather than medical necessity;

(vi) Services claimed fraudulently;

(vii) Services that represent abuse or overuse;

(viii) Services rejected or disallowed by Medicare when the rejection is based on any of the reasons listed in Section R414-10-5;

(ix) Services for which third-party payers are primarily responsible for coverage, such as Medicare, private health insurance, and liability insurance pursuant to Rule R527-936. Medicaid may make a partial payment up to the Medicaid maximum if a third party does not reach the payment limit;

(x) Related services, supplies, or institutional costs during a post-operative recovery period, if the service or procedure is not covered for any of the reasons specified in Section R414-10-5, or due to policy exclusion; and

(xi) Paternity tests.

(e) Alcoholism or drug dependency in an inpatient setting, see Subsection R414-2A-7(2).

(f) A physician assistant who works under the supervision of physician, or as a staff member of a facility, is not an independent practitioner and cannot bill independently.

(i) Service limitations or exclusions that apply to a physician shall also apply to the physician assistant.

(ii) Only a licensed physician may perform the specialty medical services of an assistant surgeon that include complex surgical procedures, while a physician assistant may neither perform specialty medical services nor assist in a surgical procedure.

(iii) Medicaid, as it considers necessary, may apply exceptions to the duties of a supervised-physician assistant in rural areas or in federally-designated health professional shortage areas.

(2) Family Planning Services.

(a) Medicaid does not cover the following family planning services:

(i) Surgical procedures for the reversal of previous elective sterilization on both males and females;

~~(ii) Infertility studies;~~
~~(iii) In vitro fertilization;~~
~~(iv) Artificial Insemination; and~~
~~(v) Surrogate motherhood, including all services, tests, and related charges.~~
~~(3) Anesthesia.~~
~~(a) Medicaid may only cover anesthesia services performed by a licensed, qualified provider.~~
~~(b) Medicaid does not cover anesthesia standby services.~~
~~(4) Surgical Services.~~
~~(a) Surgical procedures.~~
~~(i) Surgical services are global services. Global services include:~~
~~(b) preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as hospital admission;~~
~~(c) the operation;~~
~~(d) any topical, local, or regional anesthesia; and~~
~~(e) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure.~~
~~(f) Interpretation of "global" services:~~
~~(i) A physician may not bill for an office visit the day before surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "global" surgical service;~~
~~(ii) Only the consulting physician may bill for consultation services when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, the consulting physician may only use admission codes and subsequent care codes;~~
~~(iii) Office visits after hospitalization that relate to the same diagnosis are part of the global service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.~~
~~(iv) Complications, exacerbations, recurrence, or the presence of other diseases or injuries, which require services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.~~
~~(v) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.~~
~~(vi) Preoperative examination and planning are covered as separate services only under the following circumstances:~~
~~(I) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis to determine the need for a specific surgical procedure, or to prepare the patient;~~
~~(II) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or~~
~~(III) When diagnostic procedures are not part of the basic surgical procedure.~~

~~(5) Maternity Care and Delivery.~~
~~(i) Medicaid does not cover early elective delivery, whether vaginal or caesarean, before 39 weeks.~~
~~(6) Abortion, Sterilization and Hysterectomy.~~
~~(i) For information on abortion policy, see Rule R414-1B.~~
~~(ii) Sterilization and hysterectomy procedures must meet the requirements of 42 CFR 441, Subpart F.~~
~~(7) Transplant Services.~~
~~(i) Organ transplant services must meet the requirements of Rule R414-10A.~~
~~(8) Medicine.~~
~~(a) Psychiatric Services. The following services may be covered as a medical benefit:~~
~~(i) Physician-ordered psychiatric services for a patient hospitalized in a non-psychiatric unit of a hospital;~~
~~(ii) Mental health services that target the diagnosis or treatment of developmental disability or organic disorder; and~~
~~(iii) Psychosocial evaluations requested before organ transplantations, psychiatric evaluations before other medical services or surgical procedures, and evaluations for individuals with conditions that require chronic pain management services.~~
~~(b) Pain Management Services.~~
~~(i) Medicaid covers pain management for delivery and acute postoperative pain.~~
~~(ii) Medicaid covers treatment for chronic pain.~~
~~(c) Medications.~~
~~(i) Medicaid may cover prescription medications subject to the requirements of Rule R414-60.~~
~~[(1) Physician services involve direct patient care and securing and supervising appropriate diagnostic ancillary tests or services in order to diagnose the existence, nature, or extent of illness, injury, or disability. In addition, physician services involve establishing a course of medically necessary treatment designed to prevent or minimize the adverse effects of human disease, pain, illness, injury, infirmity, deformity, or other impairments to a client's physical or mental health.~~
~~(2) Physician services may be provided only within the parameters of accepted medical practice and are subject to limitations and exclusions established by the Department on the basis of medical necessity, appropriateness, and utilization control considerations.~~
~~(3) Program limitations and noncovered services are established by specific program policy maintained in the Physician Provider Manual and updated by notification through Medicaid Information Bulletins. Following is a general list of medical and health care services excluded from coverage:~~
~~(a) Services rendered during a period the recipient was ineligible for Medicaid;~~
~~(b) Services medically unnecessary or unreasonable;~~
~~(c) Services which fail to meet existing standards of professional practice, or which are currently professionally unacceptable;~~
~~(d) Services requiring prior authorization, but for which such authorization was not received;~~
~~(e) Services, elective in nature, based on patient request or individual preference rather than medical necessity;~~
~~(f) Services fraudulently claimed;~~
~~(g) Services which represent abuse or overuse;~~

~~_____ (h) Services rejected or disallowed by Medicare when the rejection was based upon any of the reasons listed above.~~

~~_____ (i) Services for which third party payors are primarily responsible, e.g., Medicare, private health insurance, liability insurance. Medicaid may make a partial payment up to the Medicaid maximum if the limit has not been reached by a third party.~~

~~_____ (j) If a procedure or service is not covered for any of the above reasons or because of specific policy exclusion, all related services and supplies, including institutional costs, are excluded for the standard post operative recovery period.~~

~~_____ (4) Experimental or medically unproven physician services or procedures are excluded from coverage. Criteria established and approved by the Department staff and physician consultants are used to identify noncovered services and procedures. Policy statements developed by the Department of Health and Human Services, Health Care Financing Administration, Coverage Issues Bureau, are also used to determine Department policy for noncovered services.~~

~~_____ (5) Certain services are excluded from coverage because medical necessity, appropriate utilization, and cost effectiveness of the services cannot be assured. A variety of lifestyle factors contribute to the "syndromes" associated with such services, and there is no specific therapy or treatment identified except for those that border on behavior modification, experimental, or unproven practices. Services include:~~

~~_____ (a) Sleep apnea or sleep studies, or both;~~

~~_____ (b) pain clinics; and~~

~~_____ (c) Eating disorders clinics.~~

~~_____ (6) When a service or procedure does not qualify for coverage under the Medicaid program because it is an elective cosmetic, reconstructive, or plastic surgery, all related services, supplies, and institutional costs are excluded from coverage.~~

~~_____ (7) Medications for appetite suppression, surgical procedures, unproven or experimental treatments, or educational, nutritional support programs for the treatment of obesity or weight control, are excluded from coverage.~~

~~_____ (8) Cognitive or Office Services:~~

~~_____ (a) Cognitive services by a provider are limited to one service per client per day. These services are defined as office visits, hospital visits except for those following a package surgical procedure, therapy visits, and other types of nonsurgical services. When a second office visit for the same problem or a hospital admission occurs on the same date as another service, the physician shall combine the services as one service and select a procedure code that indicates the overall care given.~~

~~_____ (b) Routine physical examinations, not part of an otherwise medically necessary service, are excluded from coverage, except in the following circumstances:~~

~~_____ (i) Preschool and school age children, including those who are EPSDT (CHEC) eligible, participating in the ongoing CHEC program of scheduled services and follow-up care.~~

~~_____ (ii) New patients seeing a physician for the first time with an initial complaint where a comprehensive physical examination, including a medical and social history, is necessary.~~

~~_____ (iii) Medically necessary examinations associated with birth control medication, devices, and instructions.~~

~~_____ (c) Family planning services may be provided only by or under the supervision of a physician and only to individuals of~~

~~childbearing age, including sexually active minors. The following services are excluded from coverage as family planning services:~~

~~_____ (i) Experimental or unproven medical procedures, practices, or medication.~~

~~_____ (ii) Surgical procedures for the reversal of previous elective sterilization, both male and female.~~

~~_____ (iii) Infertility studies.~~

~~_____ (iv) In vitro fertilization.~~

~~_____ (v) Artificial insemination.~~

~~_____ (vi) Surrogate motherhood, including all services, tests, and related charges.~~

~~_____ (vii) Abortion, except where the life of the mother would be endangered if the fetus were carried to term, or where pregnancy is the result of rape or incest.~~

~~_____ (d) After-hours service codes may be used only by a private physician, primary care provider, who responds to treat a patient in the physician's private office for a medical emergency, accident, or injury after regular office hours. Only one of the after hours CPT codes may be used per visit.~~

~~_____ (e) Laboratory services provided by a physician in his office are limited to the waived tests or those types of laboratory tests identified by the federal Health Care Financing Administration for which each individual physician is CLIA certified to provide, bill, and receive Medicaid payment.~~

~~_____ (f) A specimen collection fee is covered for service in a physician's office only when a specimen is to be sent to an outside laboratory, and the physician or one of his office staff under his personal supervision actually extracts the specimen from a patient, and only by one of the following tasks:~~

~~_____ (i) Drawing a blood sample through venipuncture, i.e., inserting into a vein a needle with syringe or vacutainer to draw the specimen; or~~

~~_____ (ii) Collecting a urine sample by catheterization.~~

~~_____ (iii) A drawing fee for finger, heel, or ear sticks is limited to only infants under the age of two years.~~

~~_____ (g) Eye examinations are covered, but only once each calendar year.~~

~~_____ (h) Contact lenses are covered only for aphakia, nystagmus, keratoconus, severe corneal distortion, cataract surgery, and in those cases where visual acuity cannot be corrected to at least 20/70 in the better eye.~~

~~_____ (9) Psychiatric Services:~~

~~_____ (a) Psychiatric services or psychosocial diagnosis and counseling are specialty medical services. Psychiatric services, whether in a private office, a group practice, or private clinic setting, may only be provided directly and documented and billed to the Department by the private physician. Charting and documentation must clearly reflect the private physician's direct provision of care.~~

~~_____ (b) Nonphysician psychosocial counseling services are excluded from coverage as a Medicaid benefit. The personal supervision policy, R414-45, may not be applied to psychiatric services.~~

~~_____ (c) Admission to a general hospital for psychiatric care by a physician requires prior authorization and is limited to those cases determined by established criteria and utilization review standards to be of a severity that appropriate intensity of service cannot be provided in any alternate setting.~~

~~(d) Coverage for treatment of organic brain disease is limited to that provided by the primary care provider.~~

~~(10) Laboratory and Radiology Services:~~

~~(a) Physicians prepared in a highly specialized field of practice, e.g., neurology or neurosurgery, who provide consultation and diagnostic radiology services in an independent setting at the request of a private physician may bill for both the technical and professional component of the radiology service.~~

~~(b) Dermatologists with specialized preparation in pathology services specifically for the skin may provide and bill for those services.~~

~~(11) Hospital Services:~~

~~(a) A patient hospitalized for nonsurgical services may require more than one visit per day because of the patient's condition and treatment needs. Since physician visits are limited to one per day, the physician shall select one procedure code to define the overall care given. If intensive care services are provided, or critical care service codes are used to define service provided, the Department requires additional documentation from the physician. The medical record must show documentation of medical necessity and result of the additional service.~~

~~(b) If, for the convenience of the physician and not for medical necessity, a patient is transferred between physicians within the same hospital or from one hospital to another hospital, both physicians may only use subsequent hospital care service codes to define and bill for services provided. Under this policy limitation, services associated with the following codes are excluded from coverage as a Medicaid benefit:~~

~~(i) Consultation; and~~

~~(ii) Initial hospital care services.~~

~~(c) Treatment of alcoholism or drug dependency in an inpatient setting is limited to acute care for detoxification only.~~

~~(d) Services for pregnant women who do not meet United States residency requirements (undocumented aliens) are limited to only hospital admission for labor and delivery. Medicaid does not cover prenatal services.~~

~~(12) Abortion, Sterilization and Hysterectomy:~~

~~(a) Abortion procedures are limited to:~~

~~(i) those where the pregnancy is the result of rape or incest; or~~

~~(ii) a case with medical certification of necessity where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.~~

~~(b) Sterilization and hysterectomy procedures are limited to those which meet the requirements of 42 CFR 441, Subpart F, October 1996 edition, which is adopted and incorporated by reference.~~

~~(13) Cosmetic, Plastic, or Reconstructive Services:~~

~~(a) Cosmetic, plastic, or reconstructive surgery procedures may only be covered when medically necessary to:~~

~~(i) correct a congenital anomaly;~~

~~(ii) restore body form or function following an accidental injury; or~~

~~(iii) revise severe disfiguring and extensive scarring resulting from neoplastic surgery.~~

~~(14) Surgical Services:~~

~~(a) Surgical procedures defined and coded in the CPT Manual are limited by Utah Medicaid policy to prior authorization, or are excluded from coverage. Limitations are documented on the Medical and Surgical Procedures Prior Authorization List, reviewed and revised yearly and maintained in the Physician Provider Manual through notification by Provider Bulletins.~~

~~(b) Surgical procedures are "package" services. The package service includes:~~

~~(i) the preoperative examination, initiation of the hospital record, and development of a treatment program either in the physician's office on the day before admission, or in the hospital or the physician's office on the same day as admission to the hospital;~~

~~(ii) the operation;~~

~~(iii) any topical, local, or regional anesthesia; and~~

~~(iv) the normal, uncomplicated follow-up care covering the period of hospitalization and office follow-up for progress checks or any service directly related to the surgical procedure for up to six weeks post surgery.~~

~~(c) Interpretation of "package" services:~~

~~(i) A physician may not bill for an office visit the day prior to surgery, for preadmission or admission workup, or for subsequent hospital care while the patient is being prepared, hospitalized, or under care for a "package" surgical service.~~

~~(ii) Consultation services may be billed by the consulting physician only when consultation and no other service is provided. When a consulting physician admits and follows a patient, independently or concurrently with the primary physician, only admission codes and subsequent care codes may be used.~~

~~(iii) Office visits for up to six weeks following the hospitalization which relate to the same diagnosis are part of the "package" service. The only exception to either inpatient or office service is for service related to complications, exacerbations, or recurrence of other diseases or problems requiring additional or separate service.~~

~~(d) Procedures exempt from the "package" definition are identified in the CPT Manual by an asterisk. The CPT Manual outlines the surgical guidelines which apply to documentation and billing of procedures marked by an asterisk.~~

~~(e) Complications, exacerbations, recurrence, or the presence of other diseases or injuries requiring services concurrent with the initial surgical procedure during the listed period of normal follow-up care, may warrant additional charges only when the record shows extensive documentation and justification of additional services.~~

~~(f) When an additional surgical procedure is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods continue concurrently to their normal terminations.~~

~~(g) Preoperative examination and planning are covered as separate services only in the following circumstances:~~

~~(i) When the preoperative visit is the initial visit for the physician and prolonged detention or evaluation is required to establish a diagnosis, determine the need for a specific surgical procedure, or prepare the patient;~~

~~(ii) When the preoperative visit is a consultation and the consulting physician does not assume care of the patient; or~~

~~(iii) When diagnostic procedures, not part of the basic surgical procedure, e.g., bronchoscopy prior to chest surgery, are provided during the immediate preoperative period.~~

— (h) Exploratory laparotomy procedures confirm a diagnosis and determine the extent of necessary treatment. A physician may request payment only if the exploratory procedure is the only procedure done during an operative session.

— (i) The services of an assistant surgeon are specialty services to be provided only by a licensed physician, and are covered only on very complex surgical procedures. Procedures not authorized for assistant surgeon coverage are listed in the Physician Provider Manual and updated by Medicaid Provider Bulletins as necessary. Medicare guidelines for limitation of assistant surgeon coverage are used, since those decisions are made at the national level with physician consultation.

— (j) Medicaid does not cover surgical procedures, experimental therapies, or educational, nutritional, support programs for treatment of obesity or weight control.

— (15) Diagnostic and Therapeutic Procedures:

— (a) Diagnostic needle procedures, e.g., lumbar puncture, thoracentesis, and jugular, femoral vein, or subdural taps, when performed as part of a necessary workup for a serious medical illness or injury, are covered in addition to other medical care on the same day.

— (b) Diagnostic "oscopy" procedures, e.g., endoscopy, bronchoscopy, and laparoscopy, are covered separately from any major surgical procedure. However, when an "oscopy" procedure is done the same day or at the same operative session as another procedure, the "oscopy" procedure may only be covered as a multiple procedure.

— (c) Magnetic resonance imaging (MRI) is covered only for service to the brain, spinal cord, hip, thigh and abdomen.

— (d) Therapeutic needle procedures, e.g., scalp vein insertion, injections into cavities, nerve blocks, are covered in addition to other medical care on the same day.

— (e) Puncture of a cavity or joint for aspiration followed by injection of a medication is covered as one procedure and identified by specific CPT code.

— (16) Anesthesia Services:

— Anesthesia services are covered only when administered by a licensed anesthesiologist or nurse anesthetist who remains in attendance for the sole purpose of rendering general anesthesia services. Standby or monitoring by the anesthesiologist or anesthetist during local anesthesia is not a covered Medicaid anesthesia service.

— (17) Transplant Services:

— Except for kidney and cornea transplants, Medicaid limits organ transplant services to those procedures for which selection criteria have been approved and documented in R414-10A.

— (18) Modifiers:

— Modifiers may be used only, as defined in the CPT Manual, to show that a service or procedure has been altered to some degree but not changed in definition or code. The following limitations apply:

— (a) The professional component, modifier 26, may be used only with laboratory and radiology service codes and only when direct analysis, interpretation, and written report of findings are provided by a physician on a laboratory or radiology procedure.

— (b) Unusual services are identified by use of modifier 22, along with the appropriate CPT code. A prepayment review of unusual services shall be completed by Medicaid professional staff or physician consultants. A report of the service and any important

supporting documentation must be submitted with the claim for review.

— (c) Anesthesia by surgeon is identified by use of modifier 47. The operating surgeon may not use modifier 47 in addition to the basic procedure code. Anesthesia provided by the surgeon is part of the basic procedure being provided.

— (d) Mandated services as defined by CPT and identified by modifier 32 are nonecovered services.

— (e) Reference laboratory services identified by modifier 90 are nonecovered services.

— (19) Medications:

— (a) Drugs and biologicals are limited to those approved by the Food and Drug Administration (FDA), or those approved by the Drug Utilization Review Board (DUR) for off-label use, which is use for a condition different from that initially intended for the drug or biological. Medicaid coverage of drugs and biologicals is based on individual need and orders written by a physician when the drug is given in accordance with accepted standards of medical practice and within the protocol of accepted use for the drug.

— (i) Generic drugs shall be used whenever a generic product approved by the FDA is available. If the physician determines that a brand name drug is medically necessary, the physician may override the generic requirement by writing on the prescription in his own hand writing "name brand medically necessary". Preprinted messages, abbreviations, or notations by a second party, do not meet the override requirement. The pharmacist shall fill the prescription with the generic equivalent product if the override procedure is not followed.

— (ii) Injectable medications approved in HCPCS are identified in the "J" code list published by the Health Care Financing Administration or the Department, or both. The list is reviewed and revised yearly and maintained in the Physician Provider Manual by notification and update through Medicaid Provider Bulletins.

— (iii) The "J" code covers only the cost of an approved product.

— (iv) Office visits only for administration of medication are excluded from coverage. However, an injection code which covers the cost of the syringe, needle and administration of the medication may be used with the "J" code when medication administration is the only reason for an office call.

— (v) When an office service is provided for other purposes, in addition to medication administration, only the office visit and a "J" code may be used to bill for the service provided.

— (vi) The office visit code and injection code may never be used together. Only one of the codes may be used to define the service provided.

— (vii) Vitamin B-12 is limited to use only in treating conditions where physiological mechanisms produce pernicious anemia. Use of Vitamin B-12 in treating any unrelated condition is excluded from coverage.

— (b) Vitamins may be provided only for:

— (i) Pregnant women: Prenatal vitamins with 1 mg folic acid.

— (ii) Children through age five: Children's vitamins with fluoride.

— (iii) Children through age one: multiple vitamin (A, C, and D) without fluoride.

— (iv) Children through age 15: Fluoride supplement.

~~_____ (c) Human growth stimulating hormones are limited to CHEC eligible children under the age of 15 who meet the established internal criteria for coverage that has been published and is available in the Provider Manual.~~

~~_____ (d) Methylphenidates, amphetamines, and other central nervous system stimulants require prior authorization and may be provided only for treatment of Attention Deficit Disorder (ADD).~~

~~_____ (e) Medications for appetite suppression are not a covered service.~~

~~_____ (f) Non-prescription, over-the-counter items are limited, and notification of changes consistent with this rule is made by Provider Bulletin and Provider Manual updates.~~

~~_____ (g) Nutrients may be provided only as established in R414-71-6.~~

R414-10-6. Copayment Policy.

~~_____ Each Medicaid client is responsible to pay a copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1-1.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[May 1, 2010]~~2017

Notice of Continuation: October 24, 2016

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-14**

Home Health Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41564

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule policy for home health services under the Medicaid program.

SUMMARY OF THE RULE OR CHANGE: This amendment implements by rule definitions, client eligibility, program access, service coverage, and provider reimbursement for the Home Health Services program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 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 implements by rule ongoing policy for home health services.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund home health services under the Medicaid program.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only implements by rule ongoing policy for home health services.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid members because this change only implements by rule ongoing policy for home health services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid member because this change only implements by rule ongoing policy for home health services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change current Medicaid policy or practice.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-14. Home Health Services.

R414-14-1. Introduction and Authority.

~~[_____ The Home Health Services program provides a scope of home health services for Medicaid recipients in accordance with the Home Health Agencies Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.]~~

(1) Home health services are part-time intermittent health care services that are based on medical necessity and provided to

eligible persons in their places of residence when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization.

(2) This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.70 and 42 CFR, Part 484. 42 U.S.C. Secs. 1395u, 1395x, and 1395y also authorize home health services.

R414-14-2. Definitions.

The following definition applies to home health services. In addition, the Department adopts the definitions in the Home Health Agencies Utah Medicaid Provider Manual and incorporates them by reference in Section R414-1-5.

(1) "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

(2) "Home health services" as defined in 42 CFR 440.70(b).

