

UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

PROCLAMATION 2020/10/E

WHEREAS, since the close of the 2020 General Session of the 63rd Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 63rd Legislature of the State of Utah into the Tenth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 30th day of November 2020, at 4:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2020 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 25th day of November 2020.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2020/10/E

End of the Executive Documents 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 November 17, 2020, 12:00 a.m., and December 01, 2020, 11:59 p.m. are included in this, the December 15, 2020, issue of the *Utah State Bulletin*.

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

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

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

From the end of the public comment period through April 14, 2021, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-1	Filing No. 53121

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-1. Utah Procurement Rules, General Procurement Provisions
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity and simplification.
4. Summary of the new rule or change:
The definitions have been removed or reworded to provide more clarification, there is a significant amount of renumbering, the "chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule, mandatory minimum requirements in a solicitation were simplified, and Sections R33-1-13 through R33-1-17 were added to this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

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

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

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

R33-1-1. Definitions.

(~~[A]~~1) Terms used in the procurement rules are defined in Section[s] 63G-6a-103 ~~and 104~~.

(~~[B]~~2) 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 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]~~a) "Bias" means:

(~~[a]~~i) a predisposition or a preconceived opinion that prevents an individual from impartially performing any duty or responsibility ~~set forth in~~ Utah Code Title 63G, ~~[-]~~ Chapter 6a, Utah Procurement Code, or other applicable law or rule; or

(~~[b]~~ii) 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]~~b) "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]~~c) "Bid Rigging" means an 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]~~d) "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]~~e) "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]~~f) "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]~~g) "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.

NOTICES OF PROPOSED RULES

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

(13)j "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)k "Evaluation Criteria" means the objective or subjective criteria that will be used to evaluate a vendor's solicitation 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)l "Mandatory Requirement" means a condition set out in the specifications[] or statement of work that must be met without exception.

(17)m "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[] or offeror an advantage or benefit not shared by other bidders[] or offerors, or does not adversely impact the interests of the procurement unit.

(18)n "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,]:

(i) new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software[];

(ii) [Also included are] new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable; and;

(iii) any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19)o(a) "Objective Criteria" means the solicitation criteria that [quantifiable requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors] will be evaluated and scored [by evaluators] based solely 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)p "Participating Addendum" means an agreement issued in conjunction with a [] cooperative [] contract that authorizes a public entity to use the Cooperative Contract.

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

(22)r "Person" means:

(a) i an individual;

(b) ii an association;

(c) iii an institution;

(d) iv a corporation;

(e) v a company;

(f) vi a trust;

(g) vii a limited liability company;

(h) viii a partnership;

(i) ix a political subdivision;

(j) x a government office, department, division, bureau, or other body of government; and

(k) xi any other organization or entity.

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

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

(25)u "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.

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

(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)v(a) "Subjective Criteria" means the solicitation criteria that [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] provided 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.]~~

~~(29)w~~ "Surety bond" ~~(performance bond)~~ or "Performance Bond" means a promise to pay ~~[one]~~ the obligee or ~~[c]owner~~ a certain amount if the principal or ~~[c]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.]~~

~~(30)x~~ "Steering a Contract to a Favored Vendor" is defined as a person involved in ~~any phase of 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)~~ ~~[F]~~ taking part in collusion or manipulation of the procurement process;

~~(ii)~~ ~~[A]~~ accepting any form of illegal gratuity, bribe or kickback ~~from~~ ~~[paid by]~~ a vendor in exchange for a contract award;

~~(iii)~~ ~~[A]~~ awarding a contract to a vendor without engaging in a standard procurement process ~~[to a vendor]~~ without proper justification;

~~(iv)~~ ~~[H]~~ involvement in a bid rigging scheme;

~~(v)~~ ~~[W]~~ 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)~~ ~~[H]~~ intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);

~~(vii)~~ ~~[L]~~ leaking solicitation ~~[bid, proposal]~~ or other information to a particular vendor that is prejudicial to other vendors;

~~(viii)~~ ~~[I]~~ 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)~~ ~~[P]~~ participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

~~(34)y~~ "Technology" means any type of technology defined in ~~[Section]~~ Subsection 63F-1-102(8).

R33-1-2. Applicability of Rules.

(1) Title R33 shall apply to:

(a) ~~[A]~~ a procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 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]~~ 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 as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or 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]~~ procurement official 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 Section R33-1-1.

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

(1) Unless specifically stated otherwise, ~~[all]~~ determinations under ~~[Utah Procurement Code]~~ Title 63G, Chapter 6a and Title R33 shall be made by the ~~[chief procurement officer or head of a procurement unit with independent procurement authority]~~ procurement official.

(2) ~~[D]~~ determination[s] by the ~~[chief procurement officer or head of a procurement unit with independent procurement authority]~~ procurement official shall be made:

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

(b) ~~[B]~~ by applying the reasonable person standard to determine:

(i) ~~[H]~~ 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]~~ Title 63G, Chapter 6a, or Title R33;

(ii) ~~[H]~~ if the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of ~~[the Utah Procurement Code]~~ Title 63G, Chapter 6a, or Title R33 has occurred; or

(iii) ~~[H]~~ 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]~~ procurement official issues a written exception in accordance with ~~[provisions set forth in the Utah Procurement Code]~~ Title 63G, Chapter 6a, and applicable ~~[R]~~ 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) ~~[P]~~ public funds are expended or used to acquire a procurement item; or

(b) ~~[A]~~ a procurement unit's property, name, influence, assets, resources, programs, or other things of value ~~are~~ ~~[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 ~~vendors~~ ~~[persons]~~ responding to a solicitation and to limit the number of ~~vendors~~ ~~[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.]~~

R33-1-13. Pre-Solicitation Conferences and Site Visits.

(1) A pre-solicitation conference and site visit may be held to explain the procurement requirements in accordance with the following:

(a) Persons submitting a solicitation response must attend pre-solicitation conferences and site visits, except as authorized in writing by the procurement official.

(b) Pre-solicitation conferences or site visits may be attended in person or via any of the following electronic means:

(i) teleconference;

(ii) webinar; or

(iii) other electronic media approved by the procurement official.

(c) Pre-solicitation conferences and site visits must be attended by an authorized representative of the vendor submitting a response and as may be further specified in the procurement documents.

(d) If the pre-solicitation conference or site visit is mandatory, the solicitation must state that failure to attend shall result in the disqualification of any vendor that does not have an authorized representative present for the entire duration of the pre-solicitation conference or site visit.

(e) An audio or video recording of a pre-solicitation conference and site visit may be made at the discretion of the procurement unit.

(f) Listening to or viewing an audio or video recording of a mandatory pre-solicitation conference or site visit may not be substituted for attendance, unless the procurement official grants an exception to the mandatory requirement in writing.

(2)(a) If a pre-solicitation conference or site visit is held, the 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-solicitation conference or site visit; and

(iii) a copy of any document distributed by the procurement unit to the attendees.

(b) After the pre-solicitation conference or site visit, the procurement unit shall publish an addendum to the solicitation that includes:

(i) the attendance log;

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

(iii) a copy of any document distributed to attendees; and

(iv) any verbal modification made to any solicitation document during the pre-solicitation conference or site visit.

R33-1-14. Addenda to Solicitation.

Prior to the deadline for receipt of a solicitation response, a procurement unit may issue addenda modifying any aspect of the solicitation.

(a) Addenda shall be distributed within a reasonable time to allow a person to consider the addenda in preparing a response to the solicitation.

(b) After the due date and time for submitting a response, at the discretion of the procurement official, addenda to the solicitation may be limited to vendors who submitted a solicitation response, provided the addenda does not make a change to the solicitation that, in the opinion of the procurement official, likely

would have impacted the number of persons responding to the solicitation.

R33-1-15. Rejection of a Late Response -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), a procurement unit may not accept a response after the deadline for receipt of solicitation responses.

(2) When submitting a response electronically, vendors must allow sufficient time to complete the online forms and finish uploading all documents before the closing time posted in the electronic system. Solicitation responses still in the process of being uploaded at the posted closing time will not be accepted.

(3) When submitting a solicitation response by physical delivery, which includes U.S. Mail, courier service, hand-delivery, or other physical means the vendor is solely responsible for meeting the deadline. Any delay caused by a delivery service or other physical means will not be considered an acceptable reason for a response being late.

(4) Responses received by physical delivery will be date and time stamped by the procurement unit.

(5) If 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.

R33-1-16. Voluntary Withdrawal of a Response.

A vendor may voluntarily withdraw a response at any time before a contract is awarded with respect to the solicitation for which the response was submitted provided the vendor is not engaged in any type of bid rigging, collusion or other anti-competitive practice made unlawful under other applicable law.

R33-1-17. Errors Discovered After the Award of Contract.

(1) An error discovered after the award of a contract may only be corrected if, after consultation with the procurement official and the applicable legal counsel, it is determined that correction of the error does not violate the requirements of Title 63G, Chapter 6A, or these Title R33.

(2) Any correction made under this subsection must be supported by a written determination signed by the procurement official.

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

Date of Enactment or Last Substantive Amendment: ~~June 21, 2017~~ 2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-2	Filing No. 53122

Agency Information

1. Department:	Administrative Services
Agency:	Purchasing and General Services

Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-2. Rules of Procedure for Procurement Policy Board
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity and simplification.
4. Summary of the new rule or change:
The definitions have been removed or reworded to provide more clarification, the specific location of hearings has been removed, and other minor grammatical changes have been made.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:
There are no anticipated compliance costs for affected persons.

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

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

H) Department head approval of regulatory impact analysis:
The Executive Director of the Department of Administrative Services which oversee the Division of

Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:
There are no anticipated fiscal impacts that this rule may have on businesses.
B) Name and title of department head commenting on the fiscal impacts:
Tani Downing, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 63G, Chapter 6a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

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

~~**R33-2-3. Definitions.**~~

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

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

R33-2-5. Calling Meetings.

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

R33-2-8. Meetings.

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

R33-2-10. Notice and Agenda.

(1) Notice ~~[shall be given]~~ of ~~[all]~~ each meeting[s] shall be given in accordance with the Title 52, Chapter 4, Open and Public Meetings Act.

(2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. A Board member[s] may also contact the Chair or Director to request that an item be placed on the agenda.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.

(4) A ~~[M]~~ member[s] of the Board, the Division, governmental agenc[ies]y and the public may submit a request to the Secretary to the Board ~~for [that]~~ an item to be placed on the agenda subject to review and approval by the Presiding Officer or Director.

(5) Each agenda shall include an agenda item that allows a board member[s] to request that an item be placed on a future agenda.

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

(1) Eight members of the Board are required for a quorum to transact business.

(2) ~~[For a]~~ Any determination of the Board~~[-it]~~ must be approved by a majority vote of those voting members present and ~~[#]~~ must receive an affirmative vote from at least five members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for ~~[all]~~ each Board member[s] present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.

(4) A ~~[M]~~ member[s] must be in attendance, either in person or by electronic means in accordance with this Rule, in order to vote.

KEY: government purchasing, Procurement Policy Board, rules of procedure
Date of Enactment or Last Substantive Amendment: ~~July 8, 2014~~ **2021**
Notice of Continuation: July 8, 2019
Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-3	Filing No. 53123

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-3. Procurement Organization
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to simply this rule.
4. Summary of the new rule or change:
Grammatical changes have been made and the reference to definitions in this rule has been removed.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

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

NOTICES OF PROPOSED RULES

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

R33-3. Procurement Organization.

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

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

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

Date of Enactment or Last Substantive Amendment: [July 8, 2014]2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-4	Filing No. 53124

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov

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

General Information

2. Rule or section catchline:
R33-4. Supplemental Procurement Procedures
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to simply this rule.
4. Summary of the new rule or change:
Sections R33-4-101 through R33-4-101b have been removed, "chief procurement officer" has been changed to "chief procurement official," and other title/terms have been adjusted.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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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 deadline for receipt of responses to a request for statement of qualifications has 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 request for statements of qualification under Utah Code 63G-6a-410 to 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) A [P]public entit[ies]y shall include in solicitation documents specifications for the procurement item[(s)] sought.~~

~~(2)(a) Each [S]specification[s] shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.~~

([a]b) Each [S] specification[s] shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.

(3) A [P] persons with a conflict of interest, or who anticipates responding to the proposal for which the specifications are written, may not participate in writing specifications. A [P] procurement unit[s] may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. [However, t]The person retained to assist[ing] in writing specifications [shall]may 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 R33-4-103[4](3) does not apply to the following:

- (i) a design build construction project; and
- (ii) other procurements determined in writing by the [chief]procurement official[officer], or as applicable, the head of a procurement unit with independent procurement authority.

(b) Violations of this Subsection R33-4-103[4](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]procurement official, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Requirements for [B] brand [N] name [or]and [E] equal [S] specifications are as follows[-]:

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

- (i) the phrase "or equivalent" [reference-]is included within 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) A [B] brand [N] name may be [R] requireme[nts]d if [-]:

(a) [If-]only one brand can meet the requirements set forth in the specifications, and the procurement unit [shall]solicit[s] 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[-] and the procurement unit [shall-]conducts 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]a solicitation meeting the public notice requirements of [Utah Code]Section 63G-6a-112 results in only one vendor [willing

~~to submitting a solicitation response~~[bid, provide quotes, or submit a statement of qualifications];

(b) [V]vendors on a multiple award contract, prequalification, or approved vendor list fail to respond to the procurement unit[~~bid, provide quotes, or submit statements of qualifications~~]; or

(c) [A]a procurement unit makes a reasonable effort to invite [all]each [known-]vendor[s] known to the procurement unit to submit a solicitation response[~~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" as used in Subsection (c) [shall]means:

(A) [P]public notice under [Utah Code]Section 63G-6a-112;

(B) [A]an electronic or manual search for vendors within the specific industry; [~~fails to identify any vendors willing to submit bids or provide quotes;~~]

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

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

(2) Before accepting a solicitation response[~~a bid or quote~~] from only one vendor, the [chief-]procurement official[er], [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) a bid security requirement[~~as set forth in R33-11-202~~].

(3) The [chief-]procurement official[er, 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 solicitation responses[~~bids, quotes, or statements of qualifications~~] were obtained.

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

(1) "Quote" means a [n-informal] purchasing process [which]that solicits pricing information from several sources.

(2) "Quotation" means a statement of price, terms of sale, and description of the procurement item[~~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) [Q]quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) [It is disclosed]the procurement unit informs [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) [F]the procurement unit maintains a public record that includes:

(i) [F]the name of each vendor supplying a quotation; and

(ii) [F]the amount of each vendor's quotation.

NOTICES OF PROPOSED RULES

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

(a) [M] may obtain electronic, telephone, or written quotations for a procurement item costing less than \$[5,000]10,000;

(b) [S] shall send a request to obtain quotations for a procurement item costing more than \$10[5].000 to the division of state purchasing[;];

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

(c) [M] may not obtain quotations for a procurement item available on a 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: ~~June 21, 2017~~2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-5	Filing No. 53125

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-5. Other Standard Procurement Processes
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity and to simplify this rule.
4. Summary of the new rule or change:
The maximum threshold for an individual procurement item has been raised, "chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of the rule, and a few other

portions were removed or reworded to provide clarity and simplify this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:			
A) State budget:			
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.			
B) Local governments:			
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.			
F) Compliance costs for affected persons:			
There are no anticipated compliance costs for affected persons.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no anticipated fiscal impacts that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Tani Downing, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 63G, Chapter 6a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also
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request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title: Shad Brunson, Chairperson	Date: 10/20/2020
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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 Title 63G, Chapter 6a, Part 5, Other Standard Procurement Processes [of the Utah Procurement Code], a [R]request for [I]information should indicate the procedure for business confidentiality claims and other protections provided by Title 63G, Chapter 2, [the] Utah Government Records and Access Management Act.

R33-5-104. Small Purchases.

(1) A [S]small purchase[s] shall be conducted in accordance with [the requirements set forth in] Section 63G-6a-506[-] and [-F]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 [I]individual [P]procurement item["] threshold is [a maximum amount of \$1]\$5,000 [for a procurement item]unless the procuring official determines a lower amount. When purchasing an individual procurement item costing up to \$5,000, a procurement unit may select the best source by direct award without seeking competitive bids or quotes.];]

NOTICES OF PROPOSED RULES

~~[(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)4] The [S]ingle P[ro]curement A[gg]regate threshold is [a maximum amount of \$]\$10,000 for multiple individual procurement items[s] purchased from one source at one time unless the procurement official determines a lower amount; and~~

~~(c) The A[nnual] C[umulative] threshold for purchases made from the same source is [a maximum amount of] \$50,000.~~

~~(4) Whenever practicable, the [Division of Purchasing and General Services]division 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 per project.

(2) Design professional services of \$100,000 or less 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]each~~ vendor[s] on an approved vendor list, a procurement unit shall when using this rule in conjunction with an approved vendor list, select a minimum of three design professional firms from the approved vendor list using one or more of the following methods:

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

(ii) ~~[A]assignment~~ of vendors to a specified geographic area;

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

(iv) ~~[A]another~~ method approved by the ~~[chief procurement officer or head of a procurement unit with independent procurement authority]procurement official[s].~~

(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 any of the firms in 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]each~~ vendor[s] on the approved vendor list ~~ha[ve]s~~ a fair and equitable opportunity to obtain a contract~~[;].~~

(4) A procurement unit shall include minimum specifications when using the small purchases 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]division~~ 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 Title 63G, Chapter 6a, Part 15, Design Professional

Services, [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 purchases threshold for construction project threshold per individual project is ~~[a maximum]of~~ \$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]division~~ 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 official[er, 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 official[er, 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.

~~[(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~~[f]~~ or contractor by direct award using one 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 official~~[er 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 vendors~~[f]~~ or 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 official~~[er 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 ~~[s]~~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/contractors on the approved vendor list to submit bids in accordance with the provisions set forth in ~~[Utah Code]Title 63G, Chapter [-]6a, Part 6, Bidding,~~ 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]division~~ 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]division~~ 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]division 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, a procurement unit shall, when using this rule in conjunction with an approved vendor list, 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:

(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 official~~[er 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) the small purchase threshold for medical providers is a maximum of \$100,000 per year, by direct negotiation after reviewing the qualification of medical providers.

NOTICES OF PROPOSED RULES

(~~2~~3) Professional service providers and consultants may be procured up to a maximum of \$100,000 per project, by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals. Medical providers may be procured up to a maximum of \$100,000 per year, by direct negotiation after reviewing the qualifications of medical providers.

(~~3~~4)(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 using this rule in conjunction with an approved vendor list, select a minimum of three professional service providers or consultants from the approved vendor list using one or more of the following methods:

- (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;
- (iv) Another method approved by the ~~chief~~ procurement official ~~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~~4)(a), the procurement unit shall rank the firms or individuals in order and begin fee negotiations, award a contract via direct award up to \$100,000 ~~with~~ the highest ranked firm or individual. If an agreement cannot be reached with the highest ranked firm or individual, the procurement unit shall move to the next highest ranked firm or individual and so on until a fee agreement is reached.

(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.]~~

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

(1) In accordance with Section 63G-6a-113 and Subsection 63G-6a-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~~1a) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;
- (~~A~~1i) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve the tie; and

(~~B~~1ii) 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~~1b) 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~~1i) A rotation system, organized alphabetically, numerically, or randomly;
- (~~B~~1ii) Assignment of vendors to a specified geographic area;
- (~~C~~1iii) Assignment of vendors based on each vendor's particular expertise or field; or
- (~~D~~1iv) Another method approved by the ~~chief~~ procurement official ~~or head of a procurement unit with independent procurement authority~~;

(~~iii~~1c) 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 the 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~~1a) A rotation system, organized alphabetically, numerically, or randomly;
- (~~ii~~1b) Assignment of vendors to a specified geographic area;
- (~~iii~~1c) Assignment of vendors based on each vendor's particular expertise or field; or
- (~~iv~~1d) Another method approved by the ~~chief~~ procurement official ~~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 official ~~or~~ 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 solicitation [Request for Statement of Qualifications used to establish the approved vendor list.] and includes:

(a) ~~[F]~~the minimum performance rating threshold that approved vendors must achieve in order to remain in good standing~~[on the approved vendor list]~~; and

(b) ~~[A]~~a statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be subject to a corrective action plan, which may include termination of the contract~~[disqualified and removed from the approved vendor list]~~.

(2) A procurement unit that places a vendor on a corrective action plan~~[disqualifies and removes a vendor from an approved vendor list]~~ shall:

- (a) ~~[M]~~make a written finding that:
 - (i) ~~[D]~~describes the performance rating system;
 - (ii) ~~[H]~~identifies the minimum performance rating threshold;

and

(iii) ~~[E]~~explains the performance rating achieved by the ~~[disqualified]~~ vendor; and

(b) ~~[P]~~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 contracts.

KEY: government purchasing, procurements, request for information

Date of Enactment or Last Substantive Amendment: ~~June 21, 2017~~ 2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-6	Filing No. 53126

Agency Information

1. Department:	Administrative Services
Agency:	Purchasing and General Services
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state:	Salt Lake City, UT 84129

Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-6. Bidding
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity and to simplify this rule.
4. Summary of the new rule or change:
A portion of Section R33-6-101 was removed along with Sections R33-6-102 through R33-2-107. Section R33-6-109 was also removed. Section R33-6-114 was added. "Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of

Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G,
Chapter 6a

Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2020

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

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services. R33-6. Bidding.

R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive [S]sealed [B]bidding shall be conducted in accordance with the requirements [set forth] in [Sections 63G-6a-601

through 63G-6a-612]Title 63G, Chapter 6a, Part 6, Bidding. [All d]Definitions in Title 63G, Chapter 6a, [the]Utah Procurement Code shall apply to this [R]rule unless otherwise specified in this [R]rule. This [administrative]-rule provides [additional]-requirements and procedures and must be used in conjunction with [the Procurement Code]Title 63G, Chapter 6a.

[_____] (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.

_____ (3)(a) The award of a contract shall be to the 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.

_____ (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 authorize 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.

NOTICES OF PROPOSED RULES

~~(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 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 deadline for receipt of the solicitation responses to an invitation for bids has 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 official[er or head of a procurement unit with independent procurement authority] determines that:~~

~~(a) [A] a material change in the scope of work or specifications has occurred;~~

~~(b) procedures outlined in [the Utah Procurement Code] Title 63G, Chapter 6a 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 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 official[er or head of a procurement unit with independent procurement authority] will only accept the bidder's [primary] first 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 official[er 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 designated as "heads" for the coin toss.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the [chief] procurement official[er 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: ~~June 21, 2017~~2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-7	Filing No. 53127

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-7. Request for Proposals
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity, uniformity in terms, and to simplify this rule.
4. Summary of the new rule or change:
Sections R33-7-102 through Section R33-7-103a was removed from this rule. Section R33-7-201 through

Section R33-7-501, Section R33-7-502, and Section R33-7-701.1 through Section R33-7-702, as well as the majority of Section R33-7-704 were also removed from this rule. "Head of the issuing procurement unit" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.
F) Compliance costs for affected persons:
There are no anticipated compliance costs for affected persons.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no anticipated fiscal impacts that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Tani Downing, Executive Director			

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services. R33-7. Request for Proposals.

~~**[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, a procurement unit 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, 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; 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;

(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 R33-7.~~

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

(1) Offerors requesting exceptions ~~[and/]~~or additions to the ~~[S]standard [F]terms and [C]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 procurement official~~[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.

~~[R33-7-201. 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 authorized 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 deadline for receipt of solicitation responses to a request for proposals has 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.~~

R33-7-502. 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.~~

R33-7-701.1. 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 or not meeting the mandatory minimum requirements of the RFP, or vendors determined to be not responsible.~~

NOTICES OF PROPOSED RULES

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

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

(iv)d 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)3 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)4 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)a do not have a conflict of interest with any of the offerors;
- (B)b do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and
- (C)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)5 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)6(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 responsible offeror that has not been rejected from consideration under the provisions of ~~the Utah Procurement Code~~ Title 63G, Chapter 6a, 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 Subsection 63G-6a-707(6)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)7 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;
 - (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 ~~at~~ each evaluation committee meeting[s] and must review ~~at~~ each proposal[s], 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)8 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)8(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)9 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 is to be conducted [under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601].

([8]10) 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]11) 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 procurement official [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 procurement official [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 procurement official [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 in the RFP Process.

(1) Scoring shall be based upon each applicable evaluation criteria as set forth in the RFP [and may include but is 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.~~
- ~~(2) The standard scoring methodology is:~~
- ~~(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements or criteria described in the RFP;~~
- ~~(b) Four points (Good): The proposal addresses all of the requirements or criteria described in the RFP and, in some respects, exceeds them;~~
- ~~(c) Three points (Satisfactory): The proposal addresses all of the requirements or criteria described in the RFP in a minimum satisfactory manner;~~
- ~~(d) Two points (Unsatisfactory): The proposal addresses the requirements or criteria described in the RFP in an unsatisfactory manner; or~~
- ~~(e) One point (Poor): The proposal inadequately addresses the requirements or criteria described in the RFP or cannot be assessed due to incomplete information; or~~
- ~~(f) Zero (Fail): The proposal fails to address the requirements or criteria described in the RFP or cannot be assessed due to missing information.~~
- ~~(3) A procurement unit may select another scoring methodology to score proposals, as long as:~~
- ~~(i) the scoring methodology is published in the RFP; and~~
- ~~(ii) the scoring methodology allows for competition and is reasonable.]~~

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] any evaluator's 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.

KEY: government purchasing, request for proposals, standard procurement process
Date of Enactment or Last Substantive Amendment: [July 26, 2018]2021

Notice of Continuation: July 8, 2019
 Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-8	Filing No. 53128

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-8. Exceptions to Standard Procurement Process
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity, uniformity in terms, and to simplify this rule.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule, and a few other small term changes were made.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

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

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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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 official[er 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]Title 63G, Chapter 61, Utah Procurement Code, are to ensure the fair and equitable treatment of [all]each person[s] who deals 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 by the procurement unit 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]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]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) [A]an exclusive maintenance, service, or warranty agreement.

(3) Prior to awarding a sole source contract, the [chief]procurement official[er 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) [C]osts 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) [C]osts identified in S[ub]section 63G-6a-103;

(b) [C]osts 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) [C]osts 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) [W]ritten cost estimates obtained by the [conducting] procurement unit from a competing provider[~~(s)~~] for a competing type of procurement item; and

(e) [O]ther transitional costs determined to be applicable by the [chief] procurement official[~~er 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) [C]osts prohibited in Subsection 63G-6a-103;

(b) [D]ata 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) [C]osts associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) [N]on-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) [F]actors 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) [O]ther transitional costs or other information deemed inappropriate by the [chief] procurement official[~~er 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 official[~~er 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 [F]orm titled: "Notice of [i]ntent to [a]ward a [e]contract without [e]ngaging in a [s]tandard [p]rocurement [p]rocess" 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) [F]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) [F]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 notice of intent to award a contract without engaging in a standard procurement process [F] form or develop its own [F] 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 [N] notice of intent to award a contract without engaging in a standard procurement process [N] form to the chief procurement official [er], or head of a procurement unit with independent procurement authority for approval to award a contract without engaging in a standard procurement process.

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

(1) Except as provided in Subsection (2), publication of a [N] notice of intent to award a contract without engaging in a standard procurement process [N] 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, R33-8-101b, or R33-8-101c, the [chief] procurement official [er 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) speakers or trainers with unique or proprietary presentations or training materials;
 - (vi) hosting of in-state, out-of-state, and international dignitaries;
 - (vii) international, national, or local promotion of the state or a public entity [er];
 - (viii) an award when the Legislature identifies the intended recipient of a contract;
 - (ix) 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;
 - (x) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or
 - (xi) other circumstances as determined in writing by the [chief] procurement official [er or the head of a procurement unit with independent procurement authority].
- (b) The [chief] procurement official [er or head of a procurement unit with independent procurement authority] may require publication of a [N] notice of intent to award a contract without engaging in a standard procurement process [N] 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 official [er 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 official [er 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, Protests, 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.

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

(1) One of the underlying purposes and policies of [the Utah Procurement Code] Title 63G, Chapter 6a 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) [F] initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

NOTICES OF PROPOSED RULES

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

(b)(i) ~~[F]~~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) ~~[N]~~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]~~a procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) ~~[A]~~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]~~.

R33-8-401. 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 official~~[or]~~, 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 official~~[or]~~ 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: ~~June 21, 2017~~2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-9	Filing No. 53129

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-9. Cancellations, Rejections, and Debarment
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide clarity, uniformity in terms, and to simplify this rule.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:			
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.			
B) Local governments:			
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.			
F) Compliance costs for affected persons:			
There are no anticipated compliance costs for affected persons.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members.)

Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

R33-9. Cancellations, Rejections, and Debarment.

R33-9-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled prior to the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the ~~issuing procurement unit~~ procurement official. 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 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 response to an initial solicitation, the ~~chief~~ procurement official ~~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 official ~~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 official ~~or~~ 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) A solicitation under a standard procurement process may be cancelled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

- (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;
- (d) the specifications in the solicitation have been or must be revised;
- (e) the procurement item(s) being solicited are no longer required;
- (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;

(g) 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;

(h) except as provided in Section 63G-6a-607, all otherwise acceptable solicitation responses received are at unreasonable prices, or only one solicitation response is received and the ~~chief~~ procurement official ~~or head of a procurement unit with independent procurement authority~~ cannot determine the reasonableness of the bid price or cost proposal;

- (i) other reasons specified in 63G-6a or Administrative Rule; or
- (j) other circumstances deemed to constitute reasonable cause by the ~~chief~~ procurement official ~~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.

R33-9-105. 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 official ~~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 official ~~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.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) The ~~chief~~ procurement official ~~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 responsible;

(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 responsible; 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) 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.

(3) 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.

Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the deadline for receipt of solicitation responses shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment

Date of Enactment or Last Substantive Amendment: ~~June 21, 2017~~ 2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-10	Filing No. 53130

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-10. Preferences
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.

B) Local governments:			
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.			
F) Compliance costs for affected persons:			
There are no anticipated compliance costs for affected persons.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

R33-10. Preferences.

R33-10-101. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions ~~in the Utah Procurement Code~~ at Section 63G-6a-103 shall apply to this ~~[R]~~rule unless otherwise specified in this ~~[R]~~rule. This ~~[administrative]~~rule provides additional requirements and procedures and must be used in conjunction with ~~the Procurement Code~~ Sections 63G-6a-608 and 63G-6a-1003.

(2) In the event there is more than one equally low preferred bidder, the ~~[chief] procurement official [or or head of a procurement unit with independent procurement authority]~~ shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and ~~[Rule]Section~~ R33-6-110.

R33-10-102. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the ~~[chief] procurement official [or or head of a procurement unit with independent procurement authority]~~ shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and ~~[Rule]Section~~ R33-6-110.

KEY: preferences for resident contractors, reciprocal preferences, state products

Date of Enactment or Last Substantive Amendment: [July 8, 2014]2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-11	Filing No. 53131

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-11. Form of Bonds
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

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

Net Benefits	Fiscal	\$0	\$0	\$0
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H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

R33-11. Form of Bonds.

R33-11-201. Bid Security Requirements for Projects.

(1) Invitations for [B]bids and [R]requests for [P]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 official[er 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]Sections R33-6-108, [Rule]R33-6-109 or [Rule]R33-11-202.

(4) The [chief] procurement official[er 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]Subsection R33-11-201(1).

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

(a) [F]the solicitation contains a statement that a surety or performance bond is required in an amount:

- (i) equal to the amount of the bid, 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) [F]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 solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or [P]performance [B]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) 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 responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.[

_____] For executive branch procurement units:

(a) [B]bid [B]bonds, [P]payment [B]bonds and [P]performance [B]bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of [Rule]Subsection R33-11-303(1)(b) and must be on the required bond forms; and

(b) [Surety firm requirements. All]a surety firm[s] 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.

(2) The [chief] procurement official[er, 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 official[er 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.

(3) If the [conducting] procurement unit fails to obtain a payment bond it shall be subject [Utah Code Title 14, Chapter 1]to Section 14-1-19.

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

Date of Enactment or Last Substantive Amendment: [June 21, 2017]2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-12	Filing No. 53132

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov

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

General Information

2. Rule or section catchline:
R33-12. Terms and Conditions, Contracts, Change Orders and Costs
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.

4. Summary of the new rule or change:
 "Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule. "Chief procurement officer" was removed and replaced with "procurement official" throughout the body of this rule. A portion of Sections R33-12-404 and -404.1 were removed.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.

B) Local governments:

There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

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

Regulatory Impact Table

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

and federal laws. State code or constitution citations (required):		
Title 63G, Chapter 6a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Division of Purchasing and General Services.

R33-12. Terms and Conditions, Contracts, Change Orders and Costs.

R33-12-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the [S]standard [F]terms and [C]conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the [Chief Procurement Officer]procurement official 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 official[er] may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-12-301. Awarding a Multiple Award Contract[s].

(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 a multiple award contract pursuant to the procedures established in Section R33-12-301[2]b[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) [C]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) [C]compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Sections 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) [H]indicates that contracts may be awarded to more than one bidder or offeror;
- (b) [S]specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and
- (c) [D]describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) A [M]multiple award contract[s] in an invitation for bids shall be conducted and awarded in accordance with [Utah Code 63G-6a]Title 63G, Chapter 6a, Part 6 to the lowest responsive and responsible bidder[er] 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 official[er 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

NOTICES OF PROPOSED RULES

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; and

(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; and

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

(d) [Ø]other specific objective methodology described in the solicitation, such as Section R33-12-302 for primary and secondary contracts, approved by the [chief]procurement official[er 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]Title 63G, Chapter 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.

R33-12-302. 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 official[er 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].

R33-12-404. Multi-Year Contracts.

(1) Procurement units may issue multi-year contracts for any solicitation process 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.]~~

R33-12-501. 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 Subsections 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the [chief]procurement official[er] prior to the commencement of any work to be performed under a contract change order unless:

(a) [F]the procurement unit has authority[.as may be granted under] Subsection 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) requisite to avert an emergency; or

(ii) [is]required as an emergency.

~~(e)2~~ For purposes of [this s]Subsection (1)(b) "emergency" is described in Subsection R33-8-401(3) and is subject to Section 63G-6a-803.

~~(2)3~~ 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 official[er] and included in the division's contract file.