R414-14-3. Client Eligibility Requirements.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

(1) Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

(2) The home health agency may accept a recipient for home health services only if there is a reasonable expectation that a recipient's needs can be met.

(3) The attending physician and home health agency personnel must review and sign a total plan of care as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

(4) The home health agency must provide quality, cost-effective care and a safe environment in the home through registered or licensed practical nurses who have adequate training, knowledge, judgement, and skill.

(5) Home health aide services may only be provided pursuant to written instructions and under the supervision of a registered nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

(6) Over the long term service period, the cost to provide the required service in the patient's home must be no greater than the cost to meet the client's medical needs in an alternative setting.

(7) A home health agency may provide an initial assessment visit without prior authorization to assess the patient's needs and establish a plan of care. After the initial visit, all home health care and service must be based on prior authorization.

(8) The home health agency must meet the face-to-face requirement, as stated in Section R414-1-30, or the Department may deny or recover reimbursement.

R414-14-5. Service Coverage.

(1) Two levels of home health service are covered: Skilled Home Health Services and Supportive Maintenance Home Health Services.

(2) Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

(3) Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

(4) Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

(5) IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, and all requirements of the home health program must be met in relation to orders, plan of care, and 60-day review and recertification.

(6) Physical therapy and speech-language pathology services are occasionally indicated and approved for the patient needing home health services. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care. Occupational therapy and speech-language pathology services in the home are available only to clients who are pregnant women or who are eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(7) Medical supplies utilized for home health service must be consistent with physician orders, and approved as part of the plan of care.

(8) Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

(9) Supportive maintenance home health services is limited in time equal to one visit per day determined by care needs and care giver participation.

(10) A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

(11) Only one home health provider (agency) may provide service to a patient during any period of time. However, a

subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

(12) Home health care provided to a patient capable of self-care is not a covered Medicaid benefit.

(13) Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

(14) Housekeeping or homemaking services are not covered home health benefits.

(15) Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

(16) Home health nursing service beyond the initial evaluation visit requires prior authorization.

(17) All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. After initial authorization, if level of service needs change and additional services are required, the home health agency must submit a new prior authorization request.

(18) A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

R414-14-6. Reimbursement for Services.

Reimbursement for home health services shall be provided as documented in Attachment 4.19-B of the Medicaid State Plan.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~January 10, 2014~~2017]

Notice of Continuation: May 30, 2014

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-49** Dental, Oral and Maxillofacial Surgeons and Orthodontia

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41562

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement provisions of both S.B. 39 passed during the 2016 General Session, and S.B. 274 passed during the 2017 General

Session, which direct the Department of Health to seek a federal waiver to provide dental services to blind or disabled Medicaid members who are 18 years of age or older.

SUMMARY OF THE RULE OR CHANGE: This amendment implements the scope of dental services available to blind or disabled Medicaid members who are 18 years of age or older. It also specifies program access requirements and where to reference covered services and limitations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is an expected annual cost of about \$5,456,300 to implement these provisions. This figure is based on a total of about 34,500 Medicaid members who may become eligible for dental services.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund dental services under the Medicaid program.

◆ **SMALL BUSINESSES:** Small businesses may see revenue up to \$5,456,300 as a result of this change. The exact amount, however, cannot be determined since it will depend on services needed by Medicaid members.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may see revenue up to \$5,456,300 as a result of this change. The exact amount, however, cannot be determined since it will depend on services needed by Medicaid members. Medicaid members who qualify for these services will see out-of-pocket savings based on this amount, but the exact savings cannot be determined as it will depend on what services they receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change can only result in increased revenue to a single Medicaid provider and savings to a Medicaid member.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses that are Medicaid providers will be fiscally impacted through an increase in revenue for certain dental services covered by Medicaid.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-49. Dental, Oral and Maxillofacial Surgeons and Orthodontia.

R414-49-1. Introduction.

The Medicaid Dental Program provides a scope of dental services for Medicaid recipients in accordance with the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

R414-49-2. Dental Services for the Blind or Disabled.

(1) Introduction and Authority.

(a) This section defines the scope of dental services available to blind or disabled Medicaid members who are 18 years of age or older.

(b) Dental services are authorized by 42 CFR 440.100, 440.120, and 483.460. This rule is also authorized under Sections 26-1-5 and 26-18-3.

(2) Definitions.

(a) "Dental services" whether furnished in the office, a hospital, a skilled nursing facility, or elsewhere, means covered services performed within the scope of the Medicaid dental provider's license as defined in Title 58, Occupations and Professions.

(b) "Blind or disabled" is as defined in Subsection 1614(a) of the Social Security Act.

(3) Client Eligibility Requirements.

(a) Dental Services are available to blind or disabled members who are 18 years of age or older.

(4) Program Access Requirements.

(a) Dental services are available only from a dental provider who has a current Utah Medicaid provider agreement, and has complied with all relevant laws and policy.

(5) Covered Services.

(a) Covered Services and limitations are maintained in the Utah Medicaid Coverage and Reimbursement Code Lookup and the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~January 10, 2014~~]**2017**

Notice of Continuation: **June 17, 2014**

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

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

R414-70

**Medical Supplies, Durable Medical
Equipment, and Prosthetic Devices**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41565

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule a provision of federal law, which updated parameters for the use of durable medical equipment (DME) to the home, and to implement face-to-face requirements for home health services.

SUMMARY OF THE RULE OR CHANGE: This amendment implements by rule a provision of federal law that updated parameters for the use of DME to the home, and implements face-to-face requirements for home health services. It also updates the title of the applicable provider manual to include "durable medical equipment".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-2.3 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department of Health expects this change to result in an annual cost of about \$42,100 in total funds.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund the use of DME for Medicaid members.

◆ **SMALL BUSINESSES:** Small businesses may see a portion of \$42,100 in annual revenue as a result of this change. The exact amount, however, cannot be determined since it will depend on the services needed by Medicaid members.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid providers may see a portion of \$42,100 in annual revenue as a result of this change, while Medicaid members may see a portion of \$42,100 in out-of-pocket savings. The exact savings, however, cannot be determined as it will depend on what Medicaid members qualify for and which providers they use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this amendment can only result in increased revenue to a single Medicaid provider and out-of-pocket savings to a Medicaid member.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will fiscally impact businesses related to Medicaid providers through an increase in potential revenue.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-70. Medical Supplies, Durable Medical Equipment, and Prosthetic Devices.

R414-70-1. Introduction and Authority.

(1) This rule governs the provision of medical supplies, durable medical equipment (DME), and prosthetic device services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-2.3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-70-2. Definitions.

As used in this rule:

(1) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose; and

(c) generally is not useful to a person in the absence of an illness or injury[~~and~~

~~(d) is suitable for use in the home].~~

(2) "Entitled to nursing facility services" means an individual who:

(a) is in a nursing facility and whose nursing facility stay is covered by Medicaid; or

(b) is receiving services in a waiver program for individuals who require nursing facility level of care.

(3) "Individual eligible for optional services" means an individual who is not entitled to nursing facility services.

(4) "Individual entitled to mandatory services" means an individual who is entitled to nursing facility services.

(5) "Medical supplies" means items for medical use [~~that are suitable for use in the home and~~] that are disposable or semi-disposable and are non-reusable.

(6) "Medical Supplies and Durable Medical Equipment Manual" means services described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies and Durable Medical Equipment, as incorporated in Section R414-1-5.

(7) "Prosthetic device" means replacement, corrective, or supportive devices [~~that are suitable for use in the home,~~] such as braces, orthoses, or prosthetic limbs prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

(a) artificially replace a missing portion of the body;

(b) prevent or correct physical deformities or malfunction; or

(c) support a weak or deformed portion of the body.

R414-70-3. Services.

(1) Medical supplies, DME, and prosthetic devices are optional services.

(2) Medical supplies, DME, and prosthetic devices are limited to services described in the Medical Supplies and Durable Medical Equipment Manual.

(3) The Medical Supplies and Durable Medical Equipment Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Medical supplies, DME, and prosthetic devices may be provided to an individual only as part of a written plan that is reviewed at least annually by a physician.

(5) The home health agency must meet the face-to-face requirement, as stated in Section R414-1-30, or the Department may deny or recover reimbursement.

R414-70-4. Services for Individuals Eligible for Optional Services.

(1) An individual eligible for optional services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.

(2) An individual eligible for optional services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.

R414-70-5. Services for Individuals Eligible for Mandatory Services.

(1) An individual entitled to mandatory services may receive medical supplies, DME, and prosthetic devices as described in the Medical Supplies and Durable Medical Equipment Manual.

(2) An individual eligible for mandatory services must meet the criteria established in the Medical Supplies and Durable Medical Equipment Manual and obtain prior approval if required.

(3) An individual entitled to mandatory services may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.

R414-70-6. Services for Individuals Residing in Long Term Care Facilities.

(1) The Department provides medical supplies, DME, and prosthetic devices to individuals residing in a nursing care facility or an ICF/MR as part of the per diem payment.

(2) An individual residing in a nursing care facility or ICF/MR may receive additional medical supplies, DME, and prosthetic devices only as specifically indicated in the Medical Supplies and Durable Medical Equipment Manual.

(3) An individual residing in a nursing care facility or an ICF/MR may request an agency review to seek medical supplies and DME not listed in the Medical Supplies and Durable Medical Equipment Manual.

R414-70-7. Less Costly Alternative.

The Department may provide at its discretion services not described in the Medical Supplies and Durable Medical Equipment Manual as provided in Section R414-1-6.

R414-70-8. Reimbursement.

Medical supplies, DME, and prosthetic devices are reimbursed using the fee schedule in Attachment 4.19-B of the Medicaid State Plan and incorporated by reference in Section R414-1-5.

KEY: Medicaid, medical supplies, durable medical equipment, prosthetics

Date of Enactment or Last Substantive Amendment: [~~July 1, 2013~~2017]

Notice of Continuation: September 27, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-305-5
Resource Provisions for Parents and
Caretaker Relatives, Pregnant Woman,
and Child Under Non-MAGI-Based
Community and Institutional Medicaid**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41557

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement provisions of H.B. 172 passed during the 2017 General Session, which specify how to treat resources held in a Utah Educational Savings Plan when determining eligibility for certain Medicaid programs.

SUMMARY OF THE RULE OR CHANGE: This amendment implements provisions of H.B. 172 (2017), which instruct the Department of Health to disregard resources held in a Utah Educational Savings Plan when making eligibility determinations for certain Medicaid programs. It also makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is an estimated cost of about \$2,200 to the state budget based on the projection that an additional 3.5 individuals will become eligible for certain programs.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund Medicaid services nor make eligibility determinations.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment neither imposes new cost requirements nor creates measurable revenue.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers because this amendment neither imposes new cost requirements nor creates measurable revenue. Medicaid members who qualify for certain programs may see a modest increase in out-of-pocket savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this amendment does not impose new cost requirements on a single business or provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because it does not impose any additional costs or requirements for Medicaid providers nor does it create any additional measurable revenue for providers.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-305. Resources.

R414-305-5. Resource Provisions for Parents and Caretaker Relatives, Pregnant Woman, and Child Under Non-MAGI-Based Community and Institutional Medicaid.

(1) ~~The Department determines~~ ~~[To determine]~~ resource eligibility for an individual ~~[for]~~ ~~under the~~ Parents and Caretaker Relatives, Pregnant Woman, and Child non-MAGI-based Medicaid programs, ~~as described in~~ ~~[the Department adopts and incorporates by reference]~~ 45 CFR 233.20(a)(3)(i)(B)(1), (2), (3), (4), and (6), ~~[and]~~ 233.20(a)(3)(vi)(A), ~~42 U.S.C. 604(h), 1382b(a)(13), and 1396p(d), (e), (f) and (g).~~ ~~[October 1, 2012 ed. The Department also adopts and incorporates by reference Section 1917(d), (e), (f) and (g), Section 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 2013.]~~ The eligibility agency may not count as an available resource retained funds from sources that federal laws specifically prohibit from being counted as a resource to determine eligibility for federally-funded medical assistance programs. In addition, the eligibility agency shall apply the following rules.

(2) A resource is available when the individual owns it or has the legal right to sell or dispose of the resource for the individual's own benefit.

(3) The medically needy resource limit is \$2,000 for a one-person household, \$3,000 for a two-person household and \$25 for each additional household member.

(4) To determine countable resources for Medicaid eligibility, the eligibility agency shall consider all available resources owned by the individual. The agency may not consider a resource unavailable based upon the individual's intent or action of disposing of non-liquid resources.

(5) The eligibility agency shall count resources of a household member who has been disqualified from Medicaid for failure to cooperate with third party liability or duty of support requirements.

(6) If a legal guardian, conservator, authorized representative, or other responsible person controls any resources of an individual, the eligibility agency shall count the resources as the individual's. The arrangement may be formal or informal.

(7) If a resource is available, but a legal impediment exists, the agency may not count the resource until it becomes available. The individual must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action does not allow the resource to become available; and

(b) The cost of making the resource available exceeds its value.

(8) The eligibility agency shall exclude a maximum of \$1,500 in equity value of one vehicle.

(9) The eligibility agency may not count as resources the value of household goods and personal belongings that are essential for day-to-day living. The agency shall count any single household good or personal belonging with a value that exceeds \$1,000 toward the resource limit. The agency may not count as a resource the value of any item that a household member needs because of the household member's medical or physical condition.

(10) The eligibility agency may not count the value of one wedding ring and one engagement ring as a resource.

(11) For a non-institutionalized individual, the eligibility agency may not count the value of a life estate as an available resource if the life estate is the individual's principal residence. If the life estate is not the principal residence, the provision in Subsection R414-305-3(28) shall apply.

(12) The eligibility agency may not count the resources of a child who is not counted in the household size to determine eligibility of other household members.

(13) For a non-institutionalized individual, the eligibility agency may not count as a resource, the value of the lot on which the excluded home stands if the lot does not exceed the average size of residential lots for the community in which it is located. The agency shall count as a resource the value of the property in excess of an average size lot. If the individual is institutionalized, the provisions of Subsections R414-305-3(12), (13) and (28) shall apply to the individual's home or life estate.

(14) The agency may not count as a resource the value of water rights attached to an excluded home and lot.

(15) The eligibility agency may not count any resource or interest from a resource held within the rules of the Uniform Transfers to Minors Act. The agency shall count as a resource any money that a child receives as unearned income, which the child retains beyond the month of receipt.

(16) The eligibility agency may not count lump sum payments that an individual receives on a sales contract for the sale of an exempt home if the entire proceeds are used to purchase a new exempt home within three calendar months of when the property is sold. The eligibility agency shall grant the individual one three-month extension, if more than three months is needed to complete the actual purchase. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal.

(17) The eligibility agency shall exclude as a resource retroactive benefits received from the Social Security Administration and the Railroad Retirement Board for the first nine months after receipt.

(18) The eligibility agency shall exclude from resources a burial and funeral fund or funeral arrangement up to \$1,500 for each household member who is counted in the household size. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial. The client shall separate and clearly designate the burial funds from the non-burial funds. The agency may not count as a resource interest earned on exempt burial funds that is left to accumulate. If an individual uses

exempt burial funds for some other purpose, the agency shall count the remaining funds as an available resource beginning on the date that the funds are withdrawn.

(19) Assets of an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997, are considered available to the alien. The eligibility agency shall stop counting a sponsor's assets when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(20) The eligibility agency may not consider a sponsor's assets as being available to applicants who are eligible for Medicaid for emergency services only.

(21) The eligibility agency may not count business resources that are required for employment or self-employment. The agency shall treat non-business, income-producing property in the same manner as the SSI program as defined in 42 CFR 416.1222.

(22) The eligibility agency may not count as a resource retirement funds held in an employer or union pension plan, a retirement plan or account including 401(k) plans, and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage.

(23) The eligibility agency may not count as a resource any federal tax refund and refundable credit that an individual receives for 12 months after the month of receipt.

(24) The eligibility agency may not count as income, for one year after the date of receipt, any payments that an individual receives under the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(25) The eligibility agency may not count as resources certain property and rights of federally-recognized American Indians including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources); and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

(26) The eligibility agency shall treat Utah Educational Savings Plans in accordance with Section 26-18-3.

(2[6]7) The eligibility agency ~~shall~~ may only count ~~only~~ the portion of an asset such as a retirement plan that is legally available to an individual when that asset has been divided between two divorced spouses pursuant to a qualified domestic relations order.

KEY: Medicaid, resources

Date of Enactment or Last Substantive Amendment: ~~July 1, 2016~~ **2017**

Notice of Continuation: January 23, 2013

Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-401-3** Assessment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41560

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the annual assessment amounts for nursing care facilities and intermediate care facilities for persons with intellectual disabilities (ICFs/ID) for state fiscal year (SFY) 2018.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), every nursing facility is assessed at the uniform rate of \$20.98 per patient day, which is an increase from the previous \$18.74 per patient day assessment, based upon projected days. In Subsection R414-401-3(2), ICFs/ID are assessed at the uniform rate of \$8.36 per patient day, which is a decrease from the previous \$8.45 per patient day assessment, based upon projected days. These updates are based on estimates of patient days for SFY 2018 and the appropriation amounts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The update to the assessment rates is anticipated to be budget neutral as it updates the collection rate based on projected days in SFY 2018 and the appropriation amount.

◆ **LOCAL GOVERNMENTS:** Inasmuch as swing beds are variable, it is not possible to determine the cost or savings to local hospital and swing bed facilities.

◆ **SMALL BUSINESSES:** Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize a decreased cost based upon

the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid nursing facility providers will realize an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. Inasmuch as patient days are variable, it is not possible to determine the increased cost that will be realized by these facilities. ICFs/ID will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of \$2.24 per non-Medicare patient day from each nursing facility and decrease of \$0.09 per qualifying patient day for the ICF/ID providers. The assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid-certified nursing and swing bed facilities have benefited from this process. The amount of overall gain or loss depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid-certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a fiscal impact on business through the increase in the assessment rate payable by Medicaid-certified nursing facilities to Medicaid.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-401. Nursing Care Facility Assessment.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is \$[18.74]20.98 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of \$8. [45]36 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

KEY: Medicaid, nursing facility

Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~]2017

Notice of Continuation: April 7, 2014

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

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

R414-514

**Requirements for Moratorium
Exception**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41561

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement provisions of H.B. 113 passed during the 2017 General Session, which set forth moratorium exception requirements for Medicaid-certified nursing facility programs.

SUMMARY OF THE RULE OR CHANGE: Under the Moratorium Exception, this new rule implements requirements that a Medicaid-certified nursing facility program must meet for certification of additional nursing care facility programs, or for certification of additional beds within an existing nursing care facility program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and Section 26-18-503

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is an expected annual cost of about \$1,800 to cover the licensing fees of a new nursing facility. Nevertheless, there is no way to estimate the total cost to the state budget without knowing the number of facilities that will become licensed under the new legislation.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor certify nursing facility programs under the Medicaid program.
- ◆ SMALL BUSINESSES: Each new small business may see an annual increase in cost of about \$1,800 to operate a skilled nursing facility. Nevertheless, there is no way to estimate the total cost to small businesses without knowing the number of facilities that will become licensed under the new legislation.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Each new nursing care facility provider may see an annual increase in cost of about \$1,800 to operate a skilled nursing facility under the new legislation. Nevertheless, there is no way to estimate the total cost to nursing facilities without knowing the number of facilities that will become licensed. Medicaid members will not see any out-of-pocket expenses associated with this rulemaking.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single nursing care facility provider may see an annual increase in cost of about \$1,800 to operate a skilled nursing facility under the new legislation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment fiscally impacts business by increasing licensing fees for new Medicaid nursing care facilities.

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 Office 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 or mail at PO Box 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-514. Requirements for Moratorium Exception.

R414-514-1. Introduction and Authority.

(1) This rule implements requirements that a Medicaid-certified nursing facility program must meet for certification of additional nursing care facility programs, or for certification of additional beds within an existing nursing care facility program.

(2) This rule is authorized under Sections 26-18-3, 26-18-5, and 26-18-503.

R414-514-2. Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program.

(1) A Medicaid-certified nursing care facility program must meet the requirements of Rule R414-27 to acquire additional nursing care facility programs, and must meet the requirements of Subsection 26-18-503(5) to acquire additional beds.

(2) Pursuant to Subsection 26-18-503(5), a nursing care facility program must provide all necessary information on the Utah Medicaid Nursing Facility Moratorium Exception Application. The Division of Medicaid and Health Financing (DMHF) shall return the application to the requestor if the application or supporting documentation is deficient.

(3) The notice date shall be the postmark date or other proof of delivery for the application mailed to DMHF.

(4) If DMHF receives an application for the Utah Medicaid Nursing Facility Moratorium Exception in a rural county, and a Medicaid-certified nursing facility program does not meet the quality standards pursuant to Subsection 26-18-503(5)(d)(v), the certified program may provide additional information under Subsection 26-18-503(9)(a)(ii). Any additional information submitted to DMHF must be postmarked or have other proof of delivery information within 14 days of the original notice from DMHF. Electronic mail (email) does not meet the notification requirement.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-18-503

Human Resource Management,
Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 41499
FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct spelling and to add a definition as a result of H.B. 232 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes correct spelling in Subsection R477-1-1(66), add a definition at Subsection R477-1-1(114), and renumber Subsections R477-1-1(115) through (117).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-15 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-1. Definitions.****R477-1-1. Definitions.**

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

- (1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.
- (2) **Actual FTE:** The total number of full time equivalents based on actual hours paid in the state payroll system.
- (3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.
- (4) **Actual Wage:** The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.
- (5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.
- (6) **Administrative Adjustment:** An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.
- (7) **Administrative Salary Decrease:** A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.
- (8) **Administrative Salary Increase:** An increase in the current actual wage based on special circumstances determined by an agency head.
- (9) **Agency:** An entity of state government that is:
 - (a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;
 - (b) authorized to employ personnel; and
 - (c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.
- (10) **Agency Head:** The executive director or commissioner of each agency or a designated appointee.
- (11) **Agency Human Resource Field Office:** An office of the Department of Human Resource Management located at another agency's facility.
- (12) **Agency Management:** The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) **Alternative State Application Program (ASAP):** A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) **Appeal:** A formal request to a higher level for reconsideration of a grievance decision.

(15) **Appointing Authority:** The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) **Break in Service:** A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) **Budgeted FTE:** The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) **Bumping:** A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) **Career Mobility:** A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) **Career Service Employee:** An employee who has successfully completed a probationary period in a career service position.

(21) **Career Service Exempt Employee:** An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) **Career Service Exempt Position:** A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) **Career Service Status:** Status granted to employees who successfully complete a probationary period for career service positions.

(24) **Category of Work:** A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

- (i) unit number;
- (ii) cost centers;
- (iii) geographic locations;
- (iv) agency programs.