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 official[er or head of a procurement unit with independent procurement authority] may request additional cost or pricing data; or

(c) the [chief]procurement official[er 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.

R33-12-605. Right to Audit.

(1) As used in this rule:

(a) "Authorized representative" includes:

(i) [A]a purchasing procurement unit;

(ii) [A] an internal auditor or other employee of the procurement unit;

(iii) [A] an audit firm, consultant or examiner under contract with the procurement unit;

(iv) [F] the State Auditor;

(v) [F] the Legislative Auditor General; or

(vi) [F] 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) [A] accounting information, financial statements, files, invoices, reports, and statements;

(ii) [P] pricing data;

(iii) [U] usage reports;

(iv) [F] transaction histories;

(v) [D] delivery logs;

(vi) [C] contracts, contract amendments, and other legal documents; and

(vii) [P] performance evaluations.

(2) Any contract between a contractor and a procurement unit [which] that 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] 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) [N] notification procedures for initiating an audit and reporting audit findings;

(c) [D] dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;

(d) [A] 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) [E] 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) [U] 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) [A] 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) [C] 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) [I] 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 official [er, 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] 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; and

(ii) [A] an audit or other request shall:

(A) [B] be limited to records or other information related to or pertaining to the applicable contract;

(B) [I] 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) [B] be carried out at a reasonable time and place [];

(f) [A] 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) [D] deem the contractor to be in breach of its contract with the procurement unit;

(ii) [E] enter into negotiations with the contractor to initiate a corrective action plan to bring the contractor into compliance; or

(iii) [C] cancel the contract [];

(g) [A] 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) [F] failure to respond to an audit;

(ii) [F] failure to correct errors or repay overcharges;

(iii) [A] an illegal act or fraud documented in an audit; or

(iv) [O] other reasons as determined by the [chief] procurement official [er or head of a procurement unit with independent procurement authority].

R33-12-608. Use of Federal Cost Principles.

(1) In dealing with contractors operating according to federal cost principles, the [chief] procurement official [er 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 official [er 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 official [er 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] this rule[s], a written determination shall be made by the [chief] procurement official [er 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.

R33-12-703. Inspection of Supplies and Services.

(1) Contracts may provide that the procurement unit or [chief] procurement official [er 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 official [er 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: ~~[June 21, 2017]~~ **2021**
Notice of Continuation: July 8, 2019
Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-13	Filing No. 53133

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-13. General Construction Provisions
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.

4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.
F) Compliance costs for affected persons:
There are no anticipated compliance costs for affected persons.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
There are no anticipated fiscal impacts that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Tani Downing, Executive Director			

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
--	------------

10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services. R33-13. General Construction Provisions.

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 official[er 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 official[er 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

NOTICES OF PROPOSED RULES

moneys, general obligation bonds or revenue bonds, lapsing~~[]~~ or 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 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~~[]~~ or 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 official~~[er 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 Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements~~[of the Utah Procurement Code]~~.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager~~[]~~ or 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 Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements~~[of the Utah Procurement Code]~~.

(3)(a) As used in this ~~[R]~~ rule, "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.

KEY: construction management, general construction provisions, drug and alcohol testing, state contracts

Date of Enactment or Last Substantive Amendment: ~~[June 21, 2017]~~ 2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-15	Filing No. 53134

Agency Information

1. Department:	Administrative Services
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Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-15. Procurement of Design Professional Services
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to

this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

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

H) Department head approval of regulatory impact analysis:	
The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.	
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:	
There are no anticipated fiscal impacts that this rule may have on businesses.	
B) Name and title of department head commenting on the fiscal impacts:	
Tani Downing, Executive Director	

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Title 63G, Chapter 6a		

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Purchasing and General Services.

R33-15. Procurement of Design Professional Services.

R33-15-101. Application.

~~The provisions of]Title 63G, Chapter 6a, Part 15, Design Professional Services[of the Utah Procurement Code] apply]ies to each[very] 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 R33-4-109. [A]definitions in the Utah Procurement Code shall apply to this [R]rule unless otherwise specified in this [R]rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the [P]procurement [C]code.~~

R33-15-201. Architect-Engineer Evaluation Committee.

The ~~chief]procurement official[er 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 a 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 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 official[er 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 official [or 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 official [or 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 official [or 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: [June 21, 2017]2021
Notice of Continuation: July 8, 2019
Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-16	Filing No. 53135

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-16. Protests

3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to provide uniformity in terms.
4. Summary of the new rule or change:
"Chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" throughout the body of this rule, and "request for proposals, invitation for bids, or other" was removed from Subsection R33-16-101a(iii).

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.
F) Compliance costs for affected persons:
There are no anticipated compliance costs for affected persons.

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

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

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

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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R33. Administrative Services, Division of Purchasing and General Services.

R33-16. Protests.

R33-16-101a. Grounds for a Protest.

(1) This [R]rule [shall]appl[y]ies to [all]protests filed under Section 63G-6a-1602.

(2) In accordance with the requirements [set forth]in Section 63G-6a-1602, 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 must include the relevant facts and evidence leading the protestor to contend that a grievance has occurred, including[~~but not limited to~~]:

(i) [A]an alleged violation of Title 63G, Chapter 6a, Utah Procurement Code[~~63G-6a~~];

(ii) [A]an alleged violation of Title R33 or other applicable rule;

(iii) [A]a provision of the [request for proposals, invitation for bids, or other]solicitation allegedly not being followed;

- (iv) ~~[A]~~ 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) ~~[A]~~ an alleged error made by the evaluation committee or ~~[conducting]~~ procurement unit;
- (vi) ~~[A]~~ an allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or
- (vii) ~~[A]~~ a scoring criteri~~a~~n allegedly not being correctly applied or calculated.
 - (b) "Relevant Facts and Evidence" as referred to in Section 63G-6a-1602, 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 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 such as:
 - (A) the protestor should have received a higher score;
 - (B) another vendor should have received a lower score;
 - (C) a service or product provided by a protestor is better than another vendor's service or product;
 - (D) another vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation;
 - (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; or
 - (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~~[-]~~;
 - (iii) ~~[F]~~ 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]~~ Title 63G, Chapter 6a; or
 - (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this ~~[R]~~ 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.

(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]~~ Title 63G, Chapter ~~[]~~ 6a, Part 16, Protests, or this ~~[R]~~ rule.

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]~~ Title 63G, Chapter 6a, or ~~[Administrative R]~~ rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, ~~[chief] procurement official~~ ~~[er, 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: ~~[June 21, 2017]~~ 2021
Notice of Continuation: July 8, 2019
Authorizing, and Implemented or Interpreted Law: 63G-6a

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-19	Filing No. 53136

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R33-19. General Provisions Related to Protest or Appeal
3. Purpose of the new rule or reason for the change:
An internal review of this rule found that clarification was needed regarding the obligations of the procurement unit.
4. Summary of the new rule or change:
Subsection R33-19-101(4) was added to notify that the procurement unit will not assist in writing or provide

statutory interpretation to the vendor in the filing of a protest of appeal.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.

B) Local governments:

There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

Regulatory Impact Table

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

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2021
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/20/2020
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**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~~ Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this ~~R~~ rule unless otherwise specified in this ~~R~~ rule. This ~~administrative~~ rule provides additional requirements and procedures and must be used in conjunction with ~~the Procurement Code~~ Title 63G, Chapter 6a.

(2) Title 63G, Chapter 6a, Part 19 ~~of the Utah Procurement Code~~ 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.

(4) The procurement unit will not assist in writing or provide statutory interpretation to the vendor in the filing of a protest or appeal.

KEY: appeals, protests, general provisions, procurement code
Date of Enactment or Last Substantive Amendment: ~~June 21, 2017~~2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-24	Filing No. 53138

Agency Information

1. Department:	Administrative Services	
Agency:	Purchasing and General Services	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state:	Salt Lake City, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Shad Brunson	801-965-4064	sbrunson@utah.gov

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

General Information

2. Rule or section catchline:
R33-24. Unlawful Conduct and Ethical Standards
3. Purpose of the new rule or reason for the change:
The purpose of this amendment is to simplify this rule.
4. Summary of the new rule or change:
Removed "executive branch" throughout this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated costs or savings that are expected to affect the state budget. The changes to this rule provide simplification and clarity in the terms and processes.
B) Local governments:
There are no anticipated costs or savings that are expected to affect local governments. The changes to this rule provide simplification and clarity in the terms and processes.

NOTICES OF PROPOSED RULES

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

There are no anticipated costs or savings that are expected to affect small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect non-small businesses. The changes to this rule provide simplification and clarity in the terms and processes.

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

There are no anticipated costs or savings that are expected to affect persons other than those listed above. The changes to this rule provide simplification and clarity in the terms and processes.

F) Compliance costs for affected persons:

There are no anticipated compliance costs for affected persons.

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

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

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Administrative Services which oversee the Division of Purchasing and General Services, Tani Downing, has reviewed and approved this fiscal analysis.

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

There are no anticipated fiscal impacts that this rule may have on businesses.

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

Tani Downing, Executive Director

Citation Information

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

Title 63G, Chapter 6a		
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Shad Brunson, Chairperson	Date:	10/21/2020
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R33. Administrative Services, Purchasing and General Services.

R33-24. Unlawful Conduct and Ethical Standards.

R33-24-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an [executive branch] procurement professional participates in a social activity prohibited under Subsection R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-24-105. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest [is a situation in which] occurs when the potential exists for an [executive branch] employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the [S] state's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in [Utah Code] Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

(1) E[~~xecutive branch~~] employees are prohibited from participating in [any and all] discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an [executive branch] employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from [any and all] discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct

Date of Enactment or Last Substantive Amendment: [August 22, 2016] 2021

Notice of Continuation: July 8, 2019

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R68-35	Filing No. 53177

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Cody James	801-982-2376	codyjames@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov

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

General Information

2. Rule or section catchline:

R68-35. Academic Medical Cannabis Research

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

As required by Section 4-41a-901, this rule sets guidelines under which a research university can apply for an academic medical cannabis research license to obtain, cultivate, process, and possess cannabis in the state for research purposes.

4. Summary of the new rule or change:

This new rule defines applicable terms and sets licensing requirements for academic medical cannabis research including: research plan requirements; inventory and recordkeeping requirements; transportation requirements; storage and handling requirements; waste disposal requirements; and security requirements. This rule also outlines the procedure for license renewal and sets violation categories and potential penalties.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

The cost to the Department of Agriculture and Food (Department) to administer this program will be approximately \$10,000 per year. The Department estimates that four universities will apply for and receive research licenses. The fee for each license is \$2,500, which should pay for the cost of the program.

B) Local governments:

There are no anticipated costs or savings to local governments related to this rule because local governments are not research universities and do not administer the research program.

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

There are no costs or savings to small businesses related to this rule because research universities that will apply for a license do not fall into this category.

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

There are no anticipated costs to non-small businesses because universities that will apply for a research license do not fall into this category.

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

Research universities should be considered "other persons" and as such will incur a cost of \$2,500 per license with an estimated 4 licenses and total cost of \$10,000.

F) Compliance costs for affected persons:

The compliance cost for each affected person will be \$2,500 for a total cost of \$10,000.

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

Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$10,000	\$10,000	\$10,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$10,000	\$10,000	\$10,000
Total Fiscal Cost	\$20,000	\$20,000	\$20,000
Fiscal Benefits			
State Government	\$10,000	\$10,000	\$10,000
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$10,000	\$10,000	\$10,000
Net Fiscal Benefits	\$(10,000)	\$(10,000)	\$(10,000)

H) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture and Food, R. Logan Wilde, has reviewed and approved this fiscal analysis.

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

This rule will allow universities to research cannabis while keeping the public safe. There is not fiscal impact on businesses involved.

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

R. Logan Wilde, Commissioner

Citation Information

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

Section 4-41a-901

Public Notice Information

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

A) Comments will be accepted until: 01/14/2020

10. This rule change MAY become effective on: 01/21/2020

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

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	11/02/2020
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R68. Agriculture and Food, Plant Industry.

R68-35. Academic Medical Cannabis Research.

R68-35-1. Authority and Purpose.

Pursuant to Section 4-41a-901, this rule establishes the process by which a research university may obtain, cultivate, process, and possess cannabis for academic medical cannabis research.

R68-35-2. Definitions.

1) "Applicant" means a person from a research university who applies for a research license from the Utah Department of Agriculture and Food.

2) "Batch" means a quantity of:

a) cannabis concentrate produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis concentrate is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

3) "Cannabis" means any part of the marijuana plant.

4) "Cannabis concentrate" means:

a) the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass;

b) any amount of a natural, derivative, or synthetic cannabinoid in its purified state.

5) "Cannabis Product" means a product that:

a) is intended for human use; and

b) contains cannabis or tetrahydrocannabinol.

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

7) "License" means a license issued by the Utah Department of Agriculture and Food to a research university granting authorization to obtain cannabis from a cannabis production establishment or another research licensee to cultivate, process, and possess cannabis for research purposes.

8) "Licensee" means a person authorized by the department to obtain, cultivate, process, and possess cannabis for the purpose of research.

9) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves, or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

10) "Research" means academic medical cannabis research or the study of cannabis for the purpose of developing useful processes, information, and products.

11) "Research Plan" means a plan stating the objective and purpose of the proposed academic medical cannabis research including each method and procedure for carrying out the research.

12) "Research Location" means the area of a research university where academic medical cannabis research takes place.

13) "Security Plan" means a plan to control and limit unauthorized access to cannabis and methods used to prevent diversion of cannabis.

14) "Total THC" means the sum of the determined amounts of delta-9-THC and delta-9-THCA, according to the formula: Total THC = delta-9-THC + (delta-9-THCA x 0.877).

R68-35-3. Research License Requirements.

1) No applicant may possess any cannabis until the applicant is notified that their research license has been approved by the department.

NOTICES OF PROPOSED RULES

- 2) An applicant shall be 21 years of age or older.
- 3) An applicant shall be employed by a research university.
- 4) The department may not issue a license to an applicant if they have been convicted of a drug-related felony within the last ten years.
- 5) An applicant shall submit to the department:
 - a) the name, email address, and telephone number of the principal investigator responsible for the:
 - i) procurement of cannabis;
 - ii) use and secure storage of the cannabis; and
 - iii) the management of the research;
 - b) the institution's name and address;
 - c) the name of each individual with access to cannabis material;
 - d) a research plan;
 - e) the research location;
 - f) the name and address of each cannabis production establishment or licensee from which the applicant intends to obtain cannabis; and
 - g) a security plan.
- 6) Each applicant for a license shall submit to the department, at the time of application, from each individual who will handle cannabis as part of the research, a nationwide criminal history from the FBI completed within three months of the application.
- 7) An applicant shall submit a research license fee as approved by the legislature in the fee schedule.
- 8) Prior to issuing a license the department shall inspect the proposed research location to determine if the applicant complies with state law and this rule.
- 9) An incomplete or incorrect application will be rejected and not considered by the department.

R68-35-4. Research Plan Requirements.

- 1) An applicant is responsible for ensuring that no information is included in a research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection.
- 2) Each research plan shall be submitted by a person who has the legal authority to represent the research university.
- 3) Each research plan shall be submitted to the department in a legible PDF format.
- 4) Each individual involved in research shall be considered an agent of the licensee.
- 5) A research plan is limited to twelve pages, not including references or citations, and should include the following information, in addition to the requirements of Section R68-35-2:
 - a) the purpose and goal of the proposed research;
 - b) each key milestone and timeline for the research;
 - c) background and preliminary studies, if applicable;
 - d) the amount and type of cannabis to be obtained for the research project including the justification with respect to each milestone task;
 - e) the anticipated cost of the proposed research project and funding source;
 - f) personnel that will be involved in the project, including each name and role;
 - g) facilities, equipment, and other resources required and available for conducting the proposed research project;
 - h) letters of support, limited to two pages each, confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project; and

- i) any additional information requested by the department.
- 6) Each license will be issued by the Cannabis Production Establishment Licensing Board.

R68-35-5. Inventory and Recordkeeping Requirements.

- 1) A licensee shall maintain an organized filing system so cannabis records can be easily obtained when requested by the department.
- 2) Each record related to research shall be maintained by the licensee and available for inspection by the department for a minimum of two years following the completion of the project.
- 3) The licensee shall maintain a current inventory and record of the disposition of materials for cannabis, cannabis plant product, cannabis concentrate, and cannabis product on hand.
- 4) A licensee shall take necessary measures to avoid the diversion of cannabis, cannabis concentrate, or cannabis product.

R68-35-6. Research Limitations.

- 1) A licensee is restricted to only research specified in an approved research plan.
- 2) An amendment to an approved research requires the resubmission and approval of the documents listed in Section R68-35-4 and the reason for the amendment.

R68-35-7. Transportation.