(b) positions identified by a set of essential functions, including:

- (i) position analysis data;
- (ii) certificates;
- (iii) licenses;
- (iv) special qualifications;
- (v) degrees that are required or directly related to the position.

(25) **Change of Workload:** A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) **Classification Grievance:** The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) **Classified Service:** Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) **Classification Study:** A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) **Compensatory Time:** Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) **Contractor:** An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) **Critical Incident Drug or Alcohol Test:** A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) **Demotion:** A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) **Detailed Position Record Management Report:** A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) **DHRM:** The Department of Human Resource Management.

(35) **DHRM Approved Recruitment and Selection System:** The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) **Disability:** Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(37) **Disciplinary Action:** Action taken by management under Rule R477-11.

(38) **Dismissal:** A separation from state employment for cause under Section R477-11-2.

(39) **Dual State Employment:** Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(40) **Drug-Free Workplace Act:** A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(41) **Employee Personnel Files:** For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(42) **Employment Eligibility Verification:** A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(43) **"Escalator" Principle:** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA),

returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(44) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) GOMB: Governor's Office of Management and Budget.

(51) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(52) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(53) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(54) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

- (a) safety sensitive functions:
 - (i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);
 - (ii) directly related to law enforcement;
 - (iii) involving direct access or having control over direct access to controlled substances;
 - (iv) directly impacting the safety or welfare of the general public;
 - (v) requiring an employee to carry or have access to firearms; or
 - (b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
 - (i) financial assets, liabilities, and account information;
 - (ii) social security numbers;
 - (iii) wage information;
 - (iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(55) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(56) HRE: Human Resource Enterprise; the state human resource management information system.

(57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(59) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(60) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(61) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(62) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(63) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(64) Job Requirements: Skill requirements defined at the job level.

(65) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(66) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited [~~employess~~]employees.

(67) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(68) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(69) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(70) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved

justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(72) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(73) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(74) Nonfeasance: Failure to perform either an official duty or legal requirement.

(75) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(76) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(77) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(78) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(79) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(80) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(81) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(82) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(83) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(84) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(85) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(86) Position Identification Number: A unique number assigned to a position for FTE management.

(87) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(88) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(89) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(90) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(91) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(92) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(93) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(94) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(95) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(96) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(97) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(98) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(99) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(100) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(101) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(102) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(103) Salary Range: Established minimum and maximum rates assigned to a job.

(104) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(105) Separation: An employee's voluntary or involuntary departure from state employment.

(106) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(107) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

(108) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(109) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(110) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(111) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(112) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(113) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(114) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

(115) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

~~_____~~(116) Wage: The fixed hourly rate paid to an employee.

~~_____~~(117) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: [January 4], 2017

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-15; 67-19-18

Human Resource Management, Administration **R477-2** Administration

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41501

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify language additions, to change a name as a result of S.B. 127 from the 2017 General Session, to make minor grammar corrections, and to remove an unenforceable provision.

SUMMARY OF THE RULE OR CHANGE: The changes clarify career service in Section R477-2-1, change "Office" to "Board" in Subsection R477-2-1(4), clarify that Subsection R477-2-1(6) applies to schedule A employees of elected officials, remove Subsection R477-2-2(3) as Section 67-19-18 vests such authority in each department's own agency head, and make grammatical revisions in Subsection R477-2-3(3) (b) and Section R477-2-9.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1 and Section 63G-5-201 and Section 67-19-15 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-2. Administration.

R477-2-1. Rules Applicability.

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;
- (4) officers, faculty, and other employees of the public education system, other than those directly employed by the State [~~Office~~Board of Education;
- (5) employees of the Office of the Attorney General;
- (6) elected members of the executive branch and their Schedule A employees;
- (7) employees of independent entities, quasi-governmental agencies and special service districts;
- (8) employees in any position that is determined by statute to be exempt from these rules.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

- (a) applying the rule prevents the achievement of legitimate government objectives; or
- (b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

~~[(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties under Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.]~~

R477-2-3. Fair Employment Practice and Discrimination.

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission [~~Anti-Discrimination~~ Antidiscrimination] and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

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

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in

accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act - 1986).

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed under Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a ~~law-suit~~ lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

Date of Enactment or Last Substantive Amendment: [~~July 1, 2015~~2017]

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-15; 67-19-18

**Human Resource Management,
Administration
R477-4
Filling Positions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41502

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reorganize provisions for clarity, eliminate duplicate provisions, and correct a previous error in numbering of subsections.

SUMMARY OF THE RULE OR CHANGE: The changes reorganize Subsection R477-4-2(4) for greater clarity, rewrite Subsection R477-4-2(5) to include career service exempt rather than listing all career service exempt schedule codes and reorganize provisions for clarity, revise Subsection R477-4-2(6) for clarity and to add schedule AS, correct a grammatical error (plural) in Subsection R477-4-4(2), correct a grammatical error in numbering (lettering) and a grammatical error in Subsection R477-4-5(1), eliminate provisions from Section R477-4-6 which are duplicated in other subsections and revise Subsection R477-4-6(2)(a) for consistency with other rule citations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-4. Filling Positions.

R477-4-1. Authorized Recruitment System.

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee[~~:-~~
~~(i)-~~] is hired to work part time indefinitely[~~:-~~] and[
~~(ii)-~~] shall work less than 30 hours per week[~~:-~~]; or

(b) be Schedule TL, in which the employee[~~:-~~
~~(i)-~~] is hired to work on a time limited basis[~~:-~~];

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 30 hours per week for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) ~~[Only Schedule A, IN or TL]Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection R477-4-8[may be considered for conversion to career service].~~

(6) ~~[Disclosure statements.]Agency management shall [be obtained and reference and background checks shall be conducted for]ensure that all [Schedule AB, AC, AD and AR -]new hire appointees in Schedules AB, AC, AD, AR and AS submit disclosure statements to DHRM.~~

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. ~~[Recruitment]~~Recruitments shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

~~[(d)](c)~~ A transfer may not include ~~[(#)]an~~ increase but may include a decrease in actual wage.

~~[(e)](d)~~ A reassignment may not include a decrease in actual wage except as provided in federal or state law.

~~[(f)] Except as provided in R477-4-5, an~~ ~~(c)~~ An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.

~~[(g)](f)~~ An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

- (a) a different job or position with an equal or lesser salary range maximum;
- (b) a different work location; or
- (c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

~~[(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.~~

~~[(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program III sick leave.~~

~~[(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.~~

~~[(d) Except for employees rehired under the provisions of R477-4-6(2), a rehired employee may be offered any salary within the salary range for the position.]~~

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

- (a) Classified as time-limited (~~Schedule TL~~ ~~[schedule]~~) for the duration of a phased retirement employment period; and

(b) Placed at or below the employee's wage at the time of retirement. Employees cannot be placed below the minimum of the established salary range of the job.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

(a) a detailed position record (DPR) based upon a current job or position analysis;

(b) an initial, impartial screening of the individual's qualifications;

(c) impartial evaluation and results; and

(d) reasonable accommodation for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-6(10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

R477-4-15. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [January 4], 2017

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

**Human Resource Management,
Administration
R477-5
Employee Status and Probation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41504

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to revise for clarity and include a new program per H.B. 232 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes revise Subsection R477-5-1(3)(b) to say "career service exempt" rather than listing all career service exempt schedule codes, add the Veteran's Employment Opportunity Program to the rule as required by H.B. 232 (2015) to Subsection R477-5-1(3)(c), and clarify Subsection R477-5-2(2)(c) that changing agencies does not require new probationary period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-15(5)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-5. Employee Status and Probation.

R477-5-1. Career Service Status.

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range to the previous career service position held, when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;

(b) the employee was hired from a hiring list to a ~~[schedule A, TL or IN]~~ career service exempt position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) or Veterans Employment Opportunity Program (VEOP) and successfully completed a six month on the job examination period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period including when changing agencies unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

R477-5-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: ~~July 1, 2013~~ 2017
Notice of Continuation: February 2, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

Human Resource Management, Administration **R477-6** Compensation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41503

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify language changes, correct grammar, and add newly created schedule code for the State Board of Education pursuant to S.B. 127 from the 2017 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes edit Subsection R477-6-6(1)(a) to clarify that only schedule IN and TL employees are not required to receive a 5% wage increase upon promotion, organize clarification to Subsection R477-6-6(3)(a), clarify Subsections R477-6-6(3)(c) and (d) to remove repeated requirements from Subsection R477-6-6(3)(a), revise Subsection R477-6-6(6) to require employees who apply for lower-level positions to be placed within the lower pay range, correct spelling error in Subsection R477-6-10(1)(a)(iii), add new schedule code AE to Subsections R477-6-10(2) and R477-6-11(1) pursuant to S.B. 127 (2017), and clarify edits to Subsection R477-6-11(1)(b).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
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government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-6. Compensation.

R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

- (a) Each job description shall include a salary range.
- (b) Agency approved wage increases within salary ranges

shall be:

- (i) at least 1/2%, or
- (ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment that has no budgetary impact on all affected agencies; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges cannot be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments. GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments shall not be approved for cross agency jobs unless the adjustment has no budgetary impact on all affected agencies.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, ~~and~~ JAQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

R477-6-6. Salary.

(1) Promotions.

(a) An employee who is not in designated [~~schedules B, AD, AR, AT,~~ schedule IN or [~~AW~~ TL] and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous~~[-and]~~.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

~~_____~~ (iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase ~~[if they receive a passing performance appraisal rating within the previous twelve months.]~~ subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or ~~[receiving]~~ receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may ~~[not]~~ be eligible for a longevity salary increase ~~[- Employees shall be eligible for a longevity salary increase when they have been above] after meeting the [salary range maximum for 12 months and all other longevity salary increase criteria are met.]~~ requirements of (3)(a).

(h) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

~~_____~~ (a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

~~_____~~ (b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

R477-6-7. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

R477-6-8. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the

HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career

service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(ii) Hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance;

(iii) Hourly wage \$28.85 or ~~higher~~ higher shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of

termination, may receive at the time of separation a severance benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided [for]at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods[. at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider].

R477-6-12. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management

Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~2017]

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

**Human Resource Management,
Administration
R477-7
Leave**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41505
FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct grammar, clarify edits, remove outdated content, include phased retirement pursuant to S.B. 19 from the 2016 General Session, and remove provisions DHRM does not control.

SUMMARY OF THE RULE OR CHANGE: The changes correct the name of a holiday in Subsection R477-7-2(1)(a), clarify edits and remove a 14-year-old provision from Subsection R477-7-3(2), clarify edits to Subsection R477-7-4(7), make grammatical corrections to Subsection R477-7-5(5)(b)(ii), add mention of phased retirement per S.B. 19 (2016) in Subsections R477-7-5(6) and R477-7-6(5)(c), clarify edits to Section R477-7-6, make grammatical corrections to Subsection R477-7-6(5)(a), change "work weeks" to "workweeks" consistent with FMLA regulations in Subsections R477-7-15(1) and (2), remove Subsection R477-7-17(1) as

DHRM has no control over this process, remove Subsection R477-7-17(5) as it is duplicative, and renumber Subsections R477-7-17(1) through (4) due to removal of Subsections R477-7-17(1) and (5).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 39-3-1 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-7. Leave.

R477-7-1. Conditions of Leave.

(1) An employee shall be eligible for a leave benefit when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) An employee may not use any type of leave except military and jury leave to accrue excess hours.

(7) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(8) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(9) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(10) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick

leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New [Years]Year's Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years -- six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions[-]; or

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

~~[(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.]~~

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children, or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the ~~[employees]~~employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006 shall be Program II sick leave hours.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the ~~employees~~employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014; and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 4, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the

polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Witness and Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Section 39-3-2. Military leave for part-time employees shall be based on a

prorated basis that is no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for nonworking days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12 month period to participate in disaster relief services for a disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

- (a) a copy of a written request for the employee's services from an official of the disaster relief organization;
- (b) the anticipated duration of the absence;
- (c) the type of service the employee is to provide; and
- (d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

- (1) An employee who donates bone marrow shall be granted up to seven days of paid leave.
- (2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

- (a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.
- (b) Payment of all state paid benefits shall continue at the agency's expense.
 - (i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.
 - (ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 [~~work weeks~~]workweeks of family and medical leave each calendar year for any of the following reasons:

- (a) birth of a child;
- (b) adoption of a child;
- (c) placement of a foster child;
- (d) a serious health condition of the employee; or
- (e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 [~~work weeks~~]workweeks of family and medical leave during a 12 month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

- (a) be employed by the state for at least 12 months;
- (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

- (a) thirty days in advance for foreseeable needs; or
- (b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

- (i) Program III sick leave;
- (ii)(A) Compensatory time;
- (B) Excess leave; or
- (C) Annual leave;

- (iii)(A) Converted sick leave;
- (B) Program II sick leave; or
- (C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

- (i) employee is declared medically stable by a licensed medical authority;
- (ii) workers compensation fund terminates the benefit;
- (iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers

compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

~~_____ (1) An employee determined eligible for Long Term Disability benefits shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked or the last day of FMLA leave.~~

~~_____ (2) Upon approval of the LTD claim:]~~

~~_____ (1) Upon approval of an LTD claim:~~

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for

the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

~~[(3)](2)~~ An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

~~[(4)](3)~~ Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

~~[(5) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.~~

~~[(6)](4)~~ Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

Date of Enactment or Last Substantive Amendment: ~~July 1, 2016~~ **2017**

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 34-43-103; 39-3-1; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14

Human Resource Management, Administration **R477-8** Working Conditions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41506
FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify edits, make grammatical corrections, add a new minimum comp time limit for FLSA Exempt employees, and revise to count time on Temporary Transitional Assignment as leave for purposes of max leave rule.

SUMMARY OF THE RULE OR CHANGE: The changes clarify implied provisions in Subsection R477-8-1(4), make grammatical corrections in Subsection R477-8-3(1), establish 80 hours as minimum limit of comp time earned by FLSA Exempt employees in Subsection R477-8-6(1)(b), reorganize

Subsection R477-8-6(1)(d) for clarity and to match ability of state finance to track comp time hours, make grammatical corrections to Subsection R477-8-7(1)(b), and add new provision at Subsection R477-8-17(3) to count time spent on Temporary Transitional Assignment as leave for purposes of the max leave rule at Subsection R477-7-1(9).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-1. Work Week.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

- (a) establish a written policy governing telecommuting;
- (b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
- (c) not allow participating employees to violate overtime rules;
- (d) not compensate for normal commute time; and
- (e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes [~~noncompensated~~] non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.
 (2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours.

Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) ~~[DHRM shall establish the]~~The limit on compensatory time ~~[earned]~~accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency; ~~[or]~~

(iii) changes FLSA status to nonexempt; or

_____(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

~~[(e) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.~~

~~_____~~(f)(e) Schedule AB employees may not be compensated for compensatory time except with time off.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;
 (b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from [accident]accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training;

and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24

consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

(3) Time spent on a temporary transitional assignment may be counted as leave for purposes of 477-7-1(9).

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [July 1, 2016]2017

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

**Human Resource Management,
 Administration**

R477-10

Employee Development

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41507

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reorganize for clarity and remove unnecessary punctuation.

SUMMARY OF THE RULE OR CHANGE: The changes remove unnecessary punctuation at Section R477-10-2, make organizational revisions to place employee's right to submit written comment on PIP after the provisions of the PIP itself switching Subsections R477-10-2(2) and (3), eliminate Subsection R477-10-2(6) to create new Section R477-10-3 governing written warnings with clarifying edits, and renumber Sections R477-10-3 and R477-10-4 as a result of creation of Section R477-10-3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) Performance management systems shall satisfy the following criteria:

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

(c) Managers or supervisors shall notify employees when their performance plans are implemented or modified.

(d) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) Each fiscal year a state employee shall receive a performance evaluation.

(a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.

(b) A probationary employee may receive a performance evaluation at the end of the probationary period.

R477-10-2. Performance Improvement.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may place an employee on an appropriate[;] and documented performance improvement plan in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate action.

(2) Performance improvement plans shall identify or provide for:

(a) a designated period of time for improvement;

(b) an opportunity for remediation;

(c) performance expectations;

(d) closer supervision to include regular feedback of the employee's progress;

(e) notice of disciplinary action for failure to improve; and,

(f) a written performance evaluation at the conclusion of the performance improvement plan.

(3) An employee shall have the right to submit written comment to accompany the performance improvement plan.

~~[(3) Performance improvement plans shall identify or provide for:~~

~~(a) a designated period of time for improvement;~~

~~(b) an opportunity for remediation;~~

~~(c) performance expectations;~~

~~(d) closer supervision to include regular feedback of the employee's progress;~~

~~(e) notice of disciplinary action for failure to improve; and,~~

~~(f) written performance evaluation at the conclusion of the performance improvement plan.~~

[(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

(a) training;

(b) reassignment;

(c) use of appropriate leave;

(5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

~~[(6) A]~~

R477-10-3. Written Warnings.

Agency management may use written [warning may also be used as an appropriate form of] warnings to address performance [improvement as determined by the supervisor] or conduct problems.

R477-10-[3]4. Employee Development and Training.

(1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-[4]5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within one year of completing educational work.

(i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.

(d) Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-4(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs

Date of Enactment or Last Substantive Amendment: ~~July 1, 2016~~ 2017

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6

**Human Resource Management,
Administration
R477-11
Discipline**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41508

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify edits and correct a citation error.

SUMMARY OF THE RULE OR CHANGE: The changes clarify edits in Subsections R477-11-1(4)(c)(i) and (ii), clarify edits in Subsection R477-11-1(7), and correct a citation in Subsection R477-11-2(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-11. Discipline.****R477-11-1. Disciplinary Action.**

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee, in accordance with Section R477-11-2, through one of the following actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage[-]; or

(ii) An employee's current actual wage [~~may be~~]is lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) [~~Disciplinary~~]Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee ~~for any or for no reason~~ without right of appeal, except under Sections 67-21-~~[2]~~3.5 and 67-19a-402.5. [~~Such dismissal or demotion may be for any reason or for no reason.~~]

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~2017]

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

**Human Resource Management,
Administration
R477-12
Separations**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41509
FILED: 04/26/2017**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify edits, remove provisions for withdrawal of resignation without management consent, remove provision referencing for cause discharge of career service exempt employees, and remove a citation of a repealed statute.

SUMMARY OF THE RULE OR CHANGE: The changes clarify Section R477-12-1, revise Subsection R477-12-1(1) to remove withdrawal of resignation without management consent within one working day, remove "for cause" clause in Subsection R477-12-3(9) where the whole section is reductions in force, and remove a citation to Section 67-19-17, which no longer exists.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

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♦ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-12. Separations.****R477-12-1. Resignation.**

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of agency management~~[in the work unit]~~.

~~(1) [Agency management shall accept an employee's notice of resignation or retirement without prejudice when received at least two weeks before its effective date.~~

~~————(2) [After giving a notice [of resignation or retirement, an employee may withdraw it on the next working day by notifying the supervisor or an appropriate representative of management in the work unit.~~

~~————(a) If the withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.~~

~~————(b) After the close of the next working day following submission, withdrawal of a resignation or retirement may occur only with the consent of agency management.~~

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) Management shall send the employee notice of intent to separate to the employee's last known address.

(b) The employee shall have the right to appeal separation to the agency head within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

(c) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment

plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated, including positions impacted through bumping;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;

(d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(e) When more than one employee is affected, employees shall be listed in order of retention points.

(f) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) temporary employees in schedule IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is separated due to a RIF shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) An employee notified of separation due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer[~~-, unless discharged for cause under these rules,~~] shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement

Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~2017]

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-~~17~~; 67-19-18

**Human Resource Management,
Administration
R477-14
Substance Abuse and Drug-Free
Workplace**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41510

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the name of the procedural instructions document, clarify edits, and remove and include citations to statute.

SUMMARY OF THE RULE OR CHANGE: The changes revise Subsection R477-14-1(12) to accurately reflect the title of the working document, add "or" in Subsection R477-14-1(15), remove statutory citation in Subsection R477-14-2(3), clarify language regarding records in Subsection R477-14-3(2), and update statutory citations in the annotations block at the end of the text.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-33 and Section 67-19-34 and Section 67-19-35 and Section 67-19-36 and Section 67-19-37 and Section 67-19-38 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-14. Substance Abuse and Drug-Free Workplace.

R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

(7) Employees are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

(8) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing ~~Manual~~ Policy and Procedures.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(15) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level; or

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. [~~See Section 67-19-33.~~]

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(7) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(8) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

- (i) the judicial system;
- (ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Drug and Alcohol Test Records.

(1) A separate confidential file of drug and alcohol test results and documents related to the last chance agreements shall be maintained and stored in the agency human resource field office.

(2) ~~Files~~ Test results shall be retained in accordance with the retention schedule.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2014]~~ 2017

Notice of Continuation: October 31, 2016

Authorizing, and Implemented or Interpreted Law: 63G-2-3; 67-19-6; 67-19-18; 67-19-33; 67-19-34; 67-19-35; [63G-2-3]67-19-36; 67-19-37; 67-19-38

Human Resource Management,
Administration
R477-15
Workplace Harassment Prevention

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41511

FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify edits.

SUMMARY OF THE RULE OR CHANGE: The changes clarify in Subsection R477-15-1(2) that the rule may be violated even if law is not and clarify Subsection R477-15-6(1) regarding responsibilities and reporting of harassment training.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: E.O. No. 2006-12 "Prohibiting Unlawful Harassment" and Section 63G-2-305 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-15. Workplace Harassment Prevention.

R477-15-1. Policy.

It is the policy of the State of Utah to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state or federal law.

(1) Workplace harassment includes the following subtypes:

(a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.

(2) An employee may be subject to discipline for violating workplace policies, even if:

(a) the conduct occurs outside of scheduled work time or work location[-]; or[+]

(b) the the conduct is not sufficiently severe to [warrant]constitute a [finding]violation of [unlawful harassment]law.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

R477-15-2. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

R477-15-3. Complaint Procedure.

Management shall permit employees who allege workplace harassment, retaliation, or both to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Employees who feel they are being subjected to workplace harassment, retaliation, or both should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify a witness(es), if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

R477-15-4. Investigative Procedure.

(1) When warranted investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

R477-15-5. Workplace Harassment Records.

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

R477-15-6. Training.

(1) DHRM shall provide employees training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by [~~DHRM and~~]the Division of Risk Management.

(b) Agencies shall ensure [~~updated or refresher~~]employees complete workplace harassment prevention training [~~is provided to employees upon hire and at least every two years thereafter.~~

(c) [~~Training shall be developed and provided by qualified individuals.~~

~~(d)~~ Training records shall be [~~maintained,~~]submitted to DHRM including who provided the training, who attended the training and when they attended it.