- 1) A printed transport manifest shall accompany each transport of cannabis.
- 2) The manifest shall contain the following information:
 - a) the licensee's address and license number of the departure location;
 - b) the physical address and license number of the receiving location;
 - c) the strain name, quantity by weight, and unique identification number from the inventory control system of cannabis to be transported;
 - d) the date and time of departure;
 - e) the estimated date and time of arrival; and
 - f) the name and signature of each licensee or agent accompanying the cannabis.
- 3) The transport manifest may not be voided or changed after departure.
- 4) A copy of the transport manifest shall be given to the receiving location.
- 5) The receiving location shall ensure that the cannabis received is as described in the transport manifest and shall record the amount received for each strain.
- 6) The receiving location shall document at time of receipt any difference between the quantity specified in the transport manifest and the quantity received and recorded. Any difference shall be immediately reported to the department.
- 7) During transportation, cannabis shall be:
 - a) shielded from the public view;
 - b) secured; and
 - c) temperature controlled if perishable.
- 8) A licensee shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.
- 9) A licensee or an agent of a licensee shall occupy each transporting vehicle. No other individual may occupy a transporting vehicle.

R68-35-8. Inspection and Testing.

1) A licensee shall provide the department with written consent allowing a representative of the department or local law enforcement to enter any premises where a licensee possesses or stores cannabis for the purpose of:

- a) conducting a physical inspection; or
- b) ensuring compliance with the requirements of state law and this rule.

2) Cultivation or processing based research that does not involve testing on any human or animal subject, is not subject to the testing requirements of Section R68-29-3.

R68-35-9. Minimum Storage and Handling Requirements.

1) Each storage area shall be maintained in a clean and orderly condition.

2) A licensee shall store cannabis, cannabis concentrate, or cannabis product in a manner so as to prevent diversion, theft, or loss.

3) A licensee shall make cannabis, cannabis concentrate, and cannabis product accessible only to the minimum number of specifically authorized agents of the licensee essential for efficient operation and shall return the cannabis, cannabis concentrate, or cannabis product to its secure location immediately after completion of the process or at the end of the scheduled business day.

4) If a research process cannot be completed at the end of a working day, a licensee shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

R68-35-10. Cannabis Waste Disposal.

1) A licensee shall dispose of cannabis, cannabis concentrate, or cannabis product if research is discontinued for any reason.

2) Solid and liquid waste generated during research shall be stored, managed, and disposed of in accordance with applicable state law and rules under Title R68.

3) Wastewater shall be disposed of in compliance with applicable state law and rules under Title R68.

4) Cannabis waste shall be rendered unusable prior to leaving the research location.

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

6) Material used to grind and incorporate with cannabis fall into two categories:

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

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

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

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

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

R68-35-11. Security Plan.

1) A licensee's security plan shall conform to the following requirements:

a) a licensee shall provide effective controls and procedures to guard against theft and diversion of cannabis;

b) a licensee shall store cannabis in a securely locked, substantially constructed cabinet;

c) a licensee shall not employ, as an agent or employee who has access to cannabis, any person who has been convicted of a drug-related felony in the last 10 years or is not at least 21 years of age; and

d) a licensee shall notify the department of any theft or significant loss of any cannabis within 24 hours from the discovery of the loss or theft.

R68-35-12. Renewal.

1) A licensee shall resubmit each document required in Sections R68-35-3 and R68-35-4, with updated information, before December 31st of each year including a report detailing the progress of the research.

2) The department may deny a renewal for incomplete documentation.

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

R68-35-13. Violations.

1) It is a violation for a licensee to store or process cannabis, cannabis concentrate, or cannabis product on a site not approved by the department as part of the license.

2) It is a violation for a licensee to process cannabis, cannabis concentrate, or cannabis product from a source that is not licensed by the department.

3) A licensee's research for the U.S. Drug Enforcement Administration (DEA) or another law enforcement agency is exempt from Subsections R68-35-13(1) or R68-35-13(2).

4) A licensee shall maintain each requirement of their security plan and may not allow unsupervised public access to an area where cannabis, cannabis concentrate, or cannabis product is stored or processed.

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

6) It is a violation of this rule to handle or possess cannabis without a license from the department.

7) It is a violation for a licensee to employ a person under the age of 21 in the processing or handling of cannabis or a cannabis product.

8) It is a violation to fail to keep a record required by this rule.

9) It is a violation to allow an employee that has been convicted of a drug-related felony in the last ten years access to cannabis or cannabis product.

10) It is a violation to operate outside of the scope of the research project approved under the license.

11) It is a violation to make changes to a research plan or research location without prior approval from the department.

R68-35-14. Violation Categories.

1) Public Safety Violations: Each person is fined \$3,000-\$5,000 per violation. This category is for violations that present a direct threat to public health or safety including:

NOTICES OF PROPOSED RULES

- a) cannabis sold to an unlicensed source;
 - b) cannabis purchased from an unlicensed source;
 - c) refusal to allow inspection;
 - d) unauthorized personnel on the premises;
 - e) permitting criminal conduct on the premises; or
 - f) engaging in or permitting a violation of the Title 4, Chapter 41a, Cannabis Production Establishments, that amounts to a public safety violation as described in this Subsection.
- 2) Regulatory Violations: Each person is fined \$1,000-\$5,000 per violation. This category is for violations involving this rule and other applicable state rules under Title R68 including:
- a) failure to follow approved security plan;
 - b) failure to keep and maintain records;
 - d) failure to follow transportation requirements;
 - e) failure to follow the waste and disposal requirements; or
 - f) engaging in or permitting a violation of Title 4, Chapter 41a, Cannabis Production Establishments, this rule, or other applicable state rules under Title R68 that amounts to a regulatory violation as described in this subsection.
- 3) Licensing Violations: Each person is fined \$500 - \$5,000 per violation. This category is for violations involving research license requirements including:
- a) an unauthorized change to the research plan;
 - b) failure to notify the department of changes to the research plan;
 - c) engaging in or permitting a violation of this rule or Title 4, Chapter 41a, Cannabis Production Establishments that amounts to a licensing violation as described in this Subsection; or
 - d) failure to respond to a violation.
- 4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incident giving rise to the violation.

KEY: cannabis, research
Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 4-41a-901

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R82-9	Filing No. 53233

Agency Information

1. Department:	Alcoholic Beverage Control	
Agency:	Administration	
Street address:	1625 S 900 W	
City, state:	Salt Lake City, UT 84104-1630	
Mailing address:	PO Box 30408	
City, state, zip:	Salt Lake City, UT 84130-0408	
Contact person(s):		
Name:	Phone:	Email:
Vickie Ashby	801-977-6801	vickieashby@utah.gov

Angela Micklos	801-977-6800	afmicklos@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R82-9. Event Permits
3. Purpose of the new rule or reason for the change:
This new rule is part of the effort to condense and reorganize the Alcoholic Beverage Control rules to a format similar to state statute. This rule establishes procedures and criteria for issuing and denying event permits in accordance with Title 32B, Chapter 9. This rule also incorporates a recent legislative change that allows the Department of Alcoholic Beverage Control (Department) the ability to charge a fee for a substantial change in an event permit application.
4. Summary of the new rule or change:
During the massive repeal of Title R81 and transfer to Title R82, the rule governing event permits (Rule R81-7) was repealed but a corresponding rule was inadvertently not submitted as part of Title R82. This rule establishes procedures and criteria for issuing and denying event permits in accordance with Title 32B, Chapter 9.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
None--This rule does not create additional cost or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.
B) Local governments:
None--This rule does not create additional cost or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.
C) Small businesses ("small business" means a business employing 1-49 persons):
None--This rule does not create additional cost or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
None--This rule does not create additional cost or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.

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

None--This rule does not create additional cost or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.

F) Compliance costs for affected persons:

This rule does not create additional compliance costs or savings. Fiscal impact was considered by the legislature when enacting Title 32B, Chapter 9.

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

Regulatory Impact Table

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

H) Department head approval of regulatory impact analysis:

The head of department of the Department of Alcoholic Beverage Control, Salvador Petilos, has reviewed and approved this fiscal analysis.

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

The new rule replaces Rule R81-7. It is part of the effort to condense and reorganize the administrative code to a format similar to state statute. This rule establishes procedures and criteria for issuing and denying event permits in accordance with 32B-9. It will not have a fiscal impact on businesses.

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

Salvador Petilos, Executive Director

Citation Information

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

Title 32B, Chapter 9	Section 32B-2-202
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

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

Agency Authorization Information

Agency head or designee, and title:	Salvador Petilos, Executive Director	Date:	12/01/2020
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R82. Alcoholic Beverage Control, Administration.

R82-9. Event Permits.

R82-9-101. Authority and Purpose.

(1) Pursuant to Subsections 32B-2-202(1)(c)(i) and 32B-2-202(1)(n), and 32B-9-201(1), this rule establishes procedures and criteria for issuing and denying event permits in accordance with Title 32B, Chapter 9, Event Permit Act.

R82-9-102. Definitions.

(1) For purposes of Subsection 32B-9-303(2)(a), "Conducting" means managing, controlling, hosting, or directing an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's alcoholic beverage service.

R82-9-201. Application Requirements.

(1) The director will not consider an event permit application until the requirements of Sections 32B-1-304, 32B-9-201-203, 32B-9-304 and 32B-9-405 have been met, including:

(a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department one month prior to the event; and

(b) the department has conducted an investigation in compliance with Subsection 32B-9-202(1)(a).

(2) A late application will be accepted up to seven business days prior to the event. A late application will be reviewed as time allows and is not subject to the provisions in Subsections R82-9-201.1(1)(ii) and R82-9-201.1(1)(iii).

(3) For purposes of Subsection 32B-2-201(2), a substantial change in an event application means a modification that seeks to alter the number of attendees, location, control measures, or any other substantive detail beyond changing the date of the event.

R82-9-201.1. Guidelines for Issuing Permits.

(1) Once submitted to the director, the application will be considered in accordance with Sections 32B-9-202, 32B-9-303, and 32B-9-403, including consideration of Section R82-9-202.

(i) After consideration of the totality of the circumstances, the director will either issue a preliminary decision to issue or deny the event permit or refer the application to the commission in accordance with Subsection 32B-9-202(3).

(ii) If the director issues a preliminary decision to deny issuance of an event permit, the decision shall be provided in writing detailing the basis for the denial.

(iii) An applicant may submit a request for review by the commission within the time limits of Subsections 32B-9-202(3)(b) and 32B-9-202(3)(c) related to the three business day review period and regularly scheduled commission meetings. If at least three commissioners request review of the denial in compliance with Subsections 32B-9-202(3)(b) and 32B-9-202(3)(c), the commission shall review the request at its next regularly scheduled commission meeting.

(2) In accordance with Subsection 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Subsection 32B-9-201(4).

(3) Any approval, notification, request for a meeting, or requirement to inform under Section 32B-9-202 shall be done electronically.

R82-9-202. Additional Consideration for Event Permits.

(1) In accordance with Subsection 32B-9-303(2), a single event permit is issued to entities in existence for a year or more conducting a convention, civic, or community enterprise.

(a) As part of local consent required by Subsection 32B-9-201(1)(c), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.

(b) The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise.

(c) Notwithstanding Subsection (1), an event permit may not be issued if, based on the totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of Title 32B, Chapter 9, Event Permit Act.

(2) In accordance with Subsection 32B-9-202(2)(d), in considering the nature of the event, if there is a violation of the applicant, the event, or the venue within the last 36 months, the director will consider the violation history in making a determination regarding whether to issue the permit or in determining additional controls as outlined in Section (3).

(3) In accordance with Subsection 32B-9-202(2)(d), in considering the nature of the event, the director must determine that adequate and appropriate control measures will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

(a) The director may not issue an event permit unless the applicant demonstrates the following control measures will be implemented at the event:

(i) the event will have at least one location where an individual must show proof of age prior to purchasing an alcoholic beverage;

(ii) each individual assigned to check proof of age will have completed the alcohol server training seminar outlined in Section 62A-15-401 within the last three years prior to the date of the event;

(iii) one or more individuals who have completed the alcohol server training seminar outlined in Section 62A-15-401 within the last three years will be required to supervise each location where an alcoholic beverage is sold or dispensed;

(iv) the event will be secured and delineated by a physical structure such as by a fence, wall, or gate, and secured entryways and exits;

(v) security will be provided by one or more individuals for every 50 individuals estimated to be in the consumption area at one time, which may be provided by a police officer, hired security guard, organization staff member, or security volunteer.

(b) In accordance with Subsection 32B-9-202(2)(e), the director may not issue an event permit unless the applicant demonstrates the following additional control measures will be implemented at an outdoor public event or a large-scale public event where minors are present:

(i) any alcoholic beverage shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages;

(ii) dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption is closely monitored;

(iii) a location where an individual must show proof of age prior to purchasing an alcoholic beverage shall be separate from an alcoholic beverage sales and dispensing location; and

(iv) an individual assigned to check proof of age at an event will either issue a hand stamp or non-transferable wristband to an individual authorized to purchase alcoholic beverages at the event.

(c) The director, after reviewing the facts and circumstances of a particular event, may modify any of the control measures outlined in Subsection (a) and (b) to be more or less stringent as a condition of issuing an event permit provided that the director has first reasonably determined that such modification will not increase the likelihood of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

KEY: alcoholic beverages, event permits

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-9

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-622	Filing No. 53228

Agency Information

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

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

General Information

2. Rule or section catchline:
R277-622. School-based Mental Health Qualified Grant Program
3. Purpose of the new rule or reason for the change:
This rule is being amended to reflect the changes made to its authorizing law by H.B. 323, which passed in the 2020 General Session and the regional service center code in S.B. 79 of the 2020 General Session. S.B. 79 renamed regional service centers, regional education service agencies (RESA) and authorizes a RESA to apply for grant programs under certain circumstances. This rule is being

amended to specify how a RESA may receive funding for this particular school based mental health grant program.

4. Summary of the new rule or change:

This rule is being updated to remove a match requirement for funds awarded to a local education agency (LEA) for a plan submitted after April 1, 2020. This rule also is modified to allow an LEA to use the LEA's Teacher and Student Success Account as a source of matching funds. The amendments to the funding distribution allow RESAs to receive \$50,000 per LEA member of the RESA as the funding formula for the grant governed by this rule. This rule also clarifies that any grant recipient will receive 25% of their allocation upfront and 75% on a reimbursement basis in a post-performance manner.

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:

This rule change is not expected to have independent fiscal impact on state government revenues or expenditures. The amendments reflect changes made in law by H.B. 323 (2020). The amendments align this rule with statutory changes found in S.B. 79 (2020) and the change affects distributions of an existing grant program to LEAs, but this does not change overall amounts funded or expended by Utah State Board of Education (USBE).

B) Local governments:

This rule change is not expected to have independent fiscal impact on local governments' revenues or expenditures. The amendments reflect changes made in law by H.B. 323 (2020). The amendments align this rule with statutory changes found in S.B. 79 (2020) and the change affects distributions of an existing grant program to LEAs, but this does not change overall amounts funded or expended by USBE.

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

This rule change is not expected to have independent fiscal impact on small businesses' revenues or expenditures. The amendments reflect changes made in law by H.B. 323 (2020). The amendments align this rule with statutory changes found in S.B. 79 (2020) and the change affects distributions of an existing grant program to LEAs, but this does not change overall amounts funded or expended by USBE.

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

There are no non-small businesses in the industry in question, Elementary and Secondary Schools (North American Industry Classification System (NAICS) 611110). Because there are no non-small businesses, they do not account for any service delivery for Elementary and

Secondary Schools. Therefore, non-small businesses are not expected to receive increased or decreased revenues per year. This proposed rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because there are no applicable non-small businesses and it does not require any expenditures of, or generate revenue for non-small businesses.

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

This rule change is not expected to have independent fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. The amendments reflect changes made in law by H.B. 323 (2020). The amendments align this rule with statutory changes found in S.B. 79 (2020) and the change affects distributions of an existing grant program to LEAs, but this does not change overall amounts funded or expended by USBE.

F) Compliance costs for affected persons:

There are no independent compliance costs for affected persons. The amendments reflect changes made in law by H.B. 323 (2020) and align this rule with statutory changes found in S.B. 79 (2020). The change affects distributions of an existing grant program to LEAs, but this does not change overall amounts funded or expended by USBE.

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

Regulatory Impact Table

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

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The State Superintendent of the Utah Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.

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

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

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

Sydnee Dickson, State Superintendent

Citation Information

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

Article X, Section 3	Section 53F-2-415	Subsection 53E-3-401(4)
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Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in

the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	11/30/2020
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R277. Education, Administration.

R277-622. School-based Mental Health Qualified Grant Program.

R277-622-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board;
 - (b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Section 53F-2-415 which requires the Board to makes rules that establish:
 - (i) procedures for submitting a plan for the School-based Mental Health Qualified Grant Program;
 - (ii) a distribution formula the Board will use to distribute funds to an LEA; and
 - (iii) annual reporting requirements for an LEA that receives funds pursuant to the School-based Mental Health Qualified Grant Program.
- (2) The purpose of this rule is to establish the procedures for an LEA to receive a School-based Mental Health Qualified Grant including:
 - (i) plan submission process, format, and requirements;
 - (ii) funding distribution methods; and
 - (iii) additional requirements including reporting and accountability.

R277-622-2. Definitions.

- (1) "Plan" means a School-based Mental Health Qualified Grant plan described in Section R277-622-3.
- (2) "Qualified Personnel" means the same as the term is defined in Subsection 53F-2-415(1).
- (3) "Regional Education Service Agency" or "RESA" means the same as the term is defined in Subsection 53G-4-410(1)(b).
- (~~3~~4) "Related Services" means mental-health or school nursing services provided by the local mental health authority or a private provider through a contract.

R277-622-3. School-based Mental Health Plan.

- (1) To qualify for a School-based Mental Health Qualified Grant, an LEA shall submit a plan to the Superintendent.
- (2) The plan shall include:
 - (a) a three-year projection for the LEA's goals, metrics, and outcomes;
 - (b) requirements outlined in Subsection 53F-2-415(3);
 - (c) plan for improving access to students who are underserved or at risk;
 - (d) how qualified personnel will increase access to mental health services;
 - (e) a process for utilization of qualified personnel in participating with an LEA's care team as outlined in R277-400;
 - (f) the source of the LEA's matching funds; and
 - (g) a timeline and process for stakeholder training in trauma-informed practices.
- (3) Except as provided in Subsection (4), an LEA shall submit the LEA's plan no later than May 31 for a funding distribution to be made for the upcoming school year.
- (4) An LEA shall submit a plan no later than June 7 for a funding distribution to be made in Fiscal Year 20.
- (5) An LEA's approved plan is valid for three years and may be required to be reapproved after three years of implementation.
- (6) An LEA may submit a revised plan for approval by the board, in a manner described by the Superintendent, if the LEA identifies deficiencies with the LEA's ability to implement the LEA's plan including a change in available funding.

R277-622-4. Board Approval or Denial of LEA Plan.

- (1) The Board shall approve or deny each LEA plan submitted by the Superintendent.
- (2) If the Board denies an LEA's plan, the LEA may amend and resubmit the LEA's plan to the Superintendent until the Board approves the LEA plan.

R277-622-5. School-Based Mental Health Grant Distribution.

- (1) An LEA with an approved plan pursuant to subsection R277-622-4 shall receive a School-based Mental Health Grant distribution.
- (2) The funding amount distributed to an approved LEA shall be the sum of:
 - (a) \$25,000; and
 - (b) a per student allocation based on the number of students in an LEA divided by the total available grant appropriation less the aggregate amount of appropriation allocated as described in Subsection (2)(a)~~[-]~~;
- (3) A RESA shall receive \$50,000 per member school district.
- (~~3~~4) The number of students used in Subsection (2)(b) shall be:
 - (i) based on the October 1 headcount in the prior year; or
 - (ii) for a new LEA, based on the new LEA's projected October 1 headcount.
- (~~4~~5) An LEA or RESA may only receive an initial distribution totaling 25% of the allocation upon plan approval.
- (~~5~~6) An LEA or RESA may receive a second distribution totaling 75% of the allocation on a reimbursement basis upon demonstration to the Superintendent of:
 - (a) contracting of services for qualified personnel; or
 - (b) hiring qualified personnel.
- (~~6~~7) After the distribution described in subsections (2)(a) and (b), and by October 1 of each year, the Superintendent shall distribute any undistributed funds as an additional allocation to an LEA.

NOTICES OF PROPOSED RULES

([7]8) An LEA may qualify for the additional allocation described in Subsection (6) if the LEA demonstrates an intent to collaborate with the Local Mental Health Authority of the county the LEA is located.

([8]9) The additional allocation described in subsection (6) shall be:

- (a) the aggregate total of undistributed funds;
- (b) subject to all matching fund requirements described in section R277-622-3;
- (c) distributed to an eligible LEA in an amount equal to the LEA's portion of the student headcount of all eligible and participating LEAs; and
- (d) used for collaboration with the Local Mental Health Authority of the County the LEA is located.

R277-622-6. Matching Funds.

(1) To qualify for a School-based Mental Health Qualified Grant, an LEA, that submits a plan prior to April 1, 2020, shall provide matching funds as required by Subsection 53F-2-415(4)(b).

(2) To qualify as matching funds the LEA's funds may come from any of the following sources or procedures:

- (a) prioritizing of existing unrestricted state or local funds including:
 - (i) an unrestricted donation; or
 - (ii) new funds available in the next fiscal year;
- (b) funds generated from property tax;
- (c) charter school local replacement funds;
- (d) unrestricted MSP Basic program funds;
- (e) money distributed to the LEA under Section 53G-7-1303;

or

([e]f) another source of unrestricted state funds or local funds as approved by the Superintendent.

- (3) Funds may not qualify as a match if:
 - (a) the funds are from restricted state funds including:
 - (i) funds granted to an LEA for a specific program created in statute or rule;
 - (ii) funds that have already been used as a match in a different state grant program; or
 - (iii) funds from a federal source; or
 - (b) the funds are described in Subsection 53F-2-415(5).
- (4) An LEA shall demonstrate that all matching funds fit within the scope of work for school-based mental health and general health services as outlined in an LEA's plan.

(5) An LEA shall report revenues and expenditures of program funds by location code according to the Board approved chart of accounts.

R277-622-7. Allowable Uses of Funds.

(1) An LEA that receives a distribution pursuant to Section R277-622-6 may use the funds only for the following:

- (a) salary and benefits for the hiring of qualified personnel;
- or
- (b) procuring a contract for related services;
- (2) If an LEA fails to hire qualified personnel by January 31 the allocated funds shall be returned to the Board.
- (3) All unexpended funds distributed to an LEA shall be returned to the Board at the end of the LEA's school year and redistributed in the following year's distribution.
- (4) An LEA shall use the LEA's matching funds and allocation within the fiscal year the funds are distributed.
- (5) An LEA that has remaining balances at year end shall report the remaining balances in the LEA's annual program report described in R277-484.

(6) An LEA with remaining balances shall receive a reduction totaling the remaining balances in the LEA's award for the following fiscal year.

R277-622-8. Annual Reporting and Accountability.

(1) An LEA with an approved plan and funding amount shall provide the Superintendent with an annual report no later than October 1 of each year.

- (2) The annual report shall include:
 - (a) a total baseline count of qualified personnel in an LEA before receiving the initial funding allocation;
 - (b) the number of qualified personnel hired above the baseline count using the funding allocation;
 - (c) the progress made toward achieving goals and outcomes outlined in the LEA's plan; and
 - (d) other information requested by the Superintendent.

KEY: mental health, programs, reporting

Date of Enactment or Last Substantive Amendment: ~~July 31, 2019~~ **2021**

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53E-4-302(1)(a)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R450-5	Filing No. 53216

Agency Information

1. Department:	Heritage and Arts	
Agency:	Administration	
Building:	Rio Grande Depot	
Street address:	300 S Rio Grande St.	
City, state:	Salt Lake City, UT	
Mailing address:	300 S Rio Grande St.	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Josh Loftin	801-386-4755	jloftin@utah.gov

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

General Information

2. Rule or section catchline:
R450-5. Utah Martin Luther King Jr. Human Rights Commission
3. Purpose of the new rule or reason for the change:
This rule is required by H.B. 224 passed in the 2019 General Session.

4. Summary of the new rule or change:
 This rule will establish membership and duties for the Martin Luther King Jr. Human Rights Commission (Commission).

Fiscal Information

5. Aggregate anticipated cost or savings to:

A) State budget:
 No new costs or savings will occur because of this rule. The Commission was created in 1991 and re-authorized by executive order in 2013. Commission members volunteer their time, and administrative costs related to the Commission have always been covered by the Division of Multicultural Affairs.

B) Local governments:
 No new costs or savings will occur because of this rule. This Commission does not have any authority over local governments and any work the Commission does with local governments is voluntary. Any Commission members who represent local governments serve in a volunteer capacity.

C) Small businesses ("small business" means a business employing 1-49 persons):
 No new costs or savings will occur because of this rule. This Commission does not have any authority over small businesses and any work the Commission does with small businesses is voluntary. Any Commission members who own small businesses serve in a volunteer capacity.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
 No new costs or savings will occur because of this rule. This Commission does not have any authority over non-small businesses and any work the Commission does with non-small businesses is voluntary. Any board members representing non-small businesses serve in a volunteer capacity.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):
 No new costs or savings will occur because of this rule. The Commission does not have authority for regulation. Any board members from these other entities serve in a volunteer capacity.

F) Compliance costs for affected persons:
 No new costs or savings will occur because of this rule. This rule does not require compliance by any person or organization.

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

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

H) Department head approval of regulatory impact analysis:

Jill Love, the Executive Director of the Department of Heritage and Arts, has reviewed and approved this fiscal analysis.

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

No impact on businesses.

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

Jill Love, Executive Director

Citation Information

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

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

Section 9-21-401	Section 9-21-402	
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

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

Agency Authorization Information

Agency head or designee, and title:	Josh Loftin, Public Information Officer	Date:	12/04/2020
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R450. Heritage and Arts, Multicultural Affairs.
R450-5. Utah Martin Luther King Jr. Human Rights Commission.

R450-5-1. Purpose.
 This rule establishes the membership, duties, and procedures of the Utah Martin Luther King Jr Human Rights Commission.

R450-5-2. Authority.
 This rule is required by Subsection 9-21-401(9) and enacted under the authority of Sections 9-1-201, 9-1-202.2, and 9-21-401.

R450-5-3. Definitions.
 The terms used in this rule are defined in Section 9-1-102 and 9-21-102.

R450-4-4. Membership and Duties of the Human Rights Commission.

- (1) Membership and duties of the Utah Martin Luther King Jr. Human Rights Commission are outlined in Sections 9-21-401 through 9-21-402.
- (2) A majority of the commission may request nominations for board members from organizations outside of the commission.

Those nominations shall be submitted to the Governor for appointment.

R450-5-5. Procedures.

(1) The Commission may adopt standards and procedures governing its internal operations, programs, and meeting protocol consistent with state statute and its purposes under Sections 9-21-401 through 9-21-402.

(2) Any such standards and procedures shall be set forth in print or electronic materials and available to the public.

(3) Any proposed amendment to internal operating procedures, programs and meeting protocol shall be submitted in writing to each member of the commission in advance of the next regular meeting, at which time a majority of the commission is required for the adoption of the amendment. An amendment becomes effective immediately upon its ratification.

KEY: multicultural, boards and commissions, Martin Luther King, human rights

Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 9-21-401

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R501-14	Filing No. 53226

Agency Information

1. Department:	Human Services	
Agency:	Administration, Administrative Services, Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84115	
Contact person(s):		
Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Elisabeth Kitchens	385-303-2593	ehkitchens@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov

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

General Information

2. Rule or section catchline:
R501-14. Human Service Program Background Screening

3. Purpose of the new rule or reason for the change:
As industry practices continue to evolve, the Division of Administration, Administrative Services, Licensing (Division) are aware of the need to make further substantive changes following the enactment of legislation from the 2020 General Session, this amendment reflects those changes. It also aims to cleanup preexisting language to follow the standards established in the Rulewriting Manual.
4. Summary of the new rule or change:
Definitions are added and several sections are altered to reflect industry practices and standards. Notably, the Renewal Background Screening Procedure is mostly rewritten and the Automatic Denial Exemption section has been added. Preexisting language was also reviewed and edited to meet the standards set forth in the Rulewriting Manual.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule change is not expected to have any fiscal impact to the state budget. This amendment is clarifying in nature.
B) Local governments:
It is not anticipated that local governments see any fiscal impact from these changes. The change to the applicants background screening application will not impact local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
It is not anticipated that small businesses will see any fiscal impact from this amendment. These changes are clarifying in nature and uphold current practices and procedures.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
Non-small businesses will not be impacted through these changes. These changes are clarifying in nature and uphold current practices and procedures.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
Persons other than small businesses, non-small businesses, state, or local government entities, will not see a fiscal impact from these changes. These changes are clarifying in nature and uphold current practices and procedures.

F) Compliance costs for affected persons:			
Further compliance costs will not be accrued from this amendment. These changes are clarifying in nature and uphold current practices and procedures.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Human Services, Ann Williamson, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
After conducting a thorough analysis, it was determined that these proposed rule amendments will not result in a fiscal impact to small businesses			

B) Name and title of department head commenting on the fiscal impacts:
Ann Williamson, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
Section 62A-2-120

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title: Mark Brasher, Deputy Director	Date: 11/23/2020
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R501. Human Services, Administration, Administrative Services, Licensing.

R501-14. Human Service Program Background Screening.

R501-14-1. Authority and Purpose.

- (1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.
- (2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

- (1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "Severe Abuse", "Severe Neglect", and "Sexual Abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.
- (2) "Adult-only Substance Use Disorder Program" is a program serving substance use disorder related clients ~~and that has~~

~~declared to the Office of Licensing that they] does not serve the following:~~

- (a) clients under the age of 18; or
- (b) those with any serious mental illness or cognitive impairments.
- (3) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Subsection 62A-2-120-1(a).

(a) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

~~[(4) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), and adoption service provider, an attorney representing a prospective adoptive parent as defined in Section 78B-6-103(25), or DHS Division or Office. The background screening agents are the point of contact with the Office for the purpose of background screening.]~~

~~[(5)](4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible [to maintain]for maintaining criminal records in the State of Utah.~~

~~[(6)](5) "Child" is defined in Section 62A-2-101.~~

~~[(7)](6) "Child Placing" is defined in Section 62A-2-101.~~

~~[(8)](7) "[Comprehensive Review-]Committee" means the comprehensive review committee appointed to conduct reviews in accordance with Section 62A-2-120.~~

~~[(9)](8) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.~~

~~(9) "Determination" is the result of the background clearance findings in the online system. There are four determinations that directly inform a screening agent's hiring decisions:~~

- ~~(a) "eligible" for hire and may work unsupervised;~~
- ~~(b) "ineligible" for hire and may not work;~~
- ~~(c) "supervised only" to work at all times under direct supervision of another employee with an "eligible" DHS clearance while in the presence of clients or client records; or~~
- ~~(d) "conditional hire" under conditions outlined in Subsection R501-14-7(2).~~

~~(10) "Direct Access" is defined in Section 62A-2-101.~~

~~(11) "Direct Service Worker" is defined in Section 62A-5-101.~~

~~(12) "Directly Supervised" is defined in Section 62A-2-101. The agency is responsible to document and provide upon request how the individual remains supervised for the entirety of their supervised employment term prior to full clearance.~~

~~(13) "FBI Rap Back System" is defined in Section 53-10-108.~~

~~(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or [background-]screening agent.~~

~~(15) "Foster Home" is defined in Section 62A-2-101.~~

~~(16) "Harm" is defined in Subsection R501-1-2(14) and for the purpose of background screenings also includes causing or threatening to cause financial damage or fraud.~~

~~(17) "Human Services Program" is defined in Section 62A-2-101.~~

~~(18) "Licensee" is defined in Section 62A-2-101.~~

(19) "Licensing Information System" (LIS) is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System (MIS) created by Section 62A-4a-1003.

(20) "Neglect" may include "Severe Neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(21) "Office" is defined in Subsection 62A-2-101(30) ~~and is also referred to as "OL"~~.

(22) "Online system" is the Office's electronic online background clearance system.

~~(22)~~(23) "Personal Care Attendant" is defined in Section 62A-3-101.

~~(23)~~(24) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(25) "Reside" means retaining a residence for six or more consecutive months. (b) Reside does not mean religious, educational or military service as long as the primary state of residence is maintained.

(26) "Request Type" means the type of employment the applicant is applying to work under as categorized in the online system.

(a) Request types delineate the clearance level statutorily required for each type of employment.

(b) Clearance transfers are allowed amongst the same request types or from higher level clearance to lower level clearance only. New clearances and committee review if applicable, are required when moving from a lower level request type to a higher-level request type.

(27) "Screening Agent" is the individual or individuals who are responsible for initiating, monitoring and maintaining background clearance communications with the Office, entering applications, verifying and protecting personally identifying information and ensuring information is current for their agency, applicants and providers in the online system.

~~(24)~~(28) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

~~(25)~~(29) "Substantiated" is defined in Section 62A-4a-101.

~~(26)~~(30) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

~~(27)~~(31) "Vulnerable Adult" is defined in Section 62A-2-101.

~~(28)~~(32) "Youth Residential Program" is also known as "congregate care" and means a 24-hour group living environment serving 4 or more youth. This does not include foster homes or child placing agency certified homes.

R501-14-3. Initial Background Screening Procedure.

(1) A screening agent shall ensure that a[A]n applicant for initial background screening ~~shall legibly complete, date and sign a background screening application and consent on a form provided by the Office~~ completes any required application fields and disclosure statements to authorize the Office's continual monitoring of their fingerprints and applicable state registries.

(2) An applicant shall disclose ~~all~~ any criminal charges, including pending charges, and ~~all~~ any supported or substantiated

findings of abuse, neglect or exploitation ~~on~~ during the background screening application process.

(3) An applicant may provide disclosure statements and related documents as direct attachments to the application ~~or directly attached in a sealed envelope~~ to be uploaded into the online system by a screening agent or directly emailed to the Office. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(4) An applicant seeking a position in a youth residential program, a prospective foster parent or prospective adoptive parent, adult in the home of a prospective foster or adoptive parent and DHS employee shall require the highest level of clearance to include out of state registry checks for associated applicants who have resided outside of Utah within the past five years.

~~(4)~~(5) An applicant applying to work in a youth residential program who has resided outside of the state of Utah within the 5 years immediately preceding the date of the background screening application shall provide a child abuse and neglect registry record for each State in which the applicant has resided within those 5 years.

(a) ~~(i)~~ (i) Instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the ~~OL~~ Office website at: <https://hslic.utah.gov/Out-of-state-registries>.

(b) ~~(e)~~ (e) Out of state child abuse and neglect registry records are not required ~~to be produced to the Office of Licensing~~ a second time for a license renewal, screening transfer or screening renewal as long as a record from every state resided in over the past five years has been previously submitted and reviewed by the Office of Licensing.