KEY: administrative procedures, hostile work environment
Date of Enactment or Last Substantive Amendment: [July 1, 2016]2017
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-305; E.O. No. 12 "Prohibiting Unlawful Harassment" (December 2006)

Human Resource Management,
Administration
R477-16
Abusive Conduct Prevention

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41512
FILED: 04/26/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify edits.

SUMMARY OF THE RULE OR CHANGE: The changes clarify Subsection R477-16-1(1)(c) to be more in line with statute and clarify Subsection R477-16-4(1) regarding responsibilities and reporting of harassment training.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-44 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/08/2017 09:00 AM, Senate Building, 420 N State Street, Kletting Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.

R477-16. Abusive Conduct Prevention.

R477-16-1. Policy.

It is the policy of the State of Utah to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

(a) was intended to cause intimidation, humiliation, or unwarranted distress;

(b) exploits a known physical or psychological disability; or

(c) results in substantial physical or psychological harm caused by intimidation, humiliation or unwarranted distress.

(2) A single act does not constitute abusive conduct unless it is especially severe and egregious.

(3) Abusive conduct does not include:

(a) appropriate disciplinary or administrative actions;

(b) coaching or work-related feedback;

(c) reasonable work assignments or job reassignments; or

(d) reasonable differences in styles of management, communication, expression or opinion.

(4) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(5) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

R477-16-2. Complaint Procedure.

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness(es), if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

R477-16-3. Investigative Procedure.

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

(3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

R477-16-4. Abusive Conduct Training.

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, and options available under rule.

(b) ~~[Updated or refresher]~~ Agencies shall ensure employees complete training ~~[will be provided to employees]~~ upon hire and at least every two years thereafter.

(c) Training records shall be ~~[maintained]~~ submitted to DHRM including who provided the training, who attended the training and when they attended it.

KEY: abusive conduct, administrative procedures, hostile work environment

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2015]~~ 2017

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-44

Human Services, Administration,
Administrative Services, Licensing
R501-17
Adult Foster Care

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41482

FILED: 04/18/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There is nothing in licensing statute that defines this as a human service program, and there are currently no licenses of this type issued. There is also no legislative fee associated with this human services program. After consulting with Aging and Adult Services and Division of Services for People with Disabilities, it is determined that this rule is simply no longer needed or used.

SUMMARY OF THE RULE OR CHANGE: This rule is no longer used. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 62A, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.
- ◆ **LOCAL GOVERNMENTS:** There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.
- ◆ **SMALL BUSINESSES:** There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no financial impact as there are no issued licenses of this kind by our agency, no statutory references, and no legislatively-approved fees related to this license. Repealing this changes nothing for anyone.

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

HUMAN SERVICES
 ADMINISTRATION, ADMINISTRATIVE SERVICES,
 LICENSING
 195 N 1950 W 1ST FLR
 SALT LAKE CITY, UT 84116
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
- ◆ Janice Weinman by phone at 385-321-5586, by FAX at 801-538-4553, or by Internet E-mail at jweinman@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Diane Moore, Director

R501. Human Services, Administration, Administrative Services, Licensing.

~~[R501-17. Adult Foster Care.~~

~~R501-17-1. Authority and Purpose.~~

~~_____ Pursuant to 62A-2-101 et seq., the purpose of this rule is to define standards and procedures by which the Office of Licensing, hereinafter referred to as Office, shall license adult foster care.~~

~~R501-17-2. Objective.~~

~~_____ A. These standards are to establish the minimum requirements for licensure of all Department of Human Services, hereinafter referred to as DHS, adult foster care homes.~~

~~_____ B. Adult foster care services are provided pursuant to the Division of Aging and Adult Services, hereinafter referred to as DAAS, according to 62A-3-104(2)a.~~

~~R501-17-3. Definition.~~

~~_____ "Adult foster care" means the provision of care in homes which are conducive to the physical, social, emotional and mental health of disabled or elderly adults who are temporarily unable to remain in their own homes due to abuse, neglect or exploitation as defined in 62A-3-301.~~

~~R501-17-4. License Procedure.~~

~~_____ Any adult may apply to DAAS or the Office to become an adult foster care provider. The applicant will be provided with an application, a copy of rules and advised of licensing requirements and procedure. The applicant must meet the requirements for a license and for a DAAS contract.~~

~~R501-17-5. Adult Foster Care Provider and Family Requirements.~~

~~_____ A. Personal characteristics of adult foster care provider and family, at a minimum, shall be as follows:~~

~~_____ 1. Provider shall be in good health and able to provide physical and emotional care to the consumer.~~

~~_____ a. Provider shall have a physical examination by a medical practitioner at initial licensing.~~

~~_____ b. Provider shall self-certify his or her personal physical condition annually.~~

~~_____ 2. Provider shall be an emotionally stable and responsible person 21 years of age or older. Both legally married couples and single individuals, may be adult foster providers.~~

~~_____ 3. Provider shall have sufficient income to maintain the family and shall not depend solely on the foster care payment.~~

~~_____ 4. DAAS employees shall not be approved as foster providers. In emergency situations an employee may provide care with approval of the DAAS Regional Director.~~

~~5. A provider must follow Office rules and DAAS rules and work cooperatively with the Office, DAAS, State, Court, and law enforcement officials.~~

~~6. A provider shall read, sign and follow the current DHS Provider Code of Conduct.~~

~~7. A provider shall comply with the requirements of R501-14 and R501-18.~~

~~B. Family Composition and Consumer Placement:~~

~~1. The number, ages, and gender of persons in the home shall be taken into account as they may be affected by or have an affect upon the adult.~~

~~2. Provider shall have no more than six children, including the provider's children under 18 years of age, living in the home.~~

~~3. No more than two children under two years of age, shall reside in an adult foster home, including natural children.~~

~~4. No more than three unrelated adults shall be placed in the home. Composition may be flexible and consider the needs of each adult and the family or provider.~~

~~5. No other programs providing care for children, youth or adults shall operate out of the same home.~~

R501-17-6. Physical Aspects of Home.

~~A. The adult foster home shall be located where school, church, recreation, and other community facilities are available or accessible through arranged transportation.~~

~~B. The physical facilities of the adult foster home shall be clean, in good repair, and provide for normal comforts in accordance with accepted community standards.~~

~~C. The adult foster home shall be free from health and fire hazards:~~

~~1. The adult foster home shall have at least one smoke detector on each floor.~~

~~2. The adult foster home shall have at least one approved fire extinguisher. The extinguisher shall be serviced annually.~~

~~3. The adult foster home shall have at least one adequately supplied first aid kit.~~

~~D. There shall be sufficient bedroom space in accordance with the following:~~

~~1. rooms are not shared by consumers of the opposite sex, and~~

~~2. each consumer shall have his or her own bed none of which shall be portable. Beds shall be solidly constructed, and provided with clean linens at least weekly or when soiled.~~

~~3. Bedrooms shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.~~

~~4. Closet and dresser space shall be provided within the bedroom for the consumer's personal possessions and for a reasonable degree of privacy.~~

~~E. Building and grounds:~~

~~1. There shall be adequate indoor and outdoor space for recreational activities.~~

~~2. All indoor and outdoor areas shall be maintained in a safe and sanitary condition.~~

~~3. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.~~

~~F. Equipment:~~

~~1. All furniture and equipment shall be maintained in a safe and sanitary condition.~~

~~2. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual consumer needs.~~

R501-17-7. Nutrition.

~~A. Daily meals and snacks shall meet the component, quality, and quantity of the Recommended Daily Allowance for adults.~~

~~B. The provider shall provide for specialized diet needs as required by the consumer.~~

~~C. Sanitary drinking water shall be available at all times.~~

R501-17-8. Emergency Plans.

~~A. Provider shall have a written plan of action for emergencies and disasters to include the following:~~

~~1. evacuation with a pre-arranged site for relocation;~~

~~2. transportation and relocation of consumers when necessary;~~

~~3. supervision of consumers after evacuation or relocation; and~~

~~4. notification of appropriate authorities.~~

~~B. Provider shall have a written plan for medical emergencies with arrangements for medical transportation and care.~~

~~C. In case of emergency the provider shall notify the emergency contact person or appropriate authorities.~~

~~D. Provider shall notify the consumer's physician and DHS worker of any accidents or injuries which require medical treatment.~~

~~E. Other non-medical emergencies shall be reported to the appropriate authorities.~~

~~F. The provider shall immediately report any serious illness, injury or death of a consumer to the DAAS Regional office.~~

R501-17-9. Infectious Disease.

~~A. The provider shall have policies and procedures designed to prevent or control infectious and communicable diseases in the home.~~

~~B. The provider shall receive training in the control of infectious diseases that meet Department of Health criteria.~~

R501-17-10. Medication.

~~A. Consumers shall be responsible for administering their own medication.~~

~~B. All adult household members responsible for medications shall keep them in a safe and proper place.~~

~~C. Medication shall not be discontinued without the approval of the physician. Unusual reactions or side effects shall be reported to the physician.~~

~~D. Medication shall not be used for behavior management or restraint unless prescribed by a physician with notification to the DAAS worker.~~

R501-17-11. Transportation.

~~A. The provider shall provide or arrange necessary transportation.~~

~~B. Transportation shall be provided according to state safety requirements.~~

~~C. Drivers of vehicles shall have a valid Utah drivers license and observe Utah State driving regulations.~~

~~D. Transportation shall be provided in vehicles which have current registration and safety inspection.~~

~~E. There shall be a means of transportation in case of emergency.~~

~~F. Each vehicle shall be equipped with an adequately supplied first aid kit and an emergency list which includes the names of occupants and the name, telephone number and address of the provider.~~

R501-17-12. Behavior Management.

~~A. The provider shall provide appropriate supervision at all times.~~

~~B. The provider shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, refuse rest or visits with family, humiliating or frightening methods to control the actions of consumers.~~

~~C. The provider shall inform the DAAS worker of any extreme or repeated behavioral problems.~~

R501-17-13. Consumer Rights in Adult Foster Care.

~~A. A description of the consumer's rights and responsibilities shall be provided and explained when the adult is admitted to the home. When appropriate, the adult shall be informed verbally of this policy to his or her understanding.~~

~~B. The provider shall adhere to the following:~~

~~1. allow the consumer to eat meals with the family, and allow the consumer to eat the same food as the family unless the consumer has a special prescribed diet,~~

~~2. allow the consumer to participate in family activities,~~

~~3. protect confidentiality of information,~~

~~4. not make copies of consumer records,~~

~~5. explain consumer responsibilities, including household tasks, privileges, and rules of conduct,~~

~~6. not allow discrimination,~~

~~7. treat the consumer with dignity,~~

~~8. allow the right to communicate with family, attorney, physician, clergyman, and others, except where documented to be clinically contraindicated,~~

~~9. have a list of people whose visitation rights have been restricted by legal guardian or DAAS worker,~~

~~10. allow the right to send and receive mail, and~~

~~11. allow the consumer to manage his or her own fiscal affairs, unless the consumer has an approved representative, i.e., conservator to assist them with the management of his or her money.~~

R501-17-14. Record Keeping.

~~A. The provider shall maintain the following:~~

~~1. current license certificate,~~

~~2. copy of contracts with DAAS,~~

~~3. medical report, Form ASP19, and~~

~~4. documentation of training.~~

~~B. The provider shall maintain a file for each consumer, to include the following:~~

~~1. biographical information including a current emergency contact name and telephone number,~~

~~2. documentation of each consumer to include the following:~~

~~a. physical, visual, and dental examinations,~~

~~b. emergencies requiring medical treatment,~~

~~c. medication, when applicable, and~~

~~d. record of significant expenditures for the consumer.~~

~~KEY: licensing, human services~~

~~Date of Enactment or Last Substantive Amendment: January 16, 2001~~

~~Notice of Continuation: October 18, 2012~~

~~Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.]~~

School and Institutional Trust Lands,
Administration
R850-160
Withdrawal of Trust Lands from Public
Target Shooting

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41558

FILED: 05/01/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Section 53C-2-105, which was amended by S.B. 72 from the 2016 General Session, the purpose of this new rule is to establish a process for the withdrawal of trust lands from public target shooting and to withdraw 1,533.68 acres of trust land in the Eastern Lake Mountains area from public target shooting.

SUMMARY OF THE RULE OR CHANGE: There is a history of continued abuse and degradation of trust assets due to illegal dumping and littering, use of unsafe targets, damage to sensitive archaeological sites, wildfires, and risk to public safety that stems from public target shooting. This rule sets forth general definitions, exemptions, planning, and consultation processes required for the withdrawal of specifically designated trust lands from public target shooting. The rule also withdraws 1,533.68 acres of trust lands in the Eastern Lake Mountains area from public target shooting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53C-2-105

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that all costs for implementation and enforcement of the proposed rule for items such as signs, maps, any needed restoration or rehabilitation work, or enforcement of the target shooting closure will be covered with existing personnel and budgets or through partnerships with local government and federal

land managing agencies. Due to the unpredictable nature of wildfires and the many factors such as weather conditions, terrain, fuel load, and proximity to structures which influence their size and scope, it is challenging to quantify an estimate of these potential cost savings to the state. However, it may be helpful to note that in 2012, the Dump Fire, which was caused by target shooters in close proximity to this proposed closure area and ultimately consumed 5,507 acres, resulted in total fire suppression costs of \$2,100,000 to federal, state, and local government entities. It is anticipated that implementation of this rule will assist in minimizing risk of future catastrophic fires in the area and thereby present potential savings to the state.

◆ **LOCAL GOVERNMENTS:** It is anticipated that all costs for enforcement of the target shooting closure through the local sheriff's office will be covered with existing personnel and budgets. Therefore, this proposed rule will have no impact on local government budgets.

◆ **SMALL BUSINESSES:** Due to the relatively small size of this proposed closure, the large amount of both public and trust land in the immediate area which remains open to public target shooting, and the anticipated development of a public shooting range in the area by Utah County, School and Institutional Trust Lands Administration (SITLA) asserts that this proposed rule will have no impact on the sale of merchandise such as firearms, targets, or ammunition by small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Given the ample public shooting opportunities which remain available in the immediate area on public lands, trust lands, and at the public shooting range to be developed by Utah County, SITLA sees no financial impact, positive or negative, to any other persons or entities. Those who desire to pursue target shooting in the immediate area may still do so in a responsible manner with no additional burden of travel or other expense. It is anticipated that the public target shooting range which is being developed by Utah County, independent of this proposed rule, will be free to the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The closure of these trust lands from public target shooting under the proposed rule should not create any compliance costs for affected persons. There are other public lands in the area that will still be available for public target shooting, as well as the future public shooting range to be developed by Utah County.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As Director of SITLA, I take my responsibility to generate revenue for the trust beneficiaries very seriously. Part of that responsibility includes protecting the assets of the trust from abuse or degradation. Another part of that responsibility includes fostering a business-friendly environment. I believe that with the implementation of this rule, we have struck the right balance of protecting our valuable assets without harming the opportunity for business to flourish. Although we are withdrawing a relatively small amount of trust acreage

from public target shooting, it will nevertheless remain open for other forms of responsible public recreation such as ATV riding, hunting, hiking, mountain biking, and sightseeing. The vast majority of trust lands and other public lands in the immediate area of this specific closure will remain open to public target shooting as well. Given these ample opportunities, I do not foresee any financial impact to the recreation industry or other business by the implementation of this rule. Furthermore, promulgation of this rule will help enhance public safety in the area, lower the risk of catastrophic fires, protect vulnerable archeological sites, and provide for a cohesive management and law enforcement strategy with other adjoining landowners.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: David Ure, Director

R850. School and Institutional Trust Lands, Administration.
R850-160. Withdrawal of Trust Lands from Public Target Shooting.

R850-160-100. Authorities.

The activities of the School and Institutional Trust Lands Administration are authorized by Sections 6, 7, 8, 10 and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and the Utah Trust Lands Management Act, Section 53C-1-101 et seq. This rule is specifically authorized by Section 53C-2-105 which authorizes the director to withdraw trust lands from public target shooting through rule enactment.

R850-160-200. Definitions.

For the purposes of this rule:

1. "Public Target Shooting" means the firing, discharging, or shooting of a firearm, bow, crossbow, or any other type of instrument designed to propel or throw projectiles or missiles.

2. "Withdrawal Area" means trust lands withdrawn from public target shooting.

R850-160-300. Exemptions.

This rule does not apply to:

1. Lawful hunting activities;

2. law enforcement activities by peace officers in the performance of their official duties;
3. discharging a firearm in the lawful defense of person or property;
4. use of the withdrawal area in conjunction with the administration or operation of a valid lease or permit; or
5. administrative use of the withdrawal area by the agency.

R850-160-400. Planning.

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

1. Submit proposals to withdraw trust lands from public target shooting to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review; and
2. evaluate and respond to comments received through the RDCC process.

R850-160-500. Withdrawal Process.

1. Prior to Board review of a rule that withdraws land from public target shooting, the director shall consult with:
 - (a) The sheriff of the county where the withdrawal area is located; and
 - (b) representatives from leading sports shooting organizations.
2. The director shall provide the board, for its review, the legal description of the withdrawal area and a justification statement identifying the criteria for withdrawal.
3. Each withdrawal area shall be codified as a new section under this rule and shall include a legal description of the withdrawal area.

R850-160-600. Identification of Withdrawal Area.

1. Upon codification of each withdrawal area, the agency shall:
 - (a) Post signs delineating the boundary of the withdrawal area; and
 - (b) make publicly available a map detailing the withdrawal area.

R850-160-700. Eastern Lake Mountains Withdrawal.

The following trust lands are withdrawn from public target shooting:

1. Eastern Lake Mountains, Utah County, described as: Township 7 South, Range 1 East, Salt Lake Base and Meridian, Section 6: E1/2NE1/4, NW1/4, NW1/4NE1/4, W1/2SW1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 21: Lots 6, 7, 8, 9, 10, 11; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 22: S1/2 of Lot 9, NE1/4 of Lot 9, S1/2 of Lot 10; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 23: Lots 1, 2, 6, 7, 8, 9, 10, 11, 12, SE1/4NE1/4, SE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4NE1/4, SE1/4NE1/4NE1/4NE1/4, SE1/4SW1/4NE1/4, SE1/4SW1/4SW1/4NE1/4, SE1/4NE1/4SW1/4NE1/4, SE1/4 of Lot 3, SE1/4SW1/4 of Lot 3, SE1/4NE1/4 of Lot 3, SE1/4 of Lot 5, SE1/4SW1/4 of Lot 5, SE1/4NE1/4 of Lot 5; Township 7 South, Range 1 West, Salt Lake Base and Meridian, Section 27: E1/2NE1/4, NW1/4, NW1/4NE1/4; Township 7 South, Range 1 West, Salt Lake Base and Meridian,

Section 29: NE1/4NE1/4, SE1/4NE1/4, NE1/4SE1/4, N1/2SE1/4SE1/4; Containing 1,533.68 acres, more or less.

KEY: land withdrawal, public target shooting

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 53C-2-105

Science Technology and Research Governing Authority, Administration **R856-7**

USTAR Definition of High-Quality Job

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41481

FILED: 04/17/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to measure the economic impact of Utah Science Technology and Research (USTAR) programs in terms of jobs created, a definition of a "high-quality job" is required in order to measure impacts against a known benchmark. This definition provides that benchmark. Additionally, Subsection 63M-2-302(1)(c) requires the USTAR governing authority to define high-quality jobs.

SUMMARY OF THE RULE OR CHANGE: "High-quality job" means a job that provides compensation of more than 125% of a county average wage as reported by the Department of Workforce Services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(c)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** By implementation of a standard for high-paying jobs, USTAR will be better able to articulate and measure the effectiveness of current programs or identify additional programs which may be required. This rule provides a definition. Therefore, there is no additional cost or saving associated with this administrative rule and no cost impact to the state budget.

◆ **LOCAL GOVERNMENTS:** By implementation of a standard for high-paying jobs, USTAR will be better able to articulate and measure the effectiveness of current programs and benchmark them against county average wages, therefore offering the ability to capture metrics at the county-level. This rule provides a definition. Therefore, there is no additional cost or savings associated with this administrative rule and no cost impact to local government.

◆ **SMALL BUSINESSES:** This rule provides a USTAR definition of high-paying jobs. Therefore, there is no cost or saving impact associated with this administrative rule to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule provides a USTAR definition of high-paying jobs. Therefore, there is no cost or saving impact associated with this administrative rule to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule provides a USTAR definition of high-paying jobs. Therefore, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This administrative rule allows the USTAR to better capture the economic impact of jobs created by USTAR programs and is required per Subsection 63M-2-302(1)(c).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY
ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Thom Williams by phone at 801-538-8633, or by Internet E-mail at thomwilliams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/30/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-7. USTAR Definition of High-Quality Job.

R856-7-1. Authority.

Subsection 63M-2-302(1)(c) requires the USTAR governing authority define high-quality jobs.

R856-7-2. Definition.

(1) "High-quality job" means a job that provides compensation of more than 125% of a county average wage as reported by the Department of Workforce Services.

KEY: high-quality jobs, USTAR, high-paying jobs

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Science Technology and Research Governing Authority, Administration **R856-8**

USTAR Lean Launchpad Program Reimbursement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41491

FILED: 04/25/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: USTAR's Lean Launchpad Program (copyright) (LLP) is the adoption of an established curriculum and methodology that provides mentoring, entrepreneurial training, and a methodology to assess the potential for taking a technology to market.

SUMMARY OF THE RULE OR CHANGE: The USTAR LLP is designed to provide product-market fit assessment through a training course to private entities and researchers who do not otherwise have access to the curriculum through the programs that are administered at Brigham Young University and the University of Utah to ensure there is no duplication of programs from other state entities (Section 63M-2-302) and assure that services are available to private entities and researchers across the state.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-503(1)(b) and Subsection 63M-2-504(1)(a) and Subsection 63M-2-504(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--Adoption of this administrative rule does not require additional budget outlays.

◆ LOCAL GOVERNMENTS: No local budget impact is anticipated because this program is facilitated by USTAR and only impacts businesses.

◆ SMALL BUSINESSES: Small businesses will now be eligible for USTAR's LLP (copyright) curriculum and methodology that provides mentoring, entrepreneurial training, and a methodology to assess the potential for taking a technology to market. This program will enhance small business competitiveness in obtaining private and public follow-on investment. It is not anticipated that businesses will experience a savings as a result of this mentoring but will potentially enhance their chances of becoming commercially successful. There is no cost to businesses selected to participate.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No local fiscal impact to persons other than small businesses or businesses is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Companies selected to participate are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five years following initial participation in the LLP. Companies must maintain eligibility status for the LLP until the cohort is complete and first-year reporting has been completed or repayment of the grant may be required. Compliance costs are approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Subsections 63M-2-504(1)(a) and (1)(b) instruct the USTAR governing authority to provide mentoring, networking, and entrepreneurial training for a private entity or a researcher to help take a new technology to market. Subsection 63M-2-503(1)(b) provides support to a private entity or a researcher in assessing the potential for bringing a technology to market. Subsection 63M-2-504(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR. This administrative rule fulfills these requirements.

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

SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY
ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christopher Pieper by phone at 801-366-0353, or by Internet E-mail at cpieper@utah.gov
- ◆ Peter Jay by phone at 801-372-3969, or by Internet E-mail at pjay@utah.gov
- ◆ Thom Williams by phone at 801-538-8633, or by Internet E-mail at thomwilliams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-8. USTAR Lean Launchpad Program Reimbursement.

R856-8-1. Authority.

Subsections 63M-2-504(1)(a) and (1)(b) instruct the governing authority to provide mentoring, networking and

entrepreneurial training for a private entity or researcher to help take a new technology to market. Subsection 63M-2-503(1)(b) provide support to a private entity or researcher in assessing the potential for bringing a technology to market. Subsection 63M-2-504(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

R856-8-2. Purpose.

(1) USTAR's Lean Launchpad Program (copyright) (LLP) is the adoption of an established curriculum and methodology that provides mentoring, entrepreneurial training and a methodology to assess the potential for taking a technology to market. The USTAR LLP program is designed to provide this methodology through a training course to private entities and researchers who do not have access to the curriculum through the programs that are administered at Brigham Young University and the University of Utah to ensure there is no duplication of programs from other state entities (Section 63M-2-302), but assure that services are available to private entities and researchers across the State.

(2) Application to USTAR LLP is defined in Utah Administrative Rule R856-8. This rule defines the competitive process for grant funding associated with the USTAR LLP program. The USTAR LLP grants are limited to provide reimbursement of expenses directly associated with completing the course. Use of funds are limited to travel and associated expenses for conducting the interviews required for completion of the course. Funds cannot be used for compensation for team members or other company expenses.

R856-8-3. Definitions.

(1) "Applicant" means a private entity team or researcher team has been accepted into a USTAR LLP cohort.

(2) "Awardee(s)" means a team that has been selected for grant associated with participation in USTAR LLP.

(3) "Grant" means an award of funds for a specific purpose.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and

(b) is represented by persons at least 18 years old.

(5) "Product-Market fit" means the market demand for a specific technology.

(6) "Researcher" means an employee of a university that conducts research.

(7) "Team" means the three person team from an existing company or research group that includes an entrepreneurial lead, technical lead and market lead.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) "University" means any public or nonprofit institution of higher education located in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "USTAR Lean Launchpad" means the delivery of the Lean Launchpad curriculum through a formal course.

(12) "USTAR LLP Grant" means an award for funding to support the activities of a team in a USTAR LLP cohort.

R856-8-4. Eligibility Criteria.

(1) Teams must have been selected for a USTAR LLP cohort and be meeting the requirements of the contract at the time of application.

R856-8-5. Application Form and Submission Guidelines.

(1) USTAR will provide the following instructions for applicants:

- (a) A general procedure for submitting an application.
- (b) Instructions for application content, which may include:
 - (i) Justification for grant funding for participation in USTAR LLP.
 - (ii) Specific uses of the funds.
- (2) Availability of other sources of funding.
 - (a) Description of the application evaluation process.
 - (b) Instructions for reporting project results and completing annual follow-up surveys.
- (3) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.

R856-8-6. Application Review Procedure.

- (1) All applications will be screened by USTAR staff for eligibility.
- (2) Applications will be evaluated by USTAR staff.
- (3) Final approval will be by the Executive Director USTAR.

R856-8-7. Evaluation and Award Criteria.

- (1) USTAR staff will use a scoring system to evaluate and rank applications:
 - (a) The scoring criteria will be made available during the USTAR LLP course;
 - (b) The scoring system will be designed to assess each application and may include:
 - (i) Commitment of team to the LLP curriculum.

R856-8-8. Required Contract.

- (1) USTAR reserves the right to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.
- (2) Unless addressed in the terms and conditions of the contract between company and USTAR, the following provisions shall apply:
 - (a) company must maintain eligibility status for the LLP program until the cohort is complete and first year reporting has been completed.
 - (3) Violations of Subsection R856-2-8(4) of this section may require repayment of the grant.

R856-8-9. Contract Modifications.

- (1) University and Company may request a modification to the terms of an LLP participation agreement.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) substitution or addition of a team member due to an emergency, termination of employment with the company, or inability of a team member to fulfill responsibilities provided the new team member is approved by LLP instructors and USTAR staff;

(4) Substantive changes must be approved by the USTAR executive director.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the participation agreement.

R856-8-10. Reporting.

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial participation in the LLP program.

KEY: Utah Science Technology and Research (USTAR), Lean Launchpad Program (LLP)

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)

Transportation, Program Development **R926-2** Evaluation of Proposed Additions to or Deletions from the State Highway System

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41484

FILED: 04/19/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Transportation completed a five-year review of this rule in September 2016. After the review, the Department determined that the rule is still necessary, but that it needs to be amended and updated to conform to current policy and practices.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies the purpose of the rule, eliminates definitions for terms that are no longer used, eliminates text that sets deadlines and time frames that are no longer valid, eliminates text that makes the Transportation Commission responsible to perform tasks that are now performed by the Department, and makes several technical and grammatical corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-4-102 and Section 72-4-102.5

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Department does not anticipate that this amendment will have any impact on the state's budget. The amendment addresses procedures that are internal to the Department and will not have any impact on parties external to the Department, fiscal or otherwise.

◆ LOCAL GOVERNMENTS: The Department does not anticipate that this amendment will have any impact on the budgets of local governments. The amendment addresses procedures that are internal to the Department and will not have any impact on parties external to the Department, fiscal or otherwise.

◆ SMALL BUSINESSES: The Department does not anticipate that this amendment will have any impact on the budgets of small businesses. The amendment addresses procedures that are internal to the Department and will not have any impact on parties external to the Department, fiscal or otherwise.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate that this amendment will have any impact on the budgets of persons other than small businesses, businesses, or local government entities. The amendment addresses procedures that are internal to the Department and will not have any impact on parties external to the Department, fiscal or otherwise.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment makes changes to procedures within the Department. No persons external to the Department will be affected by this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will not have any fiscal impact on business.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

R926. Transportation, Program Development.

R926-2. Evaluation of Proposed Additions to or Deletions from the State Highway System.

R926-2-1. Authority.

This rule establishes the procedure ~~[and criteria]~~ by which highways shall be considered for the addition to or deletion from the state highway system as required by Utah Code Ann. Section 72-4-102.~~[5.]~~

R926-2-2. Purpose.

Using the criteria for state highways as provided in Section 72-4-102.5, the department will determine whether to recommend the addition of or deletion from the state highway system a roadway or segment of roadway. The purpose of this rule is to establish the following:

- (1) ~~[a]A~~ process for a highway authority to propose additions to or deletions from the state highway system~~;~~ and
- (2) ~~[a]A~~ procedure for evaluating requested additions to or deletions from the state highway system~~;~~ and
- ~~—————(3) a set of criteria by which proposed changes shall be consistently evaluated.]~~

R926-2-3. Definitions.

~~[————— The terms used in this rule to describe different types of highways shall have the same meaning as provided in Utah State Code under Section 72-4-102.5 which is the same as provided under the Federal Highway Administration Functional Classification Guidelines.]~~

- (1) "C[e]ommission" means the Utah Transportation Commission;
- (2) "D[e]partment" means the Utah Department of Transportation;
- (3) "L[ocal] H[ighway] A[uthority]" means the local political subdivision, such as town, city or county responsible for the highway system in that jurisdiction;

~~[—————(4) "tourist area" means an area of the state frequented by tourists for the purpose of visiting national parks, national recreation areas, national monuments, or state parks;]~~

(4) "T[r]ansfer" means the process of adding or deleting a segment of roadway from one government's highway system to or from another government's highway system;

~~[—————(6) "urban area" has the same meaning as provided under the Federal Highway Administration Functional Classification Guidelines.]~~

R926-2-4. Notifications.

The following notifications shall be made regarding the T[r]ansfer of highways.

- (1) The D[e]partment will ~~[annually, on or before September 1st]~~ notify the local highway authorities of its intent to collect proposed changes to the state system annually.~~[with the responding proposals requested to be returned to the department by December 1st.]~~

~~_____ (2) The department shall no later than June 30th of each year notify the Transportation Interim Committee of the Legislature of any proposed transfers.]~~

~~(2)(3) [The commission shall notify the public and any affected local highway authority of any transfer under consideration and provide the opportunity to discuss that proposal at an open public meeting of the commission.]The Department will ensure an affected local highway authority is notified of any transfer under consideration by the Commission at an open public meeting.~~

~~(3)(4) As provided in 72-4-102(4)(a), [F]the C[e]ommission or the Department shall, no later than November 1[st] of each year, notify and provide to the Transportation Interim Committee of the Legislature:~~

- ~~(a) a list of the highways recommended for I[t]ransfer;~~
- ~~(b) a list of potential I[t]ransfers that are currently under consideration; and~~
- ~~(c) a list of I[t]ransfers that were proposed but not agreed to by the D[e]partment or L[ocal] H[ighway] A[uthority].~~

R926-2-5. Procedure for Requesting an Addition to or a Deletion from the State Highway System.

A request for the addition to or deletion of a highway from the state highway system shall be made by the Local Highway Authority~~[government agency]~~ currently responsible for the highway, a member of the Utah Transportation Commission or the Utah Department of Transportation. The request shall be conveyed to the Utah Department of Transportation and will be directed to the region director responsible for the area where the highway is primarily located.

R926-2-6. Procedure for Evaluating Proposed Changes to the State System.

The procedure for evaluating proposed changes to the state highway system is as follows:

- ~~(1) The [F]Region [d]Director shall:~~
 - ~~(a) notify all impacted local government agencies of the proposed change;~~
 - ~~(b) make a preliminary review of the proposed change that may include but not be limited to:

 - ~~(i) determine of what, if any funding will accompany the road I[t]ransfer;~~
 - ~~(ii) determine of what, if any, physical improvements may be necessary on the roadway before the I[t]ransfer is completed;~~
 - ~~(iii) secure a written statement from the L[ocal] Highway Authority[government agency] regarding the proposed I[t]ransfer;~~
 - ~~(iv) make a judgment as to which highway [agency]authority has the best operational abilities for maintenance and construction activities on the proposed route; and~~
 - ~~(v) determine if the highway continuity and the efficiency of state highway system operation and maintenance activities is impacted by the proposed change.~~~~
 - ~~(c) forward the proposed I[t]ransfer along with the results of the preliminary review to the Program Development[Systems Planning and Programming-]Director; and~~
 - ~~(d) present and discuss potential road I[t]ransfers at the regularly scheduled monthly Transportation Commission meetings.~~
- ~~(2) The Program Development[Systems Planning and Programming] Director shall review the request from the region director and shall:~~

~~(a) determine if the proposed I[t]ransfer meets the criteria in Utah Code Section 72-4-102.5 to qualify for inclusion on the state highway system and is consistent with statewide practice;~~

~~(b) with the Director of Program Financing, identify the source of funds, if any, proposed to accompany the I[t]ransfer; and~~

~~(c) shall present the evaluation to the C[e]ommission with a recommendation whether the route qualifies for inclusion on the state highway system and any proposed funding considerations;~~

~~(3) The C[e]ommission shall review the recommendation and shall:~~

~~(a) consider the proposed I[t]ransfer at a public meeting where the affected local officials are invited to discuss and comment on the proposed change;~~

~~(b) discuss any funding considerations and the circumstances under which the proposed I[t]ransfer will take place;~~

~~(c) take into account any other factors considered appropriate in consultation with the D[e]partment and L[ocal] H[ighway] A[uthority] impacted;~~

~~(d) approve or reject the proposed change in the state highway system;~~

~~(e) if it approves the I[t]ransfer, make the required changes to the state highway system by resolution; and~~

~~(f) report to the Transportation Interim Committee of the Legislature as detailed in Subsection 926-2-4(3)(4).~~

~~(4) The C[e]ommission may continue to process proposed I[t]ransfers that are currently under consideration by using the same notification and evaluation criteria as presented in this rule.~~

~~(5) As provided in 72-4-102, the State Legislature must approve additions to or deletions from the state highway system.[The State Legislature will review the addition to or deletions from the state highway system and shall approve or disapprove the changes.]~~

~~R926-2-7. Criteria for Inclusion of Highways in the State Highway System.~~

~~Highways requested to be added to or to remain on the state highway system shall be evaluated as follows:~~

- ~~(1) General Criteria:~~
 - ~~(a) The primary function of state highways is to provide for the safe and efficient movement of traffic, while providing access to property is a secondary function.~~
 - ~~(b) The primary function of county and municipal highways is to provide safe and efficient access to property.~~
 - ~~(c) For purposes of this rule, if a highway is within ten miles of a location identified under this section, the location is considered to be served by that highway.~~
- ~~(2) A state highway shall:~~
 - ~~(a) serve a statewide purpose by accommodating interstate movement of traffic or interregion movement of traffic within the state;~~
 - ~~(b) primarily move higher traffic volumes over longer distances than highways under local jurisdiction;~~
 - ~~(c) connect major population centers;~~
 - ~~(d) be spaced so that:

 - ~~(i) all developed areas in the state are within a reasonable distance of a state highway; and~~
 - ~~(ii) duplicative state routes are avoided.~~~~
 - ~~(e) provide state highway system continuity and efficiency of state highway system operation and maintenance activities;~~
 - ~~(f) include all interstate routes, all expressways, and all highways on the National Highway System as designated by the~~

Federal Highway Administration under 23 C.F.R. Section 470, Subpart A, as of January 1, 2005; and

- ~~(g) exclude parking lots, driving ranges, and campus roads.~~
- ~~(3) In addition to the provisions of Subsection (1), in rural areas a state highway shall:~~
 - ~~(a) include all minor arterial highways;~~
 - ~~(b) include a major collector highway that:~~
 - ~~(i) serves a county seat;~~
 - ~~(ii) serves a municipality with a population of 1,000 or more;~~
 - ~~(iii) serves a major industrial, commercial, or recreation areas that generate traffic volumes equivalent to a population of 1,000 or more;~~
 - ~~(iv) provides continuity for the state highway system by providing major connections between other state highways;~~
 - ~~(v) provides service between two or more counties; or~~
 - ~~(vi) serves a compelling statewide public safety interest; and~~
 - ~~(c) exclude all minor collector streets and local roads.~~
 - ~~(4) In addition to the provisions of Subsection (1), in urban areas a state highway shall:~~
 - ~~(a) include all principal arterial highways;~~
 - ~~(b) include a minor arterial highway that:~~
 - ~~(i) provides continuity for the state highway system by providing major connections between other state highways;~~
 - ~~(ii) is a route that is expected to be a principal arterial highway within ten years; or~~
 - ~~(iii) is needed to provide access to state highways; and~~
 - ~~(c) exclude all collector highways and local roads.~~
 - ~~(5) In addition to the provisions of Subsections (2) and (3), in tourist areas, a state highway:~~
 - ~~(a) shall include a highway that:~~
 - ~~(i) serves a national park or a national recreational area; or~~
 - ~~(ii) serves a national monument with visitation greater than 100,000 per year; or~~
 - ~~(b) may include a highway that:~~
 - ~~(i) serves a state park with visitation greater than 100,000 per year; or~~
 - ~~(ii) serves a recreation site with a visitation greater than 100,000 per year.]~~

KEY: transportation planning, highway planning, highways, transportation
Date of Enactment or Last Substantive Amendment: ~~July 28, 2006~~ 2017
Notice of Continuation: September 8, 2016
Authorizing, and Implemented or Interpreted Law: 72-4-102.5

Transportation, Preconstruction
R930-9
Detection and Elimination of
Unauthorized Discharges into Drainage
Systems, Enforcement of Water Laws,
Sanctions for Violation, and Permitting

NOTICE OF PROPOSED RULE
(New Rule)

DAR FILE NO.: 41485
 FILED: 04/19/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Transportation has the authority to detect, investigate, eliminate, and enforce against any non-storm water discharges (including illegal dumping) that it identifies in its storm drainage system or within its right-of-way. The Department also has the authority to create an effective regulatory mechanism for the Department to implement actions that meet the requirements of the Department's Utah Pollutant Discharge Elimination System (UPDES) Municipal Separate Storm Sewer System (MS4) Permit. The purpose of this rule is to create that regulatory mechanism.

SUMMARY OF THE RULE OR CHANGE: This rule recognizes the Department's authority to create a regulatory mechanism for the Department to implement actions that meet the requirements of the Department's UPDES MS4 Permit; identifies steps the Department may take to enforce the rule; and identifies fees the Department may charge for tie-ins to the Departments storm water systems, for unlawful discharges through the systems, for illicit connections to the systems, and for other unauthorized uses of the systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-7-102 and Section 72-7-104 and Subsection 63G-3-201(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ♦ **THE STATE BUDGET:** This rule provides a mechanism through which it may charge fees to third parties for using the Department's storm water systems, and to penalize third parties that direct unlawful discharges through the systems or make unauthorized tie-ins to the systems. Enforcement costs will likely offset savings to the state budget.
- ♦ **LOCAL GOVERNMENTS:** The Department does not anticipate that this rule will lead to significant costs or savings to local governments unless a local government seeks a tie-in to a Department storm water system, or makes an illicit tie-in to a system, or makes an illicit discharge through a system. In such cases, there will be a cost to the local government which will be offset by the benefits provided.
- ♦ **SMALL BUSINESSES:** The Department does not anticipate that this rule will lead to significant costs or savings to small business, generally. However, should an individual small business seek a tie-in to a Department storm water system, or make an illicit tie-in to a system, or make an illicit discharge through a system, there will be a cost to that small business which will be offset by the benefits provided.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate that this rule will lead to significant costs or savings to persons other than small

businesses, businesses, or local government entities, generally. However, should a person other than small businesses, businesses, or local government entities seek a tie-in to a Department storm water system, or make an illicit tie-in to a system, or make an illicit discharge through a system, there will be a cost to that person which will be offset by the benefits provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be compliance costs to affected persons that will be offset by the benefits provided for legitimate tie-ins.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not cause a fiscal impact on businesses, generally. However, should an individual business seek a tie-in to a Department storm water system, or make an illicit tie-in to a system, or make an illicit discharge through a system, there will be a fiscal impact to that business. Fiscal impacts on businesses with legal tie-ins will likely be offset by benefits provided to those users.

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

TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Mark Burns by phone at 801-366-0198, by FAX at 801-366-0352, or by Internet E-mail at markburns@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

R930. Transportation, Preconstruction.

R930-9. Detection and Elimination of Unauthorized Discharges into Drainage Systems, Enforcement of Water Laws, Sanctions for Violation, and Permitting.

R930-9-1. Rulemaking Authority.

The Department promulgates this rule pursuant to Utah Code Subsection 63G-3-201(2)(a), Section 72-1-201, Section 72-7-102, and Section 72-7-104.

R930-9-2. Detecting Discharges into Drainage Systems.

The Department has the authority to detect, investigate, eliminate, and enforce against any non-stormwater discharge (including illegal dumping) to its drainage systems and within its right-of-way. The Department also has the authority to create an effective regulatory mechanism to implement actions that meet the requirements of the Department's Utah Pollutant Discharge Elimination System ("UPDES") Municipal Separate Storm Sewer System ("MS4") Permit.

R930-9-3. Regulatory Mechanism to Meet the Requirements of the Department's UPDES MS4 Permit.

The Department will act to enforce the requirements of its UPDES MS4 permit.

R930-9-4. Connections to Drainage Systems, Permitting, Fees.

(1) The Department has the authority to require compensation from a local government or property owner to connect to drainage systems located within Department right-of-way.

(2) The Department may recover the costs of managing a local government or property owners' connection to drainage systems located within Department right-of-way.

(3) The Department may issue and require the local government or property owner to obtain a permit to connect to a drainage system located within Department right-of-way. The primary purpose of the drainage system is for the management of stormwater runoff from the Department's right-of-way. Drainage flows from offsite areas must not exceed the capacity of the drainage system or interfere with the Department's ability to use its drainage system. The Department has the discretion to deny requested connections to its drainage systems. If the application is complete and a connection is permitted, the Department will either enter into an agreement with the local government or the property owner shall sign the Department's drainage agreement.

(4)(a) The local government or property owner will be responsible for all costs associated with clean-up necessary or any imposed fines or penalties due to non-stormwater discharges into the Department's drainage system regardless if a connection has been permitted.

(b) If the local government or property owner fails to take measures to prevent non-stormwater discharges, the Department will require the connection to be removed from the Department's drainage system.

(5) The Department may require the local government or property owner seeking to connect to a Department drainage system to provide a surety bond sufficient to protect the Department from harm to its drainage system caused in whole or part by work performed on or substances discharging from a local government's system.

(6) The Department may adopt a fee schedule that indicates required dollar amounts for surety bonds required of various types of utility services or for property owners seeking permits to connect to a Department drainage system.

(7) The Department may adopt a fee schedule covering connection, permit, and management fees it charges local governments and property owners and will make it publicly available.

(8) Fees collected by the Department under this rule shall be deposited with the state treasurer and credited to the Transportation Fund.

R930-9-5. Enforcement.

(1) When the Department learns that a local government or property owner has installed, placed, constructed, altered, repaired, or maintained a drainage pipe, inlet or manhole, ditch, culvert or any other structure or object of any kind within Department right-of-way without the Department's without complying with the requirements of Utah Code Title 72, the Department may:

(a) Remove the installation from the right-of-way immediately as circumstances dictate; or

(b) Give written notice to the local government or property owner to remove the installation from the Department's right-of-way.

(2) Notice under Subsection (1)(b) may be served by:

(a) Personal service; or

(b)(i) Mailing the notice to the person, firm, or corporation by certified mail the last known address; and

(ii) Posting a copy on the installation for 10 days.

(3) If the installation is not removed within 10 days after the notice is served, the Department may remove the installation at the expense of the local government or property owner.

(4) The Department may recover the costs and expenses incurred in removing the installation, serving notice, and the costs of a lawsuit.

(5)(a) If the local government or property owner disputes or denies the existence, placement, construction, or maintenance of the installation, or refuses to remove or permit its removal, the Department may bring an action to remove the installation.

(b) If the Department is granted a judgment by a court the highway authority may recover the costs of removing the installation as provided in Subsection (4).

R930-9-6. Referrals to the Attorney General.

The Department will refer matters related to enforcing this rule to the attorney general.