~~(i)~~ (i) ~~a current employee in a youth residential setting at the time this rule goes into effect shall submit all out of state registry records for all states resided in for the 5 years immediately preceding their background screening renewal application.~~

(c) For youth residential providers who do not have a DHS contract to provide services for DHS, applicants experiencing delays in receiving requested out of state registry record(s) must be supervised while record(s) are pending, unless:

(i) ~~documentation is obtained from the state(s) providing the record giving a time frame for expected receipt of record(s). This documentation may not be authored by anyone but the sending state(s) authorized personnel and; the applicant has initiated the out of state record search and it is actively in progress; and~~

(ii) the Office otherwise approves the applicant's background screening with no ~~comprehensive review~~ committee review required.

(d) A renewal clearance will not be issued if the original out of state registry results have not been provided to the Office within the 12 month initial clearance time frame.

(e) This allowance does not apply to DHS contracted youth residential settings, as federal law requires that employees of these settings must have complete clearance prior to working in a licensed youth residential facility.

~~(f)~~ (f) ~~Any~~ Any out of state registry record that contains information that constitutes background screening denial under this rule, shall result in a denial or revocation of background screening and the employee direct access to clients and client records must be terminated immediately upon notification.

~~(5)~~ (6) An applicant must present valid government-issued identification.

~~(6)~~ (6) ~~An applicant who presents only a foreign country identification card may be required to submit an original or official copy of a government issued criminal history report from that country.~~

(7) The background screening application, personal identifying information, ~~including fingerprints,~~ signed consent

~~disclosure statement and applicable fee shall be submitted [to] by the background screening agent into the online system. [The background screening agent shall:]~~

~~(a) The background screening agent shall inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered[;].~~

~~[(b) review for completeness and accuracy and sign the application; and~~

~~(c) forward the background screening application, and applicable fee to the Office background screening unit.]~~

~~[(d)b] The background screening agent may withdraw a background screening application at any point in the process.~~

R501-14-4. Renewal Background Screening Procedure.

~~(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.~~

~~(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.~~

~~(3) The background screening application and personal identifying information shall be submitted to the background screening agent.~~

~~(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently enrolled in the FBI Rap Back System is not required to submit fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees unless:~~

~~(i) the applicant's most current background screening has lapsed as described in part 7 of this Section;~~

~~(ii) the human services program or background screening agent with which the applicant is associated requires a FBI Rap Back System search;~~

~~(iii) the applicant wishes to provide services with an additional licensee and has not submitted fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees; or~~

~~(iv) the renewal application is submitted on or after July 1, 2018 and the applicant is not already enrolled in the FBI Rap Back System.~~

~~(4) A background screening agent wishing to submit background screening renewal applications for multiple applicants may submit a summary log of the renewing applicants in lieu of individuals' applications.~~

~~(a) A summary log may only be used for applicants:~~

~~(i) who are enrolled in the FBI Rap Back System with the Office;~~

~~(ii) with a current approval;~~

~~(iii) whose name and address have not changed since their last background screening approval;~~

~~(iv) who have not had any of the following since their last background screening approval:~~

~~(A) criminal arrests or charges;~~

~~(B) supported or substantiated findings of abuse, neglect or exploitation; or~~

~~(C) any pending or unresolved criminal issues.~~

~~(b) Summary logs shall contain:~~

~~(i) applicant full legal name,~~

~~(ii) applicant date of birth,~~

~~(iii) the last four numbers of each applicant's social security number;~~

~~(iv) program name; and~~

~~(v) name of program representative completing summary form.~~

~~(c) A background screening agent choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain current documentation signed by each applicant, in which they attest to the accuracy of the information described in R501-14-4(4)(a) and (b).~~

~~(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.~~

~~(6) The background screening agent shall:~~

~~(a) inspect the applicant's government issued identification card and make a determination as to whether or not it appears to have been forged or altered; and~~

~~(b) review for completeness and accuracy and sign the application.~~

~~(7) Renewal applications from background screening agent and applicant shall be submitted to the Office no later than one year from the date of their most recent background screening approval. A screening that has lapsed for 30 days beyond that time is void and a new initial application must be submitted.]~~

(1) Renewal applications are not necessary if the applicant has an application entered into the online system under the program for which they work, a signed disclosure statement form uploaded and initial fingerprints that are enrolled in rap back system.

(2) The Office will monitor criminal records on an ongoing basis and applicable state registries on annual basis.

(3) It is a screening agent's responsibility to keep their agency's roster and employee information current in the online system.

(a) A screening agent shall check the roster at least monthly to verify employment of employees due for a renewal review.

(b) A screening agent shall update any names, addresses or other employee information immediately upon becoming aware of changes.

(c) When an employee no longer works for the program, a screening agent must separate that employee from the program's roster in the online system within five days of employee separation from the program.

(4) An individual who is no longer affiliated with any licensed or certified program will have 90 days to become re-employed before the individual's rap back subscription will be reported to the Department of Public Safety to be cancelled.

R501-14-5. General Background Screening Procedure.

(1) An application that [is illegible, incomplete, unsigned, undated, or] lacks a signed disclosure statement[consent], applicant information, or applicable fees will not be processed until the requirements are provided to the Office.[or required identifying information, may be returned to the individual who submitted it without further action.]

(a) Personal identifying information [submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128] shall be used to perform a search in accordance with Section[s] 62A-2-120[(3) and (13)].

(2) Except as permitted by Subsection 62A-2-120(9), an application[not] for an initial background screening shall be submitted [an application] no later than two weeks from the applicant becoming associated with the licensee. The applicant[and] shall be directly

supervised ~~[in regards to a child or vulnerable adult]~~ prior to receiving conditional or full clearance ~~[written confirmation of background screening]~~ approval from the Office.

(a) ~~[Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall submit renewal application within one year of the previous clearance date.]~~ An applicant is eligible to work unsupervised when:

(i) the criminal record check reveals no criminal offenses subject to automatic denial in accordance with Section 62A-2-120;

(ii) except as outlined in Subsection R501-14-3(5)(e), both in-state and out-of-state registry checks are completed as applicable; and

(iii) there is no comprehensive review as required by Section 62A-2-120.

~~(b) [If the screening approval lapses beyond 30 days, the applicant shall be directly supervised in regard to direct access of a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.]~~ An applicant with a pending committee review must be supervised at all times until the Office makes the final determination.

(c) An applicant whose background screening application has been denied shall have no further supervised or unsupervised direct access to clients unless the denial is overturned in an administrative hearing or by the Office Director or the Office approves a subsequent application.

~~(d) An applicant initiating an appeal of a denied application shall work under supervision at all times until there is a disposition made regarding the appeal.~~

(3) The applicant or background screening agent shall promptly notify the Office of updated application details or new investigations of abuse or neglect or any new criminal charge; ~~[any change of address while the application remains pending.]~~

(a) by updating the online system with changes to name and contact information; and

(b) by emailing cbsunit@utah.gov of any new allegations or investigations of abuse or neglect or new criminal charges.

(4) A background screening agent may ~~[roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.]~~ conduct livescan fingerprinting on an independent livescan machine for submission to the Office only after they have received and applied training in the proper methods of taking fingerprints and ensured all DHS billing codes are accurately entered into the machine.

(a) The background screening agent shall verify the identity of the applicant via personally identifying information at the time that the application is entered; ~~[government issued identification card at the time that fingerprints are taken.]~~

(b) ~~[In the event that 10% or more of the fingerprints submitted by a background screening agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.]~~ The applicant is required to present to the livescan operator the same government-issued photo identification under Subsection (4)(a) and the fingerprint authorization form.

(c) A minor applicant that submitted a youth application with no fingerprints ~~[cards]~~ and is not currently on the FBI Rap Back System must submit fingerprints within 30 days prior to the minor's 18th birthday.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with applications and fee payments.

(2) Fees shall only be made by ~~[cashiers' check, corporate check, money order, E-check, credit card or internal DHS transfer.]~~ Personal checks and credit or debit card payments shall not be accepted.

(3) A background screening agent may choose to submit ~~[one payment for any number of applicants.]~~ payments individually or in a batch.

(4) Fees are not refundable or transferable, ~~[for any reason.]~~ unless the fingerprints were never taken and the Office was never billed by the Department of Public Safety.

(5) The Office processing fee that is set legislatively is not refundable.

R501-14-7. Application Processing and Results.

(1) The Office shall approve an application for background screening in accordance with Subsection 62A-2-120(7).

~~(a) The Office shall notify the applicant [or the background screening agent or contractor]~~ through their screening agent when an applicant's background screening application is approved or denied. Only approval or denial information shall be provided to a screening agent via a determination in the online system.

~~(i) Upon receiving notice from the Office, the background screening agent shall provide notice of approval to the applicant as required under Section 62A-2-120(12)(a)(i).~~

(b) The approval granted by the Office shall be valid until ~~[a renewal approval is issued or the prior approval lapses.]~~ the individual is either no longer associated with any licensed or DHS contracted program for 90 days per Subsection R501-14-2(b) or until a new criminal or supported finding of abuse or neglect constitutes screening clearance review or revocation.

~~(c) An approval granted by the Office shall not be transferable, except as provided in R501-14-10.~~

(2) The Office may conditionally approve an application for background screening in accordance with Subsection 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes and for applicants working in a DHS contracted youth residential program.

(b) A background screening agent seeking the conditional approval of an applicant ~~[shall]~~ may not request conditional approval unless 10 business days have passed after the applicant's complete background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted ~~[to the Office.]~~ with the required consent disclosures and fees in the online system. This request must be submitted via the online system or via the cbsunit@utah.gov.

(d) Upon receipt of a written request for conditional approval that complies with Subsection [R501-14-7](2)(b), the Office shall make a conditional determination within three business days.

(e) Conditional approvals shall have expiration dates not to exceed 60 days ~~unless;~~

(i) the applicant is awaiting the results of an out of state registry check as the only remaining item prohibiting clearance, they may be granted a conditional approval; and

(ii) a renewal clearance or new conditional clearance will not be issued if the out-of-state registry check has not been provided within 12 months of initial application.

(f) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall be directly supervised until such an approval is granted.

(g) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Subsection 62A-2-120-5(a) and 62A-2-120-14(c).

(4) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

(5) The Office shall refer an application to the ~~[comprehensive review]~~committee in accordance with Subsection 62A-2-120(5)(b) and 62A-2-120(6).

(a) ~~[Per]~~In accordance with Subsection 62A-2-120(6)(a)(ii), [all]any misdemeanor convictions except those listed in Subsection ~~[R501-14-7](5)(b)~~, within the ~~[five]ten~~ years prior to submission of the application to the Office shall be reviewed by the ~~[comprehensive review]~~committee.

(b) The following misdemeanors will not be reviewed ~~except as described in (xiv) as listed below~~:

(i) violation of local ordinances related to animal licenses, littering, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park ~~[l]or~~ access hours;

(ii) ~~[all]~~misdemeanors listed in Title 41[-] Chapter 6a, Traffic Codes, except, Section 41-6a-5, Subsections 41-6a-4(401.3), 41-6a-4(401.5), 41-6a-4(401.7), 41-6a-17(1716), 41-6a-17(1717), and 41-6a-18(1803)[:];

~~(A) part 4 accident responsibility Sections 401.3, 401.5 and 401.7;~~

~~(B) part 5 driving under the influence;~~

~~(C) part 17 miscellaneous rules Section 1716 if charged as a misdemeanor B and Section 1717;~~

~~(D) part 18 Section 1803;~~

(iii) ~~[all]~~misdemeanors listed in Section 76-10-2, 76-10-21[76-10 part 1 Section 105, 76-10-24], and 76-10-27, and Subsection 76-10-1(105);

(iv) ~~[F]~~failure to ~~[A]appear~~ ~~[:]~~ ~~[A]~~a misdemeanor charge under Section 77-7-22;

(v) ~~[Unauthorized Hunting of Protected Wildlife: A]~~a misdemeanor resulting from unauthorized hunting under Section 23-20-3;

(vi) ~~[Fishing Licenses: A]~~a misdemeanor resulting from a failure to have the appropriate fishing license under Section 23-19-1;

(vii) ~~[Boating Safety: A]~~a misdemeanor resulting from a failure to comply with the boating safety requirements outlined in Section 73-18-8;

(viii) ~~[Business License: A]~~a misdemeanor resulting from failure to have a business license as required under 76-8-410;

(ix) ~~[all]~~juvenile misdemeanors except those listed in Subsection 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application ~~[-]; and~~

(c) Any misdemeanor or felony conviction that occurred more than ten years prior to the date the application is submitted in the online system, if the applicant has not committed a misdemeanor or felony offense since the day on which the conviction occurred, will not be reviewed. This comprehensive review exception does not apply to prospective foster or adoptive parents.

~~[e]d~~ The Office shall refer an applicant to the ~~[comprehensive review]~~committee upon learning of a potentially disqualifying offense or finding described in Subsection 62A-2-120(6)(a) not previously considered by the ~~[comprehensive review]~~committee.

(6) The Office may provide the status of an application to ~~[the sponsoring]~~a background screening agent, but ~~[shall]may~~ not share any specific criminal history ~~[information]or~~ abuse or neglect history or findings.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint at minimum one member and one alternate to serve on the ~~[comprehensive review]~~committee:

- (a) the Executive Director's Office;
- (b) the Division of Aging and Adult Services;
- (c) the Division of Child and Family Services;
- (d) the Division of Juvenile Justice Services;
- (e) the Division of Services for People with Disabilities;
- (f) the Division of Substance Abuse and Mental Health; and
- (g) the Office ~~[of Licensing]~~.

(2) ~~C[comprehensive review e]~~committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the ~~[comprehensive review]~~committee as a non-voting member.

(4) Four voting members shall constitute a quorum. ~~[- not including the representatives from the Office of Licensing.]~~

(5) The ~~[comprehensive review]~~committee shall conduct a comprehensive review of an applicant's background screening application, ~~[criminal history records,]records from open court cases or convictions not automatically denied in Subsection 62A-2-102-5(a) involving felony or misdemeanor offenses that are no more than ten years old, outstanding warrants for any offenses that require a committee review, abuse, neglect or exploitation records, applicant submitted child abuse and neglect registry record[{}s]{} from other state[{}s]{} and related circumstances, in accordance with Subsection 62A-2-120(6)~~.

(6) The committee may not conduct a comprehensive review of an applicant's background screening application if:

- ~~(a) the applicant has been previously reviewed and approved by the committee for the same employment request type even if lapsed; and~~
- ~~(b) the applicant has no new criminal charges or findings of abuse or neglect.~~

R501-14-9. Comprehensive Review Investigation.

(1) The ~~[comprehensive review]~~committee ~~[shall]may~~ not review a background screening application without the Office first sending the applicant a written notice that:

~~(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation[{}].~~

~~(b)a [{}]~~The applicant ~~[is encouraged to]may~~ submit any written statements or records that the ~~[comprehensive review]~~committee needs to make a determination of risk of harm including ~~[but not limited to]~~:

- (i) original police reports;
- (ii) investigatory and charging documents;
- (iii) proof of any compliance with court orders;
- (iv) any evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
- (v) personal statements;
- (vi) reference letters specific to the potential risk of harm; and[{}]

(vii) any other information that specifically addresses the criteria established in Subsection 62A-2-120(6)(b)[{}].

(e)b) [†]The ~~[comprehensive review]~~committee evaluates information using the criteria established by Subsection 62A-2-120(6)(b),~~[and]~~

(f)c) Applicant submissions of written statements or records must be received within 15 calendar days of the written notice unless an extension has been requested by the background screening agent or applicant and granted by the Office.

(2) The Office shall gather information described in Subsection 62A-2-120(6)(b) from the applicant and provide available information to the ~~[comprehensive review]~~committee.

(3) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(4) A denied application may be re-submitted to the Office after 6 months or upon substantial change to circumstances.

R501-14-10. Comprehensive Review Determination.

(1) ~~[The comprehensive review committee shall only consider applications and information presented by the Office. The comprehensive review committee shall evaluate the applications and information provided to the committee through the Office.]~~The committee shall evaluate the applications and information provided to the committee by the Office to determine if an applicant poses a risk of harm to children or vulnerable adults. In assessing the risk of harm, the committee shall consider the type of employment the applicant is seeking and the type of license under which the applicant will be employed.

(a) ~~[A background screening approval may be transferred.]~~A previously reviewed and cleared background screening approval may be transferred without further committee review to other human service programs when providing the same service under the same statutory screening requirements.

(b) [†]The committee shall re-consider ~~[all]~~previously cleared or denied screenings when the applicant requires a new clearance for a new type of ~~[service]~~employment.

(2) Each application that goes to the ~~[comprehensive review]~~committee requires an individual review by the ~~[comprehensive review]~~committee members.

(3) The comprehensive review committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the ~~[comprehensive review]~~committee determines that approval will not likely create a risk of harm to a child or vulnerable adult in the request type for which they applied.

(4) The ~~[comprehensive review]~~committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to the specific population that the applicant will be serving, [as defined in 501-14-2(16) to a child or vulnerable adult.] Each voting member shall independently document how the voting member reached the conclusion that the individual does or does not pose a risk of harm to the population the applicant is applying to serve.