KEY: storm water, tie-ins, UPDES MS4, illicit discharge
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, Implemented, or Interpreted Law: 63G-3-201(2)
(a); 72-1-201; 72-7-102; 72-7-104

Workforce Services, Unemployment
 Insurance
R994-102
 Employment Security Act, Public Policy
 and Authority

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41520

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule inadvertently expired and is necessary so it is being filed anew. This rule primarily references the Department of Workforce Services's authority to file rules.

SUMMARY OF THE RULE OR CHANGE: There are no changes to this rule. It is being filed anew because the Department inadvertently allowed it to expire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-4-102 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally funded program so there are no costs or savings to local government.

♦ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program, and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program, and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-102. Employment Security Act, Public Policy and Authority.

R994-102-101. Authority and Statement of the Rules.

(1) One of the purposes of the Employment Security Act, Utah Code Section 35A-4-101 et seq., the Act, is to lighten the burdens of persons unemployed through no fault of their own by maintaining their purchasing power in the economy. The legislature, in establishing this program, recognized the substantial social ills associated with unemployment and sought to ameliorate these problems with a program to pay workers for a limited time while they seek other employment.

(2) The Department of Workforce Services (Department) is responsible for protecting the investment of employers who contributed to the unemployment insurance fund, the interests of the unemployed workers who may be eligible for the dollars provided by the fund, and the community which benefits from a stable workforce through the maintenance of purchasing power.

(3) The legal authority for these rules and for the Department to carry out its responsibilities is found in Utah Code Sections 34A-1-104 and 35A-4-101 et seq.

(4) These rules are to be liberally construed and administered and doubts should be resolved in favor of finding coverage of the employee and assisting those who are attached to the work force.

KEY: unemployment compensation

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 35A-4-102

**Workforce Services, Unemployment
Insurance
R994-106
Combined Wage Claims**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41521

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule inadvertently expired and is necessary so it is being filed anew. This rule helps explain how combined wage claims are filed and is therefore necessary to understand how our interstate compact and federal law applies to claims where a claimant worked in more than one state in his or her base period.

SUMMARY OF THE RULE OR CHANGE: There are no changes to this rule. It is being filed anew because the Department of Workforce Services inadvertently allowed it to expire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-106(1) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.

◆ LOCAL GOVERNMENTS: This is a federally funded program so there are no costs or savings to local government.

◆ SMALL BUSINESSES: There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program, and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program, and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

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

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-106. Combined Wage Claims.

R994-106-101. General Definition.

(1) An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. He must file a combined wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, he has the right to reject a combined-wage claim and file against a state in which he is separately eligible or to cancel the combined wage claim and file no claim.

(2) Section 35A-4-106 provides for the wages earned in other states to be used to qualify for unemployment insurance benefits. Many of the restrictions and guidelines contained in this Rule are required by federal regulations which govern the establishment and payment of unemployment benefits when a claimant uses wages earned outside the state or his residence at the time the claim is filed. If there is a conflict between this Rule and federal regulations, the federal regulations will be followed.

R994-106-102. Definition of Terms.

(1) Agent State.

Agent state means any state in which an individual files a claim for benefits from another state or states.

(2) Combined-Wage Claim.

A combined-wage claim is a claim using wage credits from more than one state.

(3) Combined-Wage Claimant.

A claimant who uses wages from more than one state to establish monetary entitlement to benefits.

(4) Commuter.

Commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(5) Employment and Wages.

"Employment" refers to all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(6) Interstate Benefit Payment Plan.

This is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(7) Liable State.

The liable state is the same as the paying state.

(8) Paying State.

The paying state is the state against which the claimant is filing that actually issues the benefit checks.

(9) State.

State includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(10) State Agency.

The agency which administers the unemployment compensation law of a state.

(11) Transferring State.

A transferring state is one in which the claimant had covered employment and wages within the base period of the paying state that can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined wage claim.

R994-106-103. Restrictions on Combined Wage Claims.

(1) Any unemployed individual who has had covered employment in two or more states may file a combined wage claim unless:

(a) he has established a claim under any other state;

(b) the benefit year has not ended;

(c) and there are still unused benefit rights.

(2) Unused Benefit Rights.

A claimant will not be considered to have unused benefit rights on a prior claim if:

(a) all benefits have been exhausted, or

(b) benefits have been denied by a seasonal restriction, or

(c) benefits have been postponed for an indefinite period or for the remainder of the benefit year. A disqualification imposed because a claimant is not able to work or available for work is not considered a denial of a claimant's benefit rights.

(3) Use of Wages in Paying State.

If an individual files a combined wage claim, all wages and employment in all states during the base period of the paying state must be included. He may not select a paying state but must accept that state which is determined under Subsection 35A-4-106(1)(b) and R994-106-103.

(4) Base Period for a Combined Wage Claim.

The base period for a combined wage claim means the "base period" as established in the paying state.

(5) Benefit Year for a Combined Wage Claim.

The benefit year for a combined wage claim is the "benefit year" of the paying state.

R994-106-104. Determining the Paying State in Combined Wage Claim (CWC) Claims.

(1) The paying state is the state in which the claimant elects to file a CWC, provided the claimant has employment and wages in that state's base period and the claimant qualifies for unemployment under the law of that state using combined employment and wages. The claimant is responsible for deciding the state against which to file a CWC.

(2) If a claimant files a CWC in Utah but is not monetarily eligible for benefits against Utah, Utah will advise the claimant of Utah's qualifying requirements and his or her potential eligibility for benefits, if any, under Utah law. The claimant will also be told that he or she has the option to file in any other state/s where he or she has employment and wages. Utah will advise the claimant that state laws vary and there are differences in weekly benefits amounts and other qualifying requirements in different states. If the claimant wishes to explore options with any other state/s, Utah will provide the claimant with contact information for that/those state/s.

(3) If a claimant is found to be monetarily ineligible in Utah, the claimant can file in another state where he or she has employment and wages in that state's base period. If a claimant was found monetarily ineligible in another state and then files in Utah, Utah can use the effective date of the original claim, provided the claimant filed within the appeal period from the original state's monetary denial.

R994-106-105. Responsibilities of Utah when Transferring Wages.

(1) Transfer of Employment and Wages.

Wages earned in Utah in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state. Such wages will be transferred without restriction as to their use for determination and benefit payments under the provisions of the Paying state's law.

(2) Employment and Wages Not Transferrable.

Wages earned in Utah will not be transferred if the employment and wages have been:

(a) transferred to any other paying state and have not been returned unused, or which have been previously used as the basis of a monetary determination which establishes a benefit year; or

(b) canceled or are otherwise unavailable to the claimant as a result of a monetary determination made prior to its receipt of the request for transfer, if such determination has become final or is subject to a pending appeal. If the appeal is finally decided in favor of the combined wage claimant, any employment and wages determined eligible for use as wages in establishing monetary eligibility will be transferred to the paying state and any necessary redetermination will be made by the paying state.

R994-106-106. Non-Monetary Eligibility Determination.

When a combined wage claim is filed, the law and eligibility requirements of the paying state apply, except the paying state may not determine an issue that has previously been adjudicated by the transferring state. Such exception will not apply, however, if the transferring state's determination of the issue resulted in making the combined-wage claim possible as provided in 20 CFR 616.8 of the Code of Federal Regulations.

R994-106-107. Conditions for Withdrawing a Combined Wage Claim.

(1) Because of the complexities of combining wages, disadvantages to the claimant may not be apparent until after the monetary determination has been received. Therefore, the claimant has the right to withdraw from a combined wage claim anytime before the monetary determination of the paying state becomes final. The claimant's right to withdraw is inherent and need not be supported by reasons, provided that he either:

(a) repays in full any benefits paid to him, or

(b) authorizes the state against which he will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

R994-106-108. Notification and Appeals.

(1) Notification.

A combined wage claimant will receive a monetary determination notice from the paying state once the wage

information from all states is received. If a transferring state refuses to transfer wages because the wage credits were canceled under a disqualification or because the work was not covered, the claimant will be sent an appealable determination by the transferring state.

(2) Protests and Appeals.

A protest of a monetary determination from a transferring state or from a paying state other than Utah may be made. If the paying state or any transferring state makes any decision, monetary or nonmonetary, adverse to a combined-wage claimant's interest, the claimant is entitled to a written determination and the right to request reconsideration or an appeal in accordance with the law of the state making the determination.

KEY: unemployment compensation, interstate compacts

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 35A-4-106(1)

**Workforce Services, Unemployment
Insurance
R994-303
Contribution Rates**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41522

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule inadvertently expired and is necessary so it is being filed anew. This rule primarily references how the Department of Workforce Services calculates contribution rates for employers as defined by state and federal law. The rule is necessary to explain the formula used.

SUMMARY OF THE RULE OR CHANGE: There are no changes to this rule. It is being filed anew because the Department inadvertently allowed it to expire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-4-303 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program, and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program, and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program, and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-303. Contribution Rates.

R994-303-101. Benefit Ratio Contribution Rate Computation.

(1) There are two types of contribution rates, "new" employer rates and "experience" rates.

(2) The new employer rate is assigned to employers with less than one fiscal year of reporting experience. New employers are assigned a rate based on the two-year average benefit ratio, which is calculated by dividing benefit costs by taxable wages, of all employers in the respective industry. The overall new employer rate is the benefit ratio of the respective industry multiplied by the reserve factor plus the Social Cost. New out-of-state contractors are assigned the maximum tax rate allowable under state law unless they purchase an existing business.

(3) Experience rates are assigned to employers with one or more fiscal years of reporting experience. The overall contribution rate is calculated annually for each employer using the following three components:

(a) The "Benefit Ratio" is determined by dividing the total of all chargeable benefits paid to the employer's former employees in the last four fiscal years, by the employer's taxable wages for the same time period.

(b) The "Reserve Factor" adjustment to the benefit ratio, which may be an increase, decrease, or 1.0, is used to maintain an adequate balance in the benefit reserve fund.

(c) The "Social Cost" is applied to all employers to recover benefit costs that cannot be attributed to a specific employer.

The overall tax rate is calculated using the following formula:

$$\text{Benefit Ratio} \times \text{Reserve Factor} + \text{Social Cost}$$

(4) Contribution rates may be affected by delinquent contributions, delinquent reports, and acquiring a business of another employer, as these terms are used in Sections 35A-4-301, 35A-4-303, 35A-4-304, 35A-4-306, and 35A-4-307.

(5) The objective of the benefit ratio method of taxation is to employ an experience rating system that provides for equitable allocation of costs, increases incentives for employer participation, and makes building and maintaining a solvent reserve fund the responsibility of those employers who use the system.

R994-303-102. Computation Date.

"Computation date" means July 1st of any year. The computation date is not the date contribution rates are computed but merely serves as a reference point to identify the period of time used to compute rates.

R994-303-103. Notification of Contribution Rate and Appeal Rights.

The Department will notify the employer of its contribution rate prior to the beginning of the calendar year to which the rate applies. If the employer protests this rate, the protest must be filed within 30 days after the date the "Contribution Rate Notice" is issued by filing a written appeal stating the grounds upon which the appeal is based. This right to appeal the contribution rate does not, however, give new rights of appeal to protest the benefit costs used in computing the rate. The appeal rights for protesting the payment of benefits to former employees, charges to the employer, or the correctness of benefit charges are established in Section 35A-4-306 of the Act.

R994-303-104. Qualified Employer.

A "qualified employer" is an employer who was an employer during all four quarters of the fiscal year immediately preceding the computation date.

If an employer reopens its UI account after the account has been closed, the Department will determine if the employer qualifies for an experience rate or new employer industry rate. A qualified employer will be assigned an overall contribution rate for their account using the employer's unemployment experience during the past four fiscal years immediately preceding the computation date. If the reopening employer had no payroll for two or more consecutive calendar years immediately prior to the reopen date, the employer will be considered a new employer and will receive a new account number and the new employer industry rate, pursuant to Section 35A-4-203 of the Act.

R994-303-105. Rates Assigned to Qualified Employers.

(1) On or after January 1, 1988, a qualified employer who fails to pay all contributions due for the "applicable fiscal year" which is the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, will be assigned a contribution rate equal to the overall contribution rate or the assigned contribution rate, plus an additional one percent surcharge. Unpaid contributions for fiscal years prior to the applicable fiscal year have no effect on the employer's rate, as provided in Subsection 35A-4-303(9)(b).

(2) Contributions assessed for the applicable fiscal year after the rates are computed will not cause the one percent surcharge to be added to the rate for the following year.

(3) A qualified employer who has been assigned the 1 percent surcharge in addition to his overall contribution rate because of delinquent contributions for the applicable fiscal year shall be reassigned a rate based upon his own experience, as provided under the experience rating provisions of the Act, effective the first day of the quarter in which full payment of contributions due is made. The Department will reassign a rate effective January 1st of the year if the Department determines that the party liable for the delinquent contributions was not properly notified of the liability.

(4) Delinquent Reports - Effect on Rate.

A delinquent report is one that is not properly filed when due. Failure to file the delinquent report by the time the contribution rates are computed will be treated as if a report had been filed showing no payroll for that quarter. This will usually result in a higher contribution rate. A delinquent report that still has not been filed by the end of the calendar year will not result in adding the one percent surcharge to an employer's overall contribution rate as a penalty. Other penalties and interest assessed due to delinquent reports are discussed in Section 35A-4-305 of the Act.

R994-303-106. Successorship and Its Effect on Contribution Rates.**(1) Definitions.**

(a) "Successor" is the employing unit which acquires the business or acquires substantially all of the assets of a business.

(b) "Predecessor" is the employing unit which last operated the business.

(c) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(d) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Therefore, acquiring use of assets is defined to mean that the successor obtains the physical assets such as cash, inventories, equipment, or buildings. Use of assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights,

goodwill, employees, or an agreement by the predecessor not to compete.

(e) "Business" is an employing unit which pursues an activity or enterprise for gain, benefit, advantage or livelihood.

(f) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(g) "Discontinued operations" means that immediately at the point of acquisition, the preceding employer has no continuing business activity in this state. Liquidation of accounts receivable or "wind-down payroll" is not considered to be a continued business activity. In determining whether an employer is a successor, the phrases "substantially all" and "discontinued operations" are applied conjunctively. If less than 90 percent of all the assets are acquired, then there is no successorship and the "discontinued operations" test need not be applied.

(h) "Like part or character" will be defined by using the most current North American Industry Classification System (NAICS) manual. There is no succession unless it is determined that a like part or character of the business acquired is retained. An example of such a situation occurs when a new owner acquires a business or substantially all of its assets. The business formerly operated as an automotive service station and the predecessor employer has ceased to operate. If the new owner opens an automotive repair shop and not a service station, there is no successorship.

(2) If the acquired business was closed for 30 or more consecutive calendar days during its normal operating period immediately prior to the acquisition, there is no successorship.

(3) Succession.

In the case of succession, effective on the first day of the year following the year in which the business is acquired, a successor will pay a contribution rate newly computed on the basis of the combined experience of the predecessor and the successor unless the date of acquisition is January 1, in which case the new rate takes effect immediately. The successor's rate during the year of acquisition will be as follows:

(a) Successor Was a Qualified Employer.

If the successor was a "qualified employer" immediately prior to the time of the acquisition, it shall continue to pay the rate assigned prior to the acquisition.

(b) Successor Was Not a Qualified Employer.

If the successor was an employer but not a "qualified employer" immediately prior to the time of the acquisition and acquires one or more businesses simultaneously, it shall pay a new rate computed based on the combined experience of the predecessor(s) and the successor. This rate shall be effective on the first day of the next calendar quarter. The successor pays its previously assigned rate for the balance of the quarter in which the acquisition occurs unless the acquisition occurs on the first day of that quarter, in which case the newly computed rate takes effect on that day.

(i) Simultaneously as used in this section means the same day.

(ii) If the predecessor(s) and successor are not qualified employers and have different NAICS codes, and the successor continues to operate the acquired business(s), the successor will retain their original NAICS code.

(c) Successor Was Not an Employer.

If the successor was not an employer immediately prior to the time of the acquisition it shall pay the predecessor's rate for the current calendar year. If the successor simultaneously acquires two or more businesses it shall pay a rate newly computed based on the combined experience of the predecessors. This new computed rate shall be effective on the day of acquisition.

(4) Effect of Contributions Owed by the Predecessor on the Successor's Rate.

A successor will be assigned a 1 percent surcharge in addition to its overall contribution rate if unpaid contributions are owed by the predecessor in the prior fiscal year. The one percent surcharge applies in the years that the successor's rate is affected by the predecessor's payroll and benefit costs.

(5) Successorship Determination and Burden of Proof.

The Department will determine whether the predecessor's payroll and benefit costs will be transferred to the successor. Either the predecessor or successor may appeal the determination within 10 days of the date the determination is issued. Once the determination has been made, the burden of proof is on the predecessor or the successor to show that the determination was made in error.

R994-303-107. Fiscal Year.

Fiscal year is defined in Subsection 35A-4-301(6), and means the year beginning with the 1st day of July of one year and ending the 30th day of June of the next year.

R994-303-108. Benefit Costs.

(1) Net benefit costs are defined as those benefits actually paid during the fiscal year without regard to the week ending date for which the payment is made. The benefit is considered paid on the date the unemployment payment is issued.

(a) Net benefit costs do not include those benefits established as an overpayment during the same fiscal year in which the benefits were paid.

(b) Benefit costs from a prior fiscal year subsequently established as an overpayment will be deducted from cumulative benefit costs beginning with the fiscal year in which the overpayment is established. Such benefit costs will not be deducted from benefit costs attributable to prior fiscal years except in cases where failure to make the deduction would result in a gross inequity and provided the employer has made a written request within 30 days of when it knew or should have known of the establishment of the overpayment.

(c) Once the fiscal year ends, any benefit costs from a prior fiscal year which are subsequently identified as an overpayment will be deducted from the cumulative benefit costs beginning with the year in which the overpayment is established and subsequent years.

(2) If the benefit costs used to compute the basic tax rate are less than zero, they will be treated as if they were zero. In this case, the minimum overall tax rate an employer can be assigned will be the social tax rate.

R994-303-109. Actual Reserve Fund Balance.

The "actual reserve fund balance" used in the calculation of the reserve factor is this state's Trust Fund balance on deposit

with the United States Department of the Treasury as of June 30 preceding the computation date.

KEY: unemployment compensation, rates

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 35A-4-303

Workforce Services, Unemployment Insurance **R994-401** Payment of Benefits

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41523

FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule inadvertently expired and is necessary so it is being filed anew. This rule primarily references the calculation used for determining benefits which is in statute but this rule is necessary to explain to the public how the calculations are made.

SUMMARY OF THE RULE OR CHANGE: There are no changes to this rule. It is being filed anew because the Department of Workforce Services inadvertently allowed it to expire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-4-401 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program, and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program, and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally

funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-401. Payment of Benefits.

R994-401-101. Payment of Benefits.

Eligibility is established and benefits are paid on a weekly basis. The week starts on Sunday and ends on Saturday. Benefits do not become due until the end of the week for which benefits are claimed.

R994-401-201. Weekly Benefit Amount (WBA), Maximum Benefit Amount (MBA), and Monetary Determination.

(1) The formulas for determining the WBA and the MBA are found in Section 35A-4-401.

(2) The wages used to determine the WBA and the MBA are limited to wages reported to the Department by base period employers and verifiable wages paid by additional base period employers reported by the claimant in the initial claim. If an employer does not report wages and the claimant can verify wages from that employer, those wages may be included.

(3) The Department will send the claimant a "Notice of Monetary Determination." The notice will inform the claimant of the WBA, MBA, and the wages used to determine the claimant's monetary eligibility. The notice will also inform the claimant of his or her right to appeal the monetary determination. The claimant must notify the Department of any errors in the monetary determination. The time limit for notifying the Department of any errors or for appealing a monetary determination is the same as

filing an appeal from an initial Department determination and is governed by rules R994-508-102 through R994-508-104.

(4) The monetary determination is based on the wages actually paid during the base period regardless of when the work was performed.

(5) To be monetarily eligible, a claimant must have earned base period wages of 1 and 1/2 times the high quarter wages and also meet a minimum dollar amount as established by the monetary base period wage requirement as defined in Section 35A-4-201.

(6) For any claimant whose benefit year is effective on or before January 1, 2011, if the claimant is not monetarily eligible under the 1 and 1/2 times requirement in paragraph (5) of this section, but meets the monetary base period wage requirement, the claimant can still be eligible under this section if the claimant had earnings of at least five percent of the "monetary base period requirement for insured work," as defined in Subsection 35A-4-201(17), in each of at least 20 weeks during the base period. The earnings must be for work performed during each of the 20 weeks, all of which must fall within the base period, regardless of when the claimant received payment for the work. The requirement that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in R994-401-202.

(7) The dollar amount for each of the 20 weeks required to establish eligibility under subsection (6) of this section will be determined by the monetary base period requirement for insured work in effect for the calendar year in which the initial claim is filed even if some or all of the 20 weeks are in a different calendar year.

(8) If the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, and the claimant's benefit year is effective on or before January 1, 2011, it is the claimant's responsibility to show 20 weeks of covered employment which meet the minimum dollar amount. Acceptable proof of covered employment includes:

(a) appropriately dated check stubs issued by the employer;

(b) a written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) time cards;

(d) canceled payroll checks; or

(e) personal or business records kept in the normal course of employment that would substantiate work and earnings.

(9) An employer's potential liability is based on its proportion of the claimant's base period wages. Employers will be informed of the wages used in determining a claimant's monetary entitlement, the employer's potential liability for benefits costs, and the right to and time limitation for requesting relief of charges or a correction to wages. A contributory employer is given a notice of all benefit costs each quarter and has the opportunity to report any errors or omissions to the Department at that time as well. The quarterly notices give the employer 30 days to advise the Department of any corrections, as provided in Subsection 35A-4-306(3).

(10) A party failing to file a timely appeal or protest may lose its right to have the monetary determination corrected. An untimely appeal or protest may be considered if the party had good cause, as defined in R994-508-104.

(11) The Department may revise the monetary determination after the expiration of the appeal time if there has been a mistake as to the facts or the revision would be substantial and required by fairness for a party who did not have access to the information and therefore could not have reasonably filed a timely appeal. The decision to revise a monetary determination after the appeal time has expired is discretionary with the Department.

R994-401-202. Wages Used to Determine Monetary Eligibility.

(1) "Wages paid" include those wages actually received by the worker and wages constructively paid, provided the employer's liability for payment has become unconditionally established. Wages are considered constructively paid, for the purposes of this section, on the earliest of: the next regular pay day in accordance with the employer's customary payment practices, the day required by contractual agreement, or as required by state law.