(5) If the applicant fails to provide additional information requested by the Office within 30 days of initial request, the ~~[comprehensive review]~~committee may consider and weigh only what was submitted to ~~[them]~~the committee and only consider additional information that is publicly available in making ~~[their]~~the committee's evaluation of the risk of harm to clients. The committee may not deny an application simply due to lack of information.

(6) The Office Director or designee shall make the final determination to approve or deny the application after considering the comprehensive review committee's recommendation.

(7) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access unless overturned by an administrative hearing or by the Office Director or the Office approves a subsequent application.

(a) An applicant initiating an appeal of a denied application shall work under supervision at all times until there is a disposition made regarding the appeal.

R501-14-11. Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have their current background screening approval shared with or transferred to another human services program only if the applicant is currently enrolled in the FBI Rap Back System and the screening was run under the same statutory authority as the original screening.

(2) An applicant who wishes to have their current background screening shared with or transferred to another human services program shall complete a background screening application ~~[and identify the name of the original program and youth residential status in boxes indicated]~~through a screening agent of the new program.

(i) [†]Transfers from a non-youth residential program to a [between] youth residential program, [s] including a foster home, adoptive home, certified home or DHS employee position is not permitted.

(ii) Transfers from a non-youth residential to a youth residential program shall require submission of out of state registry records when the applicant has resided in another state~~[s]~~ within 5 years of the application.

(iii) transfers from youth residential program to a non-youth residential program are permitted

(3) An applicant shall be directly supervised until the ~~[program receives written confirmation from the Office that the background screening is current and valid]~~applicant's status in the online system reflects "eligible", "eligible for hire" and has been "permanently hired" by a screening agent.

~~[(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.]~~

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and background screening agent shall immediately notify the Office via cbsunit@utah.gov if the applicant is charged with any felony, misdemeanor, or infraction, or has a new finding in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.

~~[(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records.]~~

~~[(3)]~~2) An applicant who has been charged with any felony, misdemeanor, or infraction listed in Subsection 62A-2-120(5)(a) or has a new finding in the Licensing Information System or the DAAS Statewide Database, after a background screening application is approved will have a new clearance status indicating that they shall be directly supervised until [after an application and personal identifying information have been resubmitted to the Office and a current

~~background screening approval is received from the Office] a disposition on the case is reached.~~

~~[(4) An applicant charged with an offense for which there is no final disposition and no comprehensive review committee denial, shall inform the Office of the current status of each case every 90 days.~~

~~(a) The Office shall determine whether the pending charge could require a denial or committee review, and if so, notify the applicant to submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.~~

~~(b) An applicant shall submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.]~~

~~[(5)]3 The Office may revoke the background screening approval of an applicant who:~~

~~(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records; and fails to provide required current status information as described in (4) of this Rule or;~~

~~(b) has been convicted of any felony, misdemeanor or infraction listed in Subsection 62A-2-120(5) after a background screening approval had already been granted by the Office while charges were pending.~~

~~[(6)]4 The Office shall process identifying information received pursuant to Subsection R501-14-12(2) in accordance with Rule R501-14.~~

~~[(7)]5 The background screening agent shall notify the Office of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120. The Office shall report the termination to BCI within [five months]90 days if the individual has not transferred the clearance to a transfer-eligible program within that time frame.~~

R501-14-13. Confidentiality.

(1) The Office may disclose registry and criminal background screening information, [including information acknowledging the existence or non-existence of a criminal history,] only to the applicant in accordance with [the Government Records Access and Management Act,] Section 63G-2-101 [et seq].

(2) The background screening agents and DHS auditors with over oversight of the licensed program may be granted minimal, read-only access to the online system solely to see application determinations. No additional case details will be viewable.

~~[(2)]3 Except as described in Section R501-14-11 [and below], background screening information may not be transferred or shared between human service programs.~~

~~[(a)]4 [A licensed child placing adoption agency]A background screening agent or Office representative may provide the approval [granted by the Office]letter generated by the online system to the person who is the subject of the approval, the court, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).~~

R501-14-14. Retention of Background Screening Information.

(1) ~~[A human services program or department contractor.]The online system shall retain the background screening information of [all] associated individuals for a minimum of seven years after the termination of the individual's association with the program.~~

R501-14-15. Expungement.

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with an official copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

(1) A Notice of Agency Action issued by the Office Director or designee that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with [Administrative]Rule R497-100 and Section 63G-4-1[01, et seq].

R501-14-17. Exemption.

(1) Subsection 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or DHS[department] contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

(2) The substance abuse program exemption limits the exemption with regard to program directors and members. Ownership and management of a human services program, as included in the definition of member, for purposes of this rule means a person or entity who alone or in conjunction with other persons or entities has a majority voice in the decision-making and administration of the program.

R501-14-18. Automatic Denial Exemption.

(1) Programs serving only adults whose only impairment is a mental health diagnosis with or without co-occurring substance use disorder are exempt from the automatic denial provisions of Subsection 62A-2-120-5(a) and are entitled instead to a committee review per Subsection 62A-2-120-5(c). A Program claiming exemption must identify on their program application how they meet the exemption criteria. Final determination regarding potential exemption will be made by the Office.

(2) Programs approved for exempted screening processes listed in this section are responsible for informing the Office immediately upon any program changes that would render them ineligible for the exemption.

KEY: licensing, background screening, fingerprinting, human services
Date of Enactment or Last Substantive Amendment: ~~July 18, 2019]~~2021
Notice of Continuation: September 29, 2015
Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-160	Filing No. 53229

Agency Information

1. Department:	Insurance
Agency:	Administration

Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-160. Adjudicative Proceedings
3. Purpose of the new rule or reason for the change:
This rule is being amended to remove unnecessary provisions; remove legalese, plural, and passive language; streamline processes, and add a provision for dismissing an adjudicative proceeding.
4. Summary of the new rule or change:
Most of the changes are not substantive; they remove legalese, plural, passive, and unclear language. The changes also remove provisions that duplicate Utah Administrative Procedures Act (UAPA) provisions; eliminate "removing an existing disability" from the list of proceedings designated as informal adjudicative proceedings; eliminate pro hac vice requirement; a lawyer in good standing with a state bar association may represent a party; authorize service on the department by certified mail; adopt Utah R. Civ. P. 41 standards for dismissing an adjudicative proceeding; adopt single rule for service of pleadings and eliminate separate provisions for electronic and non-electronic service; and specify requirements for challenging a finding of fact on agency review.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes merely streamline the rule to make it easier to understand.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes merely streamline the rule to make it easier to understand.

C) Small businesses ("small business" means a business employing 1-49 persons):																																												
There is no anticipated cost or savings to small businesses. The changes merely streamline the rule to make it easier to understand.																																												
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):																																												
There is no anticipated cost or savings to non-small businesses. The changes merely streamline the rule to make it easier to understand.																																												
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):																																												
There is no anticipated cost or savings to any other persons. The changes merely streamline the rule to make it easier to understand.																																												
F) Compliance costs for affected persons:																																												
There are no compliance costs for any affected persons. The changes merely streamline the rule to make it easier to understand. There are no new regulations.																																												
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)																																												
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<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2021</th> <th>FY2022</th> <th>FY2023</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Fiscal Benefits</td> <td></td> <td></td> <td></td> </tr> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2021	FY2022	FY2023	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0	Total Fiscal Cost	\$0	\$0	\$0	Fiscal Benefits				State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
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NOTICES OF PROPOSED RULES

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Tanji J. Northrup, Interim Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 31A-2-201(3)(a)	Subsection 63G-4-102(6)	Subsection 63G-4-203(1)

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and	

will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer 1	Date:	12/01/2020
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R590. Insurance, Administration.

R590-160. Adjudicative Proceedings.

R590-160-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a), 63G-4-102(6), 63G-4-203(1), and applicable provisions of Title 63G, Chapter 4, Administrative Procedures Act.

R590-160-2. Purpose and Scope.

(1) This rule establishes procedures governing the designation and conduct of an adjudicative proceeding before the presiding officer.

(2) A public hearing pursuant to Section 63G-3-302 is not governed by this rule.

(3) This rule shall be liberally construed to secure a just, speedy, and economical determination of each issue.

(4) The presiding officer may permit a deviation from this rule for good cause.

R590-160-3. Definitions.

In addition to the definitions in Sections 31A-1-301 and 63G-4-103, the following definitions shall apply ~~for the purpose of~~ to this rule:

(1) "Complainant" means the Department in any action against a licensee or other person alleged to have committed a violation of statute, rule, or order of the commissioner.

~~(2) ["Department" means the Utah Insurance Department.~~

~~(3) "Existing disability" means:~~

~~(a) any suspension, revocation or limitation of a license or certificate of authority; or~~

~~(b) any limitation on a right to apply to the commissioner for a license or certificate of authority.~~

~~(4) "Intervenor" means any person, not a party, permitted to intervene in a proceeding pursuant to Section 63G-4-207.~~

~~(5) "Licensee" means any person who has been issued a license or certificate pursuant to Title 31A, Insurance Code.~~

~~(6) "Petitioner" means any person, other than the department, who commences an adjudicative proceeding and seeks agency action.~~

~~(7) "Pleading" means any paper or document filed, in written or electronic form, in an adjudicative proceeding document authorized to be filed pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and this rule.~~

~~(8) "Presiding officer" means the commissioner or a presiding officer appointed by the commissioner.~~

~~(9) "Respondent" means any person against whom an adjudicative proceeding is initiated.~~

R590-160-4. Designations of Proceedings.

~~(1) [Any of the following proceedings may be commenced] The department designates each of the following as an informal adjudicative proceeding:~~

~~(a) [the Department's initial decision on] denial of an application for a license or a certificate of authority;~~

~~(b) [the Department's decision on a petition to remove an existing disability;~~

~~(c) the Department's decision to disapprove]disapproval of a rate or form filing[;~~

~~(d) the Department's decision to disapprove a form];~~

~~(e)c] [when it appears to the Department that the matter may have no issues]a matter having no factual or legal issue in dispute;~~

~~(f)d] [when it appears to the Department that the matter involves technical or minor violations of law]a matter involving a technical or minor violation of law; or~~

~~(g)c] [a proceeding for the purpose of entering stipulated findings of fact, conclusions of law and orders]the entry of a stipulated pleading.~~

~~(2) [A complainant.]The department may commence an informal or formal adjudicative proceeding pursuant to this rule.~~

~~(3) A[ny] petitioner may commence a formal adjudicative proceeding pursuant to this rule.~~

~~(4) The presiding officer shall conduct an[y] informal or formal adjudicative proceeding[;~~

~~(5) Any time before a final order is issued, the presiding officer may, sua sponte or upon motion of any party, convert any adjudicative proceeding from a formal to an informal adjudicative proceeding or from an informal to a formal adjudicative proceeding, provided the conversion is in the public interest and does not unfairly prejudice the rights of any party].~~

R590-160-5. Rules Applicable to [Each—]Any Adjudicative Proceeding.

The following rules apply to any adjudicative proceeding:

~~(1) [Liberal Construction. These rules shall be liberally construed to secure just, speedy, and economical determination of any issue.~~

~~(2) Deviation from Rules. The presiding officer may permit a deviation from these rules if strict compliance is found to be impracticable or unnecessary or for other good cause.~~

~~(3) Computation of Time.—]The time within which any act shall be completed shall be computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday, or a legal holiday, and then the last day is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.~~

~~(4) Parties.~~

~~(a) A party to a proceeding is:~~

~~(i) any person authorized by statute or agency rule to participate in the adjudicative proceeding pursuant to Subsections 63G-4-201(1)(a) or (b);~~

~~(ii) a complainant;~~

~~(iii) a petitioner;~~

~~(iv) a respondent; or~~

~~(v) an intervenor.~~

~~(b)2] A[ny participant in-] party to a proceeding shall be named in the caption as Petitioner, Complainant, Respondent, or Intervenor.~~

~~(5)3] [Appearances, Representation, and Pro Hac Vice]Representation of a Party and Entering an Appearance.~~

~~(a) Representation of a Party.~~

~~(i) An attorney who is an active member, in good standing, of the Utah State Bar or an attorney with an active license from another jurisdiction may represent a party.~~

~~(ii) An individual who is a party to an adjudicative proceeding may self represent.~~

~~(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code.~~

~~(iv) A general partner may represent a partnership.~~

~~(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code.~~

~~(vi) The legal, registered owner of a business conducted under an assumed name shall be considered the legal party in interest and that business may not be represented except through the legal party in interest or an attorney.~~

~~(b) [Making-]Entering an Appearance. A[ny] party's attorney or representative enters an appearance by filing a[an initial] written response to a notice of agency action[—at the beginning of the adjudicative proceeding, providing the party's-] by filing a notice of appearance or by orally stating an appearance at a hearing. The appearance shall include the attorney's or representative's name, address, email, telephone number, and the party's position or interest in the proceeding.~~

~~(b) Representation of Parties.~~

~~(i) An attorney who is an active member of the Utah State Bar may represent any party.~~

~~(ii) An individual who is a party to an adjudicative proceeding may represent himself or herself.~~

~~(iii) An officer duly authorized by corporate resolution may represent a corporation that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.~~

~~(iv) A general partner may represent a partnership.~~

~~(v) An authorized member or manager may represent a limited liability company that is duly registered with the Department of Commerce, Division of Corporations and Commercial Code, as required by law.~~

~~(vi) The legal, registered owner of a business conducted under an assumed name, dba, shall be considered the legal party in interest and that business may not be represented except through the legal party in interest.~~

~~(c) Pro Hac Vice.~~

~~(i) An attorney licensed to practice in a jurisdiction outside of Utah may represent any party in a particular matter before the presiding officer without being admitted pro hac vice in Utah.~~

~~(ii)(A) An attorney, pro hac vice attorney, or other authorized representative pursuant to Subsection R590-160-5(5)(b), if previous appearance has not been entered, shall file a Notice of Appearance with the presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.~~

~~(B) The Notice of Appearance shall contain:~~

~~(I) the name, address, telephone number, fax number, email address, each bar identification number, and each state of admission of the pro hac vice attorney, if applicable;~~

~~(II) the name and docket number of the case in which the applicant is appearing as the attorney of record;~~

~~(III) a statement whether, in any state, the applicant is currently suspended or disbarred from the practice of law, or has been disciplined within the prior five years, or is the subject of any pending disciplinary proceeding; and~~

~~(IV) the name, address, bar identification number, telephone number, fax number, and email of a member of the Utah State Bar to serve as associate counsel.~~

~~(iii) The presiding officer may require Utah counsel to appear at any hearing.~~

~~(6)4] A Pleading.~~

NOTICES OF PROPOSED RULES

~~(a) A[n Allowable Pleading. A pleading shall consist of any petition, complaint, request for hearing, responsive pleading, motion, stipulation, affidavit, memorandum, order, or document in a proceeding.~~

~~(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.~~

~~(c) Title. Each pleading shall be titled.] pleading shall be in substantially the following form:~~

~~(i) [C]centered heading[?], BEFORE THE UTAH INSURANCE COMMISSIONER[~~OF THE STATE OF UTAH~~];~~

~~(ii) [L]left side, identification of parties;~~

~~(iii) [R]right side, [identification of type]title of pleading; and~~

~~(iv) [R]right side, docket number.~~

~~(d)b) [Content of a Pleading. Any]A pleading shall [identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought]clearly and concisely present a party's position or request and the grounds in support.~~

~~(e)c) [Amendment to a Pleading.~~

~~(i) The presiding officer may allow any pleading to be amended or corrected.~~

~~(ii) Any amendment to any pleading shall be consistent.]A pleading may be amended in accordance with the Utah Rules of Civil Procedure, Rule 15.~~

~~(f)d) Signing of a Pleading.~~

~~(i) A[ny] pleading shall be signed and dated by the party, [or by]the party's attorney, or other authorized representative and shall show the signer's address, telephone number, and email.~~

~~(ii) The signature in Subsection (4)(d)(i) shall be[is] a certification by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are [good]grounds to support it.~~

~~(g)c) Motions.~~

~~(i) A [proceeding seeking an order to secure compliance may not be initiated by motion except for a Motion for Order to Show Cause.~~

~~(ii)(A) Any]motion, other than one made orally at a hearing, shall be in writing and shall [be filed and served on each party as provided in this rule]state the basis for relief.~~

~~(A) An affidavit, declaration, or other document may be submitted in support of a motion.~~

~~(B) The presiding officer may [use discretion to]decide a[ny] motion with or without a hearing.~~

~~(C) If either party desires a hearing on [its]a motion, [any pleading in support or in opposition shall state that a hearing is requested and shall provide the reasons therefor.~~

~~(D) The filing of an affidavit or declaration in support of a motion or in opposition thereto may be permitted or required by the presiding officer.~~

~~(E) An oral motion may be allowed at a hearing at the discretion of the presiding officer]the party's pleading shall state the grounds for a hearing.~~

~~(f)ii) A[ny] motion shall be filed and served at least ten days prior to the date set for the hearing.~~

~~(7)5(a) [Filing and Service.~~

~~(a) Any]A pleading shall be [considered]filed with the presiding officer by mail or by submitting a PDF to uidadmincases@utah.gov.~~

~~(b) A pleading is filed on the date [it is]received[by the Department].~~

~~(6) Service of a Pleading.~~

~~(a) A copy of a pleading filed with the presiding officer shall be served on each party to the proceeding.~~

~~(b) The department may be served with a summons, complaint, petition, or other pleading that commences a proceeding by sending a copy of the document by certified mail to the commissioner.~~

~~(c) The department may be served with any other pleading by ordinary mail or by sending a PDF to the email address of the attorney who represents the department in the proceeding.~~

~~(d) A licensee or a certificate holder may be served by:~~

~~(i) ordinary mail;~~

~~(ii) sending a PDF to the current email address provided to the department by the licensee or certificate holder pursuant to R590-258; or~~

~~(iii) sending a PDF to the current email address set forth in the pleading last filed by or on behalf of the licensee or certificate holder(b) Unless filed and served electronically pursuant to Section R590-160-6, a pleading shall be filed with the Department and a copy served upon each other party to the proceeding.~~

~~(e) The presiding officer may direct that a copy of any pleading be made available by the filer to any person requesting copies thereof who the presiding officer determines may be affected by the proceeding.~~

~~(d) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner.~~

~~(e) Service upon a licensee, if by mail, shall be to the mailing address or other address on file with the Department].~~

~~(f)c) A[ny pleading required to be served by these rules] pleading shall include a Certificate of Service in[~~substantially the following form: "The undersigned hereby certifies that on this date, a true and correct copy of the (Pleading title) was served, emailed, or mailed, postage prepaid, to the following: name, street, city, state, zip code, and email address. Dated this (blank) day of (month), (year), (signed)," which the signer certifies the date and method of service, the person on whom the pleading was served, and the service email address or mailing address.~~~~

~~(g)f) When a[ny] party is represented by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.~~

~~(8)7) Disqualification of a Presiding Officer.~~

~~(a) [Any party to an adjudicative proceeding may move for the disqualification of an assigned]A party may move to disqualify the presiding officer by filing a motion with the commissioner [an affidavit]alleging [facts sufficient to support]the basis for disqualification.~~

~~(b) The commissioner [shall determine the issue of disqualification as a part of the record of the case and]may request [and receive any]additional memoranda, evidence, or testimony as [considered]necessary to [make this determination]decide the motion.~~

~~(i) [The adjudicative proceeding may not proceed until the commissioner makes this determination]An adjudicative proceeding is stayed until the commissioner decides the motion.~~

~~(ii) [No appeal shall be taken from the commissioner's order on the determination of disqualification except as part of an appeal of a final agency action.~~

~~(iii) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized by statute or this rule.]A party may not appeal the commissioner's decision until a final order is entered in the proceeding.~~

(c) A presiding officer may at any time voluntarily ~~disqualify himself or herself~~ withdraw from deciding an adjudicative proceeding.