(2) Quarterly wages are all wages paid or constructively paid during a quarter regardless of when those wages are earned. Bonus or lump sum payments which do not meet the definition of vacation and severance pay in R994-405-701 et seq. made within the quarter which were not due on any specific day shall be treated as wages paid during the quarter in which the payment is made unless a request is made by the claimant for apportionment to the calendar quarters in which the remuneration was earned. Any such request must be received by the Department within ten days of the issuance of the monetary determination as provided by Subsection 35A-4-401(7).

R994-401-203. Retirement or Disability Retirement Income.

(1) A claimant's WBA is reduced by 100% of any retirement benefits, social security, pension, or disability retirement pay (referred to collectively in this section as "retirement benefits" or "retirement pay") received by the claimant. Except, for claims with an effective date on or after July 4, 2004, and on or before December 11, 2010 the reduction for social security retirement benefits will only be 50%. For claims with an effective date on or after December 12, 2010, there is no reduction for social security retirement benefits. The payments must be:

(a) from a plan contributed to by a base-period employer. Social security payments are counted if a base period employer contributed to social security even if the social security payment is not based on employment during the base period;

(b) based on prior employment and the claimant qualifies because of age, length of service, disability, or any combination of these criteria. Disability payments must be based, at least in part, by length of service. Savings plans such as a 401(k) or IRA should not be used to reduce the WBA. Payments from workers' compensation for temporary disability, black lung disability income, and benefits from the Department of Veterans Affairs are not counted because the amount of the payment is based on disability and not on length of service. Payments received as a spouse or beneficiary are not counted. That portion of retirement benefits payable to a claimant's former spouse is not counted if the paying entity pays the former spouse directly and it is pursuant to court order or a signed, stipulated agreement in accordance with the law;

(c) periodic and not made in a lump sum. Lump sum payments, even if drawn from the employer's contributions to a fund established for the purpose of retirement, are not treated as severance pay under Subsection 35A-4-405(7); and

(d) payable during the benefit year. A claimant's WBA is not reduced if the claimant is eligible for, but not receiving, retirement income. However, if the claimant subsequently receives a retroactive payment of retirement benefits which, if received during the time unemployment insurance claims were filed, would have resulted in a reduced payment, an overpayment will be established. The period of time the payment represents, not the time of the receipt, is the determining factor. An assumption that a claimant is entitled to receive a pension, even if correct, is not sufficient basis to recompute the WBA. However, if a claimant has applied for a pension and expects to be determined eligible for a specific amount attributable to weeks when Unemployment Insurance benefits are payable, and the claimant is only awaiting receipt of those payments, a reduction of the claimant's WBA will be made.

(2) A claimant who could be eligible for a retirement income, but does not apply until after the Unemployment Insurance benefits have been paid, will be at fault for any overpayment resulting from a retroactive payment of retirement benefits.

(3) The formula for recomputation of the MBA in the event a claimant begins receiving retirement income after the beginning of the benefit year is found in Subsection 35A-4-401(2)(d). The recomputation is effective with the first full calendar week in which the claimant is eligible to receive applicable retirement benefits or adjustments to those benefits.

R994-401-301. Partial Payments - General Definition.

(1) A claimant's earnings that are equal to or less than 30 percent of the WBA will not result in a reduction of the WBA. The claimant's gross weekly earnings over 30 percent of the WBA will be deducted dollar for dollar from the WBA in the week in which it was earned. A claimant who earns less than the WBA and files a claim may be credited with a waiting week, or paid a partial payment. A claimant who earns equal to or more than the WBA, will not be credited with a waiting week nor be eligible for any partial payment for that week.

(2) All work and earnings must be reported on a weekly basis. For example, when an otherwise eligible claimant is required to report income from a farm, and is paid one day of holiday pay and then accepts a one-day temporary job, the work and earnings from all three sources must be reported.

(3) Earnings are reportable in the week the work is performed which may be different from the week payment is received. If a claimant receives payment for commission sales, or other periodic earnings, the income must be attributed to, and reported in, the week when the work was performed.

(4) Reportable earnings which a claimant must report on the weekly claim include any and all wages, remuneration, or compensation for services even if the employer is not required to pay contributions on these wages.

R994-401-302. Liability of Part-time Concurrent Reimbursable Employers When There Is No Job Separation from the Part-Time Reimbursable Employer.

(1) If the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in the regular part-time work with a reimbursable employer, the nonseparating part-time employer will not be liable for benefit costs provided;

(a) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed.

(b) the claimant is not working on an "on call" basis.

(c) the number of hours of work have not been reduced, and

(d) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(2) The claimant's WBA will be determined on the basis of the total base period employment and earnings, however, earnings from the part-time reimbursable employer will be excluded from the calculation of the MBA.

(3) If the claimant is later separated from this employer within the benefit year or the claimant's hours of work are reduced below the customary number of hours worked during the base period, the reimbursable employer will be liable to pay the proportionate amount of benefit payments paid thereafter. A new monetary determination can also be made at the request of the claimant and would include all base period wages. The effective date of the revised monetary determination will be the first day of the week in which the request is made. See R994-307-101 for contributory employers.

R994-401-303. Income the Claimant Must Report While Receiving Unemployment Benefits.

(1) All payments whether an hourly wage, salary, or commission paid for the performance of any service shall be reportable unless specifically identified as an exception in R994-401-304 or R994-401-305.

(2) Gratuities or tips paid directly to an employee by a customer or the employer for a service provided are reportable.

R994-401-304. Income Which May Be Reportable Under Certain Circumstances.

(1) A bonus paid as a direct result of past performance of service for a specific period prior to the separation is not reportable with respect to any week after the separation. A bonus is a payment given to an employee in addition to usual wages. If the payment is made contingent upon termination it will be considered a severance payment. Payments given at the time of separation that are based on years of service will also be considered severance payments. Severance payments are reportable in accordance with Subsection 35A-4-405(7).

(2) If a claimant is hired to start working on a certain day and the work is not available as of that date but the employer puts the claimant on the payroll as of that date, the claimant is considered employed and those wages are reportable.

(3) Any payment made in consideration of training that is required by the employer is considered to be reportable income unless shown to be:

(a) expenses necessary for school, for example, tuition, fees, and books;

(b) travel expenses;

(c) actual costs for room and board where costs are created as a necessary expense for the schooling; and

(d) the payments are exempt from income tax liability.

(4) If a claimant is being paid under a contract for the express purpose of being available to an employer, and there are limits placed upon the individual either as to how much earnings, if any, may be earned while receiving these payments, or on the time the individual must hold himself or herself available to the employer, the payment is considered reportable income.

(5) Any payments in kind are reportable, including the cash value for meals, lodging, or other payment unless the meals and lodging are excluded from the definition of wages by the Internal Revenue Service as under the following conditions:

(a) Meals that are furnished:

(i) on the business premises of the employer;

(ii) for the convenience of the employer;

(iii) without charge for substantial non-compensatory business reasons, not for the purpose of additional compensation. Substantial noncompensatory business reasons will be limited to meals which are provided:

(A) to have employees available for emergency call;

(B) to have employees with restricted lunch periods;

(C) because adequate eating facilities are not otherwise available.

(b) Lodging that is furnished:

(i) on the business premises of the employer;

(ii) as a condition of employment;

(iii) for the convenience of the employer, for example, to have an employee available for call at any time.

(6) Pensions that do not meet the criteria in R994-401-203 are not reportable income.

R994-401-305. Income a Claimant Is Not Required to Report While Receiving Unemployment Benefits.

Payments which are received for reasons other than the performance of a service are not reportable income. Some examples are:

(1) Payments from corporate stocks and bonds;

(2) Public service in lieu of payment of fines;

(3) Fees paid for jury duty or as witness fees will be considered reimbursement for expenses;

(4) Amounts paid specifically, either as an advance or reimbursement, for bona fide, ordinary, and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. If an accounting by the employee is not required by the employer for actual expenses, the Department shall not require itemization;

(5) Payments specifically identifiable as not being provided for the rendering of service will not be considered wages including grants, public or private assistance or other support payments;

(6) Money or other considerations which are normally provided as a matter of course to immediate family members;

(7) Income from investments;

(8) Disability or permanent impairment awards under the Workers' Compensation Act; and,

(9) Payment attributable to the value of any equipment owned by the claimant and necessary for the performance of the job. If there is no contract of hire or the contract does not delineate what portion is payable for the equipment, the Department will

determine the claimant's wages based on the prevailing wage for similar work under comparable conditions.

KEY: unemployment compensation, benefits
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 35A-4-401(1); 35A-4-401(2); 35A-4-401(3); 35A-4-401(6)

Workforce Services, Unemployment Insurance **R994-402** Extended Benefits (EB)

NOTICE OF PROPOSED RULE (New Rule)

DAR FILE NO.: 41525
FILED: 04/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule inadvertently expired and is necessary so it is being filed anew. This rule primarily references Extended Benefits which have not been used since 1984 but could be triggered if Utah's unemployment rate went up and thus the rule is necessary.

SUMMARY OF THE RULE OR CHANGE: There are no changes to this rule. It is being filed anew because the Department of Workforce Services inadvertently allowed it to expire.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-4-402 and Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to local government.
- ◆ SMALL BUSINESSES: There are no costs or savings to any small businesses as there are no fees associated with this program, and it is federally funded.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program, and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program, and it is federally

funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-402. Extended Benefits (EB).

R994-402-201. General Definition.

When a claimant has been unable to find work for an extended period of time and has exhausted all of his or her regular benefits, EB may be paid providing the state is in an extended benefit period as defined by Subsection 35A-4-402(7). A claimant does not have to have additional wage credits to qualify for EB as the original claim is extended with the same weekly benefit amount. The maximum benefit amount for a claimant is one-half of the amount of his or her original regular claim up to a maximum of 13 times the weekly benefit amount. All EB stop when the unemployment rate drops below a certain level, even if the claimant has not used all of his or her EB. If the claimant has sufficient additional wage credits and can qualify for a new regular claim, EB are not allowed. There is no waiting week on an EB claim. Availability requirements for EB are different from those for regular claimants. Unless the claimant has good prospects as defined in R994-402-205, the EB claimant must have no occupational restrictions, must reduce wage expectations and increase his or her work search efforts beyond those expected of regular benefit claimants. The only exception to this requirement is for claimants who have Department approval while attending school.

R994-402-202. General Requirements for EB.

(1) Notwithstanding the provisions of the Act concerning regular benefits, a claimant is ineligible for EB during any week of

unemployment in the claimant's eligibility period if the Department finds that during such period:

(a) the claimant failed to accept any offer of suitable work as defined in R994-402-204 or failed to apply for any suitable work to which he or she was referred by the Department; or

(b) he or she failed to make an active, good faith effort to secure employment as provided in Section R994-402-207.

(2) Any claimant who has been found ineligible for EB under Subsection R994-402-202(1) will be denied benefits until he or she has performed services in bona fide covered employment for at least four subsequent weeks, whether or not consecutive, and earned wages for such services equal to at least six times the claimant's weekly benefit amount.

(3) Notwithstanding R994-402-204, no claimant will be denied EB for failure to accept an offer of, or apply for, any job which meets the definition of suitability as described in that subsection if:

(a) the position was not offered to the claimant in writing as defined in R994-402-206 or was not listed with the Department of Workforce Services;

(b) such failure would not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of R994-402-204 or

(c) the claimant meets the requirements of "good prospects" as defined in R994-402-205.

(4) No work is considered to be suitable work unless it complies with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code as provided in Subsection 35A-4-405(3).

(5) The Department shall refer any claimant entitled to EB to any suitable work which meets the criteria prescribed in R994-402-204.

R994-402-203. Eligibility for EB.

To be eligible for EB the claimant must:

(1) exhaust regular benefits as defined by Subsection 35A-4-402(7)(h) and his or her benefit year must have ended after the beginning of the EB period;

(2) be ineligible for a regular claim in Utah or any other state or under any federal unemployment program;

(3) file for EB in accordance with instructions;

(4) meet EB requirements for availability and work search; and

(5) accept suitable work.

R994-402-204. Suitable Work.

(1) Suitable work for EB claimants includes work:

(a) in any occupation within the claimant's capabilities unless he or she can show that his or her prospects for obtaining work in his or her regular occupation are good, as defined in Subsection R994-402-205 and

(b) paying the greater of the federal or state minimum wage provided the gross average pay exceeds the claimant's weekly benefit amount plus any supplemental unemployment benefit.

(2) Suitable work for EB claimants does not include work:

(a) available as the result of a strike or labor dispute;

(b) having wages, hours or other conditions of the work which are substantially less favorable to the claimant than those prevailing for similar work in the locality (for example, a skilled claimant, such as a carpenter, may be required to take a job paying the minimum wage in another occupation, but he or she does not have to take a carpenter job paying minimum wage if that wage is substantially less than the prevailing wage for carpenter work in his or her locality);

(c) which requires the claimant as a condition of being employed to join a union or to resign from or refrain from joining any labor organization;

(d) which would not be considered suitable for a regular claimant, such as unsafe working conditions or work requiring a move or travel beyond normal commuting distance. Except with regard to the type of occupation and the wages, standards for determining the suitability of work are the same for EB claimants as for regular claimants.

R994-402-205. Good Prospects.

When a claimant has a definite assurance of full-time employment in his or her customary occupation to begin within four weeks the claimant is considered to have good prospects. He or she must continue to seek work, but suitability will be determined under the definition of suitable work for regular benefit claimants in Subsection 35A-4-405(3) without regard to the definition in R994-402-204.

R994-402-206. Position Offered in Writing.

A position is considered "offered in writing" if it is listed with the Department and the claimant is referred or offered a referral by the Department even if the claimant is given the referral verbally. If an employer makes a verbal offer of work and the job is not listed with the Department, the provisions of Section 35A-4-405(3) may apply.

R994-402-207. Systematic and Sustained Work Search.

(1) A systematic and sustained work search means that the claimant must register for work with the Department and contact at least 4 employers each week, unless advised otherwise by an authorized Department representative. The claimant should have a realistic plan for finding employment. All of the employer contacts cannot be made on the same day except in circumstances where a work search on several days of the week is impractical. Work search contacts must be with employers not contacted within the last 90 days.

(2) Except for claimants who have received Department approval under section R944-403-201, there is no good cause exception for failure to make a systematic and sustained work search after the claimant has received instructions with regard to the required work search. If the claimant is ill or otherwise unable to seek work, but files a claim for benefits after being instructed with regard to work search requirements, benefits must be denied under Section 35A-4-402 and not under Section 35A-4-403(1)(c) unless the claimant was hospitalized for treatment of an emergency or life-threatening condition. Benefits may be allowed if the claimant failed to make the required work search because he or she was on jury duty and regular unemployment benefits would have been allowed under similar circumstances. If the claimant made the required work search but was unable to work or unavailable for

work for more than half the normal workweek, he or she might be found ineligible under Sections R994-403-111c and R994-403-112c.

(3) If the claimant has obtained part-time work, he or she is still required to make a work search on those days when he or she is not working. The number of contacts may be reduced if the claimant is working a substantial amount of time in the part-time job.

(4) Work search requirements may be suspended if the Department determines that severe weather conditions or other calamity has forced a suspension of such activities by most members of the community.

R994-402-208. Claimant Responsibilities.

(1) EB claimants must report all information as requested by the Department.

(2) An EB claimant is required to keep a detailed record of the employers contacted including:

- (a) the name and address of the employer,
- (b) the date of contact with the employer,
- (c) the person contacted if personal contact is made,
- (d) the result of the contact,
- (e) the type of work sought.

(3) Failure to keep records or provide such information will result in a conclusion that a work search was not made unless other convincing evidence is provided.

R994-402-209. Period of Disqualification.

A claimant who fails to accept an offer of suitable work or fails to actively seek work will be denied benefits for the week in which such failure occurs and for the following weeks until he or she has had employment during at least four subsequent weeks and has earned at least six times his or her weekly benefit amount. The earnings do not have to be in consecutive weeks, but must be bona fide, covered, employment.

R994-402-210. Requalification Requirement Following a Disqualification for a Crime in Connection with Employment.

All disqualifications for regular unemployment benefits continue to be in effect on EB claims. In addition, a claimant who has been denied benefits under Subsection 35A-4-405(2)(b) is not eligible to receive EB until he or she has returned to bona fide, covered employment and earned at least six times his or her weekly benefit amount in employment subsequent to the disqualifying separation, even if the disqualification period has ended.

R994-402-211. Out of State Claimants.

A claimant who resides in another state but is filing against Utah under the interstate benefit payment plan is only entitled to two weeks of EB while residing in another state if the state of residence is not in an extended benefit period. The amount of the payment, whether it is a full or partial payment, is immaterial. When a payment of any amount has been made for each of two weeks, whether or not consecutive, no further payments can be made.

R994-402-212. Overpayments.

Overpayments established on extended benefit payments are collectible in accordance with the provisions of Subsections 35A-4-406(4) and 35A-4-406(5).

R994-402-601. Notice.

(1) Immediately after it has been determined that an extended benefit period will become effective or will end in the state, the Department will make a public announcement and give personal notice calculated to reach the largest practicable number of potentially eligible persons within the state.

(2) The notice given at the beginning of an extended benefit period will state

(a) the first date on which potential claimants may file a claim for, and become eligible for, extended benefit payments,

(b) eligibility criteria for EB, and

(c) what action individuals must take to protect their benefit rights.

(3) Whenever there has been a determination that an EB period will end, the Department will provide notice to all claimants currently filing claims for EB of the forthcoming end of the EB period and its effect on the claimant's right to EB.

R994-402-602. Effective Date of EB Claim.

The effective date of claims for EB will be the Sunday of the first week during which EB are payable in accordance with Subsection 35A-4-402(7) provided the claimant has filed as instructed. The effective date of the EB claim may be backdated upon a showing of good cause under Subsections 35A-4-403(1) and 35A-4-401(1)(b).

KEY: unemployment compensation, employee recruitment, extended benefits

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 35A-4-402(2); 35A-4-402(6)(a)

End of the Notices of 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 Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Administrative Services, Inspector
General of Medicaid Services (Office
of)
R30-1
Office of Inspector General of Medicaid
Services

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41487
FILED: 04/21/2017

**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: This rule is enacted under Title 63A, Chapter 13, "Office of Inspector General of Medicaid Services". This provision authorizes the Office to create rules that establish standards for how the Office is to conduct business and how it will interact with Medicaid-contracted entities.

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 not been any written comments received by this Office in the past five years regarding this rule.

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 should be continued because the

work of the Office is still conducted in a substantially similar fashion. The Office is conducting a thorough review of the rule under new management and will likely update the rule in the future.

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

ADMINISTRATIVE SERVICES
INSPECTOR GENERAL OF MEDICAID SERVICES
(OFFICE OF)
288 N 1460 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gene Cottrell by phone at 801-538-6856, by FAX at 801-538-6382, or by Internet E-mail at gcottrell@utah.gov
♦ Nathan Johansen by phone at 801-538-6455, by FAX at 801-538-6382, or by Internet E-mail at nmjohansen@utah.gov

AUTHORIZED BY: Gene Cottrell, Inspector General

EFFECTIVE: 04/21/2017

Environmental Quality, Water Quality
R317-5
Large Underground Wastewater
Disposal (LUWD) Systems

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41492
FILED: 04/25/2017

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 19-5-104(1)(a)(iv) authorizes the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the Board. Subsection 19-5-104(1)(a)(v) specifies that the Board is to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One comment was received since the last five-year review of this rule. The comment was not in opposition of the rule and only requested clarification of a definition.

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 sets design requirements for construction of large underground wastewater treatment and disposal systems as defined in the rule. The Water Quality Board is charged with making the rules that provide the guidelines for review and approval of these systems. The rule is required to meet this charge. 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 Office 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: 04/25/2017

Environmental Quality, Water Quality
R317-550
 Rules for Liquid Waste Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41493
 FILED: 04/25/2017

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 19-5-104(1)(a)(iv) authorizes the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the Board. Subsection 19-5-104(1)(a)(v) specifies that the Board is to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies.

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 have been received since the last five-year review of this rule. This rule was amended 07/30/2014 and included changes to the title.

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 is required to regulate Liquid Waste Operations in order to protect public health and the environment. 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 Office 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: 04/25/2017

Environmental Quality, Water Quality
R317-560
 Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41494
FILED: 04/25/2017

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 19-5-104(1)(a)(iv) authorizes the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the Board. Subsection 19-5-104(1)(a)(v) specifies that the Board is to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies.

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 have been received since the last five-year review of this rule.

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 regulates the design, construction, operation, and maintenance of vault and earthen pit privies to protect public health and the environment. 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 Office 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: 04/25/2017

Health, Administration
R380-10
Informal Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41488
FILED: 04/21/2017

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: Title 63G, Chapter 4, and Sections 26-1-7, 26-1-5, 26-1-17, and 26-1-24 establish the procedures for informal adjudicative proceedings within the Department of Health.

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 comments have been received since 04/26/2012.

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 sets the procedures for who can request a hearing, who has adjudicative authority, who will be the presiding officer, how the proceedings will commence and response, and when and how an agency review will be completed. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tamara Hampton by phone at 801-538-6622, by FAX at 801-538-6306, or by Internet E-mail at thampton@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/21/2017

Health, Administration
R380-100
Americans with Disabilities Act
Grievance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41490
 FILED: 04/24/2017

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: This rule is required by Subsection 63G-3-201(3), Section 26-1-17, and 28 CFR 35.107. The Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule.

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 comments have been received since 04/26/2012, the last time the rule was reviewed.

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 is to implement the provisions of 28 CFR 35. The Utah Department of Health adopts and publishes the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act. Therefore, this rule should be continued.

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

HEALTH
 ADMINISTRATION
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Tamara Hampton by phone at 801-538-6622, by FAX at 801-538-6306, or by Internet E-mail at thampton@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/24/2017

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-60
 Medicaid Policy for Pharmacy Program**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41556
 FILED: 04/28/2017

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: Section 26-18-3 requires the Department of Health to implement Medicaid policy through administrative rules, and Section 26-1-5 authorizes the Department to adopt rules that provide services to Medicaid members and reimbursement to Medicaid providers. Additionally, 42 CFR 447.502 through 447.520 sets forth criteria for the payment of drugs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received written comments from Gold Standard after the Department filed an amendment to implement Medicaid policy by rule in 2016. The comment stated that by listing only one nationally recognized database (Medi-Span) to define a "covered outpatient drug", the Department was favoring one particular vendor instead of using broader language to avoid the need for passing a new law whenever a new business enters the marketplace. Gold Standard then suggested either changing the Definitions section of the rule (Section R414-60-2) to include Gold Standard, or using broader language to include any nationally recognized database. The Department also received written requests after filing an amendment to the rule in 2017 to implement the federal Covered Outpatient Drug Rule. These requests came from Convenience, Value and Service (CVS) Health and the Utah Food Industry Association (UFIA). These entities wanted to confirm their understanding of fee-for-service rates in regard to Wholesale Acquisition Cost (WAC), Federal Upper Limit (FUL), and the Utah Maximum Allowable Cost (UMAC), and to verify their understanding of urban, rural, and out-of-state professional dispensing fees. UFIA also wanted to confirm whether UMAC would factor in the National Average Drug Acquisition Cost (NADAC), and wanted to know whether pharmacies would be required to submit their Average Acquisition Cost (AAC) on every claim submitted in regard to the Department's evaluation of Submitted Ingredient Cost.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In its initial response to the comments from Gold Standard, the Department maintained that it does not reference other databases because it uses only the Medi-Span drug file. The Department further stated that if a drug is not in the Medi-Span drug file, the Department cannot

adjudicate the drug because it is not in the system. Additionally, listing a generic reference could mean the drug is listed in the First DataBank file and not the Medi-Span file, and may render the Department unable to adjudicate the claim. When the Department switches its compendia from Medi-Span to another compendia, it will update the rule accordingly. In the meantime, the Department needs to specify and clearly state what it will cover and not cover. Based on the aforementioned response, the Department made the proposed rule effective in 2016. Nevertheless, after further discussion with Gold Standard and after more internal review, the Department decided to amend the rule further to use broader language. The new proposed change has been published for comment in the April 15, 2017, Utah State Bulletin under Filing No. 41379, and is pending approval to be made effective. In its response to CVS Health and UFIA, the Department confirmed their understanding of the proposed rule in terms of WAC, FUL, and UMAC, and verified their understanding of urban, rural, and out-of-state professional dispensing fees. The Department further confirmed that UMAC will be the NADAC for drugs that the Centers for Medicare and Medicaid Services (CMS) has established at a NADAC price. For drugs that do not have a NADAC, the Department may set a UMAC price. In regard to the Department's evaluation of Submitted Ingredient Cost, pharmacies that use medications purchased through the 340B program, Federal Supply Schedule, or Nominal Price, must submit the actual acquisition cost on the claim. Pharmacies that have purchased medications outside of these programs may continue to bill Utah Medicaid using their Usual and Customary pricing structure. The Department will continue this rule because it implements pharmacy services and prescription drug coverage, clarifies coverage for over-the-counter drugs, specifies reimbursement and pharmacy dispensing fees, and implements federal policy for covered outpatient drugs. There is no opposition to the rule itself, and the Department addressed previous concerns as noted above. Therefore, this rule should be continued.

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 Office 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/28/2017

Human Resource Management, Administration **R477-1** Definitions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41524
FILED: 04/27/2017

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 67-19-6(1)(j) requires the Department of Human Resource Management (DHRM) to adopt rules for human resource management. This rule creates a definitions section for DHRM rules under Title R477.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of Rule R477-1 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-1. It is the opinion of the agency that Rule R477-1 is a vital part of the established DHRM rules. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

Human Resource Management,
Administration
R477-2
Administration

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41526
FILED: 04/27/2017

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 Department of Human Resource Management (DHRM) Rule R477-2 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules from human resource management". DHRM Rule R477-2 describes the application of such rules and responsibility for compliance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-2 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-2. It is the opinion of the agency that Rule R477-2 adequately meets the requirements of Section 67-19-6. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

Human Resource Management,
Administration
R477-3
Classification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41527
FILED: 04/27/2017

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 Department of Human Resource Management (DHRM) Rule R477-3 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules from human resource management", as well as "design and administer the state classification system and procedures for determining schedule assignment". DHRM Rule R477-3 creates rules for position classification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-3 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-3. It is the opinion of the agency that Rule R477-3 adequately meets the requirements of Section 67-19-6. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

Human Resource Management,
Administration
R477-4
Filling Positions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41528
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-4 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-4 establishes rules regarding the hiring of executive branch employees in both career service and career service exempt positions, in accordance with Sections 69-19-15 and 67-19-16.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-4 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-4. It is the opinion of the agency that Rule R477-4 adequately meets the requirements of Section 67-19-6. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

Human Resource Management,
Administration
R477-5
Employee Status and Probation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41529
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-5 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules from human resource management". In addition, DHRM Rule R477-5 establishes rules relating to probationary periods for employees in career service positions, as required by Section 67-19-16.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-5 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-5. It is the opinion of the agency that Rule R477-5 adequately meets the requirements of Sections 67-19-6 and 67-19-16. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-6
Compensation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41530
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-6 creates a pay plan for each job in the state personnel system, as required by Sections 67-19-6 and 67-19-12.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-6 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-6. It is the opinion of the agency that Rule R477-6 adequately meets the requirements of Sections 67-19-6 and 67-19-12. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

**Human Resource Management,
Administration
R477-7
Leave**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41531
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-7 establishes rules regarding the use of leave for executive branch employees. The rule was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-7 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-7. It is the opinion of the agency that Rule R477-7 adequately meets the requirements of Section 67-19-6. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-8
Working Conditions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41532
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-8 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-8 establishes rules regarding overtime standards, in accordance with the Fair Labor Standards Act, 29 CFR Parts 500 through 899 (2002) and Section 69-19-6.7.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-8 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-8. It is the opinion of the agency that Rule R477-8 adequately meets the requirements of the Fair Labor Standards Act and Sections 67-19-6 and 69-19-6.7. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-9
Employee Conduct**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41533
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-9 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-9 establishes rules regarding standards of conduct for all executive branch employees, including conduct standards for outside employment and political activity.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-9 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-9. It is the opinion of the agency that Rule R477-9 adequately meets the requirements of Sections 67-19-6 and 67-25-302, as well as the Federal Hatch Act. Therefore, this rule should be continued.

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

ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-10
Employee Development**

**Human Resource Management,
Administration
R477-11
Discipline**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41537
FILED: 04/27/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41538
FILED: 04/27/2017

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

**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 Department of Human Resource Management (DHRM) Rule R477-10 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-10 addresses requirements set forth in Section 67-19-3.1 regarding the evaluation and improvement of employee performance.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Department of Human Resource Management (DHRM) Rule R477-11 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-11 establishes the procedural and documentary requirements of the disciplinary process as required in Section 67-19-18.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-10 in the last five years.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-11 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-10. It is the opinion of the agency that Rule R477-10 adequately meets the requirements of Sections 67-19-6 and 69-19-3.1. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-11. It is the

opinion of the agency that Rule R477-11 adequately meets the requirements of Sections 67-19-6 and 69-19-18. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-12
Separations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41541
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-12 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". Specifically, DHRM Rule R477-12 establishes the procedural and documentary requirements for separations as required in Section 67-19-18.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-12 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-12. It is the opinion of the agency that Rule R477-12 adequately meets the requirements of Sections 67-19-6 and 69-19-18. Therefore, this rule should be continued.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Resource Management,
Administration
R477-13
Volunteer Programs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41542
FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-13 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-13 creates rules governing the designation of volunteer positions and the process for documenting the approval, use, and number of hours worked by volunteers as required in Section 67-20-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal communication in support or opposition of DHRM Rule R477-13 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-13. It is the opinion of the agency that Rule R477-13 adequately meets the requirements of Sections 67-19-6 and 69-20-8. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Resource Management,
 Administration
 R477-15
 Workplace Harassment Prevention**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41543
 FILED: 04/27/2017

**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 Department of Human Resource Management (DHRM) Rule R477-15 was created in response to the mandates of Section 67-19-6, which requires the executive director of DHRM to "adopt rules for human resource management". In addition, DHRM Rule R477-15 establishes rules regarding the prevention of workplace harassment, in accordance with Title VII of the Federal Civil Rights Act and Utah Executive Order 12, Prohibiting Unlawful Harassment (December 2006).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM has received no formal

communication in support or opposition of DHRM Rule R477-15 in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: DHRM has received no formal communication in opposition to Rule R477-15. It is the opinion of the agency that Rule R477-15 adequately meets the requirements of Section 67-19-6, Utah Executive Order 12 (December 2006), and Title VII of the Civil Rights Act. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

AUTHORIZED BY: Debbie Cragun, Executive Director

EFFECTIVE: 04/27/2017

**Human Services, Child and Family
 Services
 R512-204
 Child Protective Services, New
 Caseworker Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41483
 FILED: 04/18/2017

**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: Section 62A-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values. This includes requirements for new caseworker training.

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 have 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: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide training for new caseworkers.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhonesrobbins@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 04/18/2017

**Public Service Commission,
Administration
R746-313
Electric Service Reliability**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41514
FILED: 04/27/2017

**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: Section 54-3-1 requires the Public Service Commission (Commission) to establish requirements for each electric corporation and distribution electrical cooperative that is also a public utility to have a program to ensure reliable electric service is provided to each electric service customer.

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 proposed by the Commission on 04/15/2012. On 08/01/2012, a change of proposed rule was filed. Changes were based upon the consideration of comments received on the initial version of the rule and the desire to incorporate the 05/21/2012 version of Standard IEEE 1366-2012 Guide for Electric Power Distribution Reliability Indices (which was published after the initial 05/15/2012 filing deadline for the proposed rule) as the foundation for the rule. The changes provided more flexibility for an electric corporation to develop, manage, and revise its electric service reliability program while requiring the electric corporation to meet Commission-approved levels of reliability. When the rule was amended on 12/20/2012, Rocky Mountain Power recommended to replace the requirement for an electric corporation to report Momentary Average Interruption Frequency Index (MAIFI) data with the requirement to report Momentary Average Interruption Frequency Index Event (MAIFIE) data, to clarify reporting requirements for MAIFIE data and to make other minor changes. As proposed by Rocky Mountain Power, the impact of momentary electric service interruption experienced by a customer is related to the entire momentary event (as represented by MAIFIE) rather than the electric system's attempts to automatically restore power after a fault event (as represented by MAIFI). Therefore, the electric service reliability rules addressing momentary outages should reference MAIFIE not MAIFI.

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 should remain in effect to allow the Public Service Commission to require utilities to have a program to ensure reliable electric service is provided to each electric service customer. Therefore, this rule should be continued.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 04/27/2017

**Public Service Commission,
Administration
R746-400
Public Utility Reports**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41513
FILED: 04/27/2017

**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: Section 54-1-10 requires the Public Service Commission (Commission) to engage in long-range planning regarding public utility regulatory policy and to submit annual reports to the governor and the legislature. Section 54-3-2 requires every public utility to file with the Commission its schedules, rules, regulations, contracts, privileges, and facilities affecting or relating to rates, tolls, rentals, charges, classifications, or services. Sections 54-3-21 and 54-3-22 require utilities to provide to the Commission any information or reports directed by the Commission. Section 54-4-16 requires utilities to provide information and reports regarding accidents. Section 54-4-22 requires utilities to provide information needed to assess the special regulation fee imposed by Chapter 5. Section 54-8b-10 requires telecommunication carriers to provide information relating to the hearing and speech impaired surcharge. Section 54-8b-15 requires telecommunications carriers to provide information regarding the Universal Public Telecommunications Service Support Fund. Section 54-12-2 permits the Commission to promulgate rules for its development of small power production and cogeneration. Section 54-13-3 permits the Commission to promulgate rules for its pipeline safety responsibilities. The rule provides direction on how utilities should provide the information required to comply with the statutory provisions referenced above.

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 comments have been received in the last five years.

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 should remain in effect to allow utilities to provide statutorily required information, which is required for regulation by the Public Service Commission and the Division of Public Utilities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 04/27/2017

**School and Institutional Trust Lands,
Administration
R850-11
Procurement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41489
FILED: 04/24/2017

**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 53C-1-201(3)(e) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of alternative procurement procedures. Rule R850-11 provides the alternative procedures for the agency to follow when procuring goods and services related to the administration of the agency or management, development, leasing, or sale of trust lands.

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 have been received by the agency for this rule since the previous 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: This rule is required by statute in order for the

agency to be exempt from the provisions outlined under Title 63G, Chapter 6a, Utah Procurement Code, in order to streamline the procurement process and enable the agency to respond to marketing opportunities in a more timely manner and to efficiently fulfill its responsibilities under the law. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S

SALT LAKE CITY, UT 84102-2818
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ron Carlson by phone at 801-538-5131, by FAX at 801-538-5118, or by Internet E-mail at rcarlson@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 04/24/2017

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

Workforce Services, Unemployment Insurance **R994-102** Employment Security Act, Public Policy and Authority

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 41515
FILED: 04/27/2017

SUMMARY: The five-year review was not filed by the deadline so the rule expired and is removed from the Administrative Code. (EDITOR'S NOTE: A proposed new Rule R994-102 is under Filing No. 41520 in this issue, May 15, 2017, of the Bulletin.)

EFFECTIVE: 04/27/2017

Workforce Services, Unemployment Insurance **R994-106** Combined Wage Claims

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 41516
FILED: 04/27/2017

SUMMARY: The five-year review was not filed by the deadline so the rule expired and is removed from the Administrative Code. (EDITOR'S NOTE: A proposed new Rule R994-106 is under Filing No. 41521 in this issue, May 15, 2017, of the Bulletin.)

EFFECTIVE: 04/27/2017

Workforce Services, Unemployment Insurance **R994-303** Contribution Rates

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 41517
FILED: 04/27/2017

SUMMARY: The five-year review was not filed by the deadline so the rule expired and is removed from the Administrative Code. (EDITOR'S NOTE: A proposed new Rule R994-303 is under Filing No. 41522 in this issue, May 15, 2017, of the Bulletin.)

EFFECTIVE: 04/27/2017

Workforce Services, Unemployment
Insurance
R994-401
Payment of Benefits

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 41518

FILED: 04/27/2017

SUMMARY: The five-year review was not filed by the deadline so the rule expired and is removed from the Administrative Code. (EDITOR'S NOTE: A proposed new Rule R994-401 is under Filing No. 41523 in this issue, May 15, 2017, of the Bulletin.)

EFFECTIVE: 04/27/2017

Workforce Services, Unemployment
Insurance
R994-402
Extended Benefits (EB)

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 41519

FILED: 04/27/2017

SUMMARY: The five-year review was not filed by the deadline so the rule expired and is removed from the Administrative Code. (EDITOR'S NOTE: A proposed new Rule R994-402 is under Filing No. 41525 in this issue, May 15, 2017, of the Bulletin.)

EFFECTIVE: 04/27/2017

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

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

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

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

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Family Health and Preparedness, Emergency Medical Services

No. 41332 (AMD): R426-5. Emergency Medical Services Training and Certification Standards

Published: 03/15/2017

Effective: 04/26/2017

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 41290 (AMD): R414-61-2. Incorporation by Reference

Published: 03/01/2017

Effective: 04/20/2017

Workforce Services

Employment Development

No. 41336 (AMD): R986-600. Workforce Investment Act

Published: 03/15/2017

Effective: 05/01/2017

End of the Notices of Rule Effective Dates Section

**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, 2017 through May 01, 2017. 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 Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office'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	

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R21-1	Transfer of Collection Responsibility of State Agencies	41374	NSC	04/10/2017	Not Printed
R21-2	Office of State Debt Collection Administrative Procedures	41376	5YR	03/17/2017	2017-8/59
R21-3	Debt Collection Through Administrative Offset	41377	5YR	03/17/2017	2017-8/59
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R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting	40947	AMD	01/20/2017	2016-23/6
R23-19	Facility Use Rules	41267	5YR	02/01/2017	2017-4/57
R23-20	Free Speech Activities	41268	5YR	02/01/2017	2017-4/58
R23-30	State Facility Energy Efficiency Fund	40946	AMD	01/20/2017	2016-23/11
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R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	2017-3/71
R25-7	Travel-Related Reimbursements for State Employees	41147	AMD	03/10/2017	2017-3/2
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	2017-3/79
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R27-1	Definitions	41105	AMD	02/21/2017	2017-2/4
R27-3	Vehicle Use Standards	41106	AMD	02/21/2017	2017-2/6
R27-4	Vehicle Replacement and Expansion of State Fleet	41107	AMD	02/21/2017	2017-2/12
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R30-1	Office of Inspector General of Medicaid Services	41487	5YR	04/21/2017	Not Printed
<u>Purchasing and General Services</u>					
R33-4-101b	Vendors with Exclusive Authorization to Bid	41292	NSC	03/06/2017	Not Printed
R33-8-102	Adding Additional Funds to a Contract	41023	AMD	02/02/2017	2016-24/4
R33-16	Protests	40898	AMD	01/20/2017	2016-22/10

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 R58-3 Brucellosis Vaccination Requirements 41164 5YR 01/12/2017 2017-3/80
 R58-6 Poultry 41165 5YR 01/12/2017 2017-3/80
 R58-11 Slaughter of Livestock and Poultry 40951 AMD 01/12/2017 2016-23/16
 R58-11 Slaughter of Livestock and Poultry 41372 NSC 04/05/2017 Not Printed
 R58-18 Elk Farming 41162 5YR 01/12/2017 2017-3/81
 R58-19 Compliance Procedures 41194 5YR 01/18/2017 2017-4/58
 R58-22 Equine Infectious Anemia (EIA) 41163 5YR 01/12/2017 2017-3/81
 R58-23 Equine Viral Arteritis (EVA) 41167 5YR 01/12/2017 2017-3/82

Horse Racing Commission (Utah)

R52-7 Horse Racing 41102 AMD 03/06/2017 2017-1/4

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 R70-101 Bedding, Upholstered Furniture and Quilted Clothing 41371 NSC 04/05/2017 Not Printed
 R70-201 Compliance Procedures 41160 5YR 01/12/2017 2017-3/82
 R70-320 Minimum Standards for Milk for Manufacturing Purposes, Its Production and Processing 41166 5YR 01/12/2017 2017-3/83
 R70-350 Ice Cream and Frozen Dairy Food Standards 41159 5YR 01/12/2017 2017-3/83
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 R81-4 Retail Licenses 40924 NEW 01/03/2017 2016-22/17
 R81-8 Manufacturer Licenses (Distillery, Winery, Brewery) 40923 AMD 01/03/2017 2016-22/19

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 R105-1 Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services 41466 5YR 04/10/2017 2017-9/41
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R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	41260	AMD	03/27/2017	2017-4/4
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R156-37	Utah Controlled Substances Act Rule	41289	5YR	02/06/2017	2017-5/61
R156-37f-301	Access to Database Information	41339	NSC	04/05/2017	Not Printed
R156-37f-303	Access to Opioid Prescription Information Via an Electronic Data System	41265	NSC	02/23/2017	Not Printed
R156-44a-601	Delegation of Nursing Tasks	41340	NSC	04/05/2017	Not Printed
R156-46b-202	Informal Adjudicative Proceedings	41169	AMD	03/13/2017	2017-3/8
R156-46b-202	Informal Adjudicative Proceedings	41354	NSC	04/05/2017	Not Printed
R156-47b	Massage Therapy Practice Act Rule	41436	5YR	04/04/2017	2017-9/41
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R156-55c	Plumber Licensing Act Rule	41298	AMD	04/10/2017	2017-5/12
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R251-703	Vehicle Direction Station	41450	5YR	04/05/2017	2017-9/43
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R277-210	Utah Professional Practices Advisory Commission (UPPAC), Definitions	41087	AMD	02/07/2017	2017-1/24
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R277-404	Requirements for Assessments of Student Achievement	41033	AMD	01/24/2017	2016-24/7
R277-417	Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation	41188	AMD	03/14/2017	2017-3/12
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R307-130	General Penalty Policy	41229	5YR	01/27/2017	2017-4/62
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R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties	40773	AMD	02/01/2017	2016-19/38
R307-302	Solid Fuel Burning Devices	40773	CPR	02/01/2017	2017-1/102
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R477-5	Employee Status and Probation	41529	5YR	04/27/2017	Not Printed
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R477-6	Compensation	41530	5YR	04/27/2017	Not Printed
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R590-262	Health Data Authority Health Insurance Claims Reporting	41172	AMD	03/10/2017	2017-3/36
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R708-34	Medical Waivers for Intrastate Commercial Driving Privileges	41132	5YR	01/08/2017	2017-3/104
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R708-39	Physical and Mental Fitness Testing	41205	5YR	01/20/2017	2017-4/87

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R746-100	Practice and Procedures Governing Formal Hearings	41115	REP	03/06/2017	2017-2/33
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R746-341	Lifeline Rule	41031	CPR	03/24/2017	2017-4/54
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R746-430	Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource	41392	5YR	03/27/2017	2017-8/83
R746-440	Voluntary Resource Decision	41264	5YR	01/31/2017	2017-4/89

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R810-9	Contractors and Their Employees	41328	NSC	03/14/2017	Not Printed
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R850-90	Land Exchanges	41155	5YR	01/12/2017	2017-3/105
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R856-5	USTAR Energy Research Triangle Professors Grant	41096	NEW	03/22/2017	2017-1/88
R856-6	USTAR Energy Research Triangle Scholars Grant	41097	NEW	03/22/2017	2017-1/92

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R926-4	Establishing and Defining a Functional Classification of Highways in the State of Utah	41375	5YR	03/17/2017	2017-8/84
R926-13-4	Highways Within the State That Are Designated as State Scenic Byways	41053	AMD	02/07/2017	2017-1/95
R926-15-5	Highways Within the State That Are Designated as State Scenic Backways	41329	NSC	03/14/2017	Not Printed

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R986-700-706	Provider Rights and Responsibilities	41171	AMD	04/01/2017	2017-3/68

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R994-106	Combined Wage Claims	41516	EXD	04/27/2017	Not Printed
R994-303	Contribution Rates	41517	EXD	04/27/2017	Not Printed
R994-401	Payment of Benefits	41518	EXD	04/27/2017	Not Printed
R994-402	Extended Benefits (EB)	41519	EXD	04/27/2017	Not Printed
R994-405-2	Separations from a Temporary Help Company (THC)	41103	AMD	03/01/2017	2017-1/97

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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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>accident law</u>					
Health, Disease Control and Prevention, Laboratory Services	40868	R438-10	REP	01/11/2017	2016-21/46
<u>accounts receivable</u>					
Administrative Services, Debt Collection	41374	R21-1	NSC	04/10/2017	Not Printed
	41376	R21-2	5YR	03/17/2017	2017-8/59
	41377	R21-3	5YR	03/17/2017	2017-8/59
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Public Safety, Driver License	41130	R708-14	5YR	01/08/2017	2017-3/103
	41131	R708-35	5YR	01/08/2017	2017-3/104
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<u>administrative offset</u>					
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<u>administrative procedures</u>					
Commerce, Consumer Protection	40920	R152-6	AMD	01/09/2017	2016-22/21
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	41354	R156-46b-202	NSC	04/05/2017	Not Printed
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	41435	R380-5	5YR	04/03/2017	2017-9/47
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