(d) ~~When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue~~ If the presiding officer is disqualified, the commissioner shall appoint another presiding officer.

~~(9)8~~ [Ex Parte Contact Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the]A presiding officer shall not have ex parte contact with a[ny] party or its representative[, directly or indirectly involved in any matter that is the subject of a pending adjudicative proceeding unless each party is given notice and an opportunity to participate].

~~(10)9~~ [Standard of Proof. Any]An issue of fact in an adjudicative proceeding [before the presiding officer]shall be decided [upon the basis of]by a preponderance of the evidence[standard].

~~(11)10~~ Burden of Proof.

(a) A party who commences an adjudicative proceeding has the burden to prove entitlement to the relief sought.

(b) A party who asserts an affirmative defense to a request for relief has the burden to prove entitlement to that defense.

(11) Dismissal of an Adjudicative Proceeding.

(a) A complainant or a petitioner may dismiss an adjudicative proceeding by filing:

(i) a notice of dismissal before the respondent serves a response to the initial pleading; or

(ii) a stipulation of dismissal signed by each party who has appeared.

(b) Except as provided in Subsection (11)(a), an adjudicative proceeding may be dismissed at a party's request by order of the presiding officer only on terms the presiding officer considers proper.

(c) If a complainant or a petitioner fails to prosecute, the presiding officer may dismiss the proceeding after applying the standard for dismissal for failure to prosecute under Utah Rules of Civil Procedure, Rule 41.

R590-160-6. [Electronic Filing and Service of Pleadings in Formal and Informal Proceedings.

~~(1) Filing with or service on the presiding officer may be accomplished by sending a copy of the pleading in PDF to uidadmineases@utah.gov.~~

~~(2) Filing with or service on the Department may be accomplished by sending a copy of the pleading in PDF to the Department's current email as provided in the subject proceeding.~~

~~(3) Filing with or service on:~~

~~(a) a licensee may be accomplished by sending a copy of the pleading in PDF to the current email provided by the licensee pursuant to Subsection 31A-23a-412(1); or~~

~~(b) a party's representative may be accomplished by sending a copy of the pleading in PDF to the representative's current email set forth in the representative's filed pleading.~~

~~(4)(a) Any pleading electronically filed or served shall be signed by a party or its representative and shall contain a signed certificate stating the date of electronic filing or service.~~

~~(b) An electronically filed or served pleading may be signed using any lawfully recognized signature, including an electronic signature.~~

R590-160-7. [Rules Applicable to a Formal Adjudicative Proceeding[s].

~~(1) [Conduct of Hearing. Any]A hearing in a formal adjudicative proceeding shall [be conducted pursuant to]comply with Section 63G-4-206.~~

~~(2) The presiding officer may direct the parties to participate in a pre-hearing conference.~~

~~(3) [Continuance.~~

~~(a) If application is made within a reasonable time prior to the date of hearing, upon proper notice to each other party, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown.~~

~~(b) The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.]The presiding officer may grant a motion to continue any proceeding for good cause.~~

~~(3)4~~ [Public Hearing.—]Unless ordered by the presiding officer for good cause, a[ny] hearing in a formal adjudicative proceeding shall be open to the public.

~~(4)5~~ Telephonic Testimony.

~~(a) [The presiding officer has discretion whether telephonic testimony may be allowed.~~

~~(b)]The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically.~~

~~(e)b~~ If telephonic testimony is taken, a[ny] party shall be permitted to hear the testimony and examine or cross-examine the witness.

~~(d)c~~ [Any t]Telephonic testimony shall be given under oath.

~~(5)6~~ Record of a Hearing.

~~(a) Recording.~~

~~(i) [The]A record of [the proceeding.]a hearing shall be made by [an]audio recording.~~

~~(ii) [A duplicate copy of the recording, or any portion thereof, shall be provided by the presiding officer at the request and expense of any party, and at no cost to the commissioner.]The presiding officer shall provide a copy of the recording at the request and expense of a party other than the department.~~

~~(b) Transcript of a Hearing.~~

~~(i) [Upon reasonable notice and at the party's own expense, any party may request that a certified shorthand reporter be present to record the proceeding.]On reasonable notice to and approval from the presiding officer, a party may employ a certified court reporter to record a hearing.~~

~~(ii) [If a transcript is made, the original transcript of the proceeding shall be filed.]The party seeking approval shall pay for the reporter and file the original transcript with the presiding officer at no cost to the commissioner.~~

~~(iii) A[ny] party who wants a copy of the transcript may purchase it from the [certified shorthand]reporter[at the party's own expense].~~

~~(6)7~~ Subpoenas, Witness Fees, and Payment].

~~(a) [Subpoenas.~~

~~(i) On the presiding officer's command, or at the request of any party, the presiding officer may issue a subpoena to:~~

~~(A) obtain or inspect documents;~~

~~(B) inspect premises or tangible things; or~~

~~(C) secure the attendance of a witness at a hearing or deposition in a formal adjudicative proceeding.~~

~~(ii) Any]A subpoena shall be issued and served in accordance with the Utah Rules of Civil Procedure, Rule 45[Subpoena].~~

~~(b) [Witness Fees. Each subpoenaed witness, other than Department staff, who appears before the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party who requests the subpoena.~~

~~(c) Payment.~~
~~(i) Any witness appearing at the request of the presiding officer shall be entitled to payment from the funds appropriated for the use of the Department.~~
~~(ii) Any witness subpoenaed at the request of a party other than the presiding officer may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.] A party that requests a subpoena shall pay the same fees and mileage allowed by law to witnesses in a district court.~~
~~(7) [Discovery.] Discovery may be conducted by the parties' agreement or pursuant to an order of the presiding officer[-].~~
~~(8) Order. The presiding officer shall issue a written, signed order based upon evidence presented in the hearing].~~

R590-160-[8]7. Rules Applicable to an Informal Adjudicative Proceeding[s].

~~(1)(a) [An informal adjudicative proceeding may be commenced by the Department.] The department may commence an informal adjudicative proceeding by issuing a Notice of [Informal Adjudicative Proceeding-] Agency Action and Order pursuant to Subsection R590-160-4(1).~~
~~(b) The [Notice of Informal Adjudicative Proceeding and] Order shall be based upon the information contained in [the files of the Department, any declarant's testimony, and information known to the presiding officer] affidavits, declarations, and the department's files.~~
~~(c) The [Notice of Informal Adjudicative Proceeding and] Order shall constitute a proposed order that shall become final 15 days after service [or mailing to the party-] on the respondent unless a written request for a hearing is received [by the Department prior to-] before the expiration of 15 days.~~
~~(2) A respondent's failure to timely request a hearing in an informal adjudicative proceeding will be considered a failure to exhaust administrative remedies.~~
~~(3) When a hearing is requested in an informal adjudicative proceeding, a [N]notice of a [P]prehearing [C]conference shall be issued stating the matters to be decided and giving notice of the date, time, and place of the prehearing scheduling conference to be held.~~
~~(4) A hearing in an informal adjudicative proceeding may be of record.~~
~~(5) At a hearing in an informal adjudicative proceeding, the presiding officer may receive any testimony, proffer of evidence, affidavit, declaration, and argument relating to the issues to be decided and may issue a subpoenas requiring the attendance of any witness or the production of necessary evidence[-].~~
~~(6) At the close of the informal adjudicative proceeding, the presiding officer shall issue a written, signed order based upon evidence in the Department's files and the evidence or proffers of evidence received at the proceeding. The order shall be final on the date of the order].~~

R590-160-[9]8. Agency Review.

~~(1)(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing pursuant to Subsection R590-160-[8]7(1), shall be available to a [ny] party to [the-]a proceeding by filing a [R]request for [A]agency [R]review with the commissioner within 30 days of the date of the order.~~
~~(b) Failure to seek agency review shall be considered a failure to exhaust administrative remedies.~~
~~(2) [A request for a] Agency review shall [be filed pursuant to] comply with Sections 63G-4-301 and 63G-4-302.~~

~~(3)(a) The [review shall be conducted by the-] commissioner or the commissioner's designee shall conduct the review.~~
~~(b) [The-]A designee shall not be the presiding officer who issued the decision under review.~~
~~(c) If [the review is conducted by-]a designee conducts a review, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.~~
~~(4) Content of a Request for Agency Review.~~
~~(a) [The content of a-]A request for agency review shall [be in accordance-]comply with Subsection 63G-4-301(1)(b), and shall include the following:~~
~~(i) a copy of the order[-, which] that is the subject of the request[-];~~
~~(ii) the factual basis for the request, including:~~
~~(A) citation to the record of the formal adjudicative proceeding; and~~
~~(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;~~
~~(iii) the legal basis for the request, including citation to supporting authority;~~
~~(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and~~
~~(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.~~
~~(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:~~
~~(i) order a transcript of the recording relevant to the finding;~~
~~(ii) certify that a transcript has been ordered;~~
~~(iii) file the transcript with the commissioner or the commissioner's designee and serve a copy on each party; and~~
~~(iv) bear the cost of preparing the transcript.~~
~~(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.~~
~~[(b) A party requesting agency review shall set forth any factual or legal basis in support of that request.~~
~~(e) The request for agency review may include:~~
~~(i) supporting argument;~~
~~(ii) citation to appropriate legal authority;~~
~~(iii) any reference to the relevant portion of the record developed during the formal adjudicative proceeding under review; or~~
~~(iv) reference to the relevant portion of the Department's files, and any other evidence or proffer of evidence received during the informal adjudicative proceeding under review.~~
~~(d) If a party challenges a finding of fact in the order subject to review, the party shall demonstrate:~~
~~(i) based on the entire record, that the finding is not supported by substantial evidence in the formal adjudicative proceeding under review; or~~
~~(ii) based on the Department's files and declarant's testimony, that the finding is not supported by substantial evidence in the informal adjudicative proceeding under review.~~
~~(e) If a party challenges a legal conclusion in the order subject to review, the party shall support its argument with citation to any relevant authority and also:~~
~~(i) cite the portion of the record that is relevant to that issue in the formal adjudicative proceeding under review; or~~
~~(ii) cite the portion of the record that is relevant to the issue based upon any evidence in the Department's files, any fact appearing in the Department's files and verified by a declarant testimony, and any~~

fact presented in evidence or proffer of evidence received in the informal adjudicative proceeding under review.

(f)(i) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall:

(A) order and cause a transcript of the recording relevant to such finding or conclusion to be prepared in the formal adjudicative proceeding under review, in accordance with Subsections R590-160-7(5)(a) and (b); or

(B) provide a statement in its request for agency review that no transcript or recording is available in the informal adjudicative proceeding under review.

(ii) In a request for agency review pursuant to Subsection R590-160-9(4)(f)(i)(A), the party seeking review shall certify that a transcript has been ordered and shall notify the presiding officer when the transcript is available for filing.

(iii) The party seeking agency review shall bear the cost of the transcript.

(iv) The presiding officer may waive the requirement of preparation of a written transcript and permit citation to the recording of such adjudicative proceeding upon motion and a reasonable showing that such citation would not be extensive and the costs and period of time in preparation of a written transcript would be unduly burdensome in relation thereto.

(5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct the agency review, the supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(c) A reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a Stay.

(a) On motion by any party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within 10 days from the date the stay is requested. Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) An opposition to the request for a stay shall be made in writing within ten days from the date the stay is requested.

(c) In determining whether to grant a request for a stay, the presiding officer shall review the request, any opposing memorandum, the findings of fact, conclusions of law, and order and determine whether a stay is in the best interest of the public.

(d) If it is determined to be in the best interest of the public to issue a stay, the presiding officer may:

(i) issue a stay, staying any part of the order pending agency review; or

(ii) issue a conditional stay by imposing any term, condition, or restriction on a party pending agency review.

(e) The presiding officer may also enter an interim order granting a stay pending a final decision on the request for a stay.

(6) Memoranda.

(a) The presiding officer may order or permit any party to file any memorandum to assist in conducting an agency review.

(b) Any memorandum shall be filed consistent with these rules or as otherwise governed by any scheduling order.

(c)(i) If a transcript is necessary to conduct an agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the Department.

(ii) If a transcript is unavailable or waived by the presiding officer pursuant to Subsection R590-160-9(4)(f)(iv), any supporting memorandum to the request for agency review shall be filed with the request.

(d) Any opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(e) After the filing of an opposing memorandum, a reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.]

(7) [Oral Argument.

(a) The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with the agency review.

(b) The presiding officer may order or permit oral argument if determined to be warranted to assist in conducting an agency review.

(8) Standard of Review. The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(9) Order on Review.

(a) The order on review shall comply with the requirements of Subsection 63G-4-301(6).

(b) An order on review may affirm, reverse, or amend, in whole or in part, the previous order, or remand for further adjudicative proceeding or hearing. The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(10) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.

R590-160-[40]2. Sanctions.

(1)(a) [In any adjudicative proceeding, t]The presiding officer may[, by order, impose any appropriate] sanction [upon any-]a party, a party's representative, a[ny] witness, or a witness's representative for contemptuous or disobedient conduct, or for failure to comply with this rule or a[ny] lawful order.

[(2)(a) The presiding officer may take any reasonable step to control the conduct of an adjudicative proceeding and may impose any sanction against a party or a witness who fails to comply with an order or with a requirement of Rule R590-160.

—(b) A sanction may include:

- (i) excluding evidence;
- (ii) dismissing one or more claims;
- (iii) striking any pleading or any portion of a pleading;
- (iv) entering a default judgment; or
- (v) ordering payment of any costs, expenses, and fees.

(2) The presiding officer may take reasonable steps to control the conduct of an adjudicative proceeding.

R590-160-[44]10. Severability.

If any provision of this rule, R590-160, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule which can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

KEY: insurance

Date of Enactment or Last Substantive Amendment: ~~June 8, 2020~~ **2021**

Notice of Continuation: September 21, 2018

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Repeal		
Utah Admin. Code Ref (R no.):	R590-231	Filing No. 53230

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	3110	
Building:	State Office Building	
Street address:	450 N State St.	
City, state:	Salt Lake City, UT 84114	
Mailing address:	PO Box 146901	
City, state, zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-538-3803	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-231. Workers' Compensation Market of Last Resort
3. Purpose of the new rule or reason for the change:
This rule is being repealed in its entirety in response to S.B. 92 which was passed by the Legislature during the 2017 General Session. The Workers' Compensation Fund (WCF) was named in statute as the carrier of last resort until the passage of S.B. 92.
4. Summary of the new rule or change:
The Utah Insurance Department (UID) is currently going through a request for proposal process to find a replacement. WCF will remain carrier of last resort until December 31, 2020, and the contract for the replacement will begin January 1, 2021. There will be no procedural changes between WCF and its replacement. The only change may be the company that will act as the carrier of last resort that employers can use when purchasing workers' compensation insurance.

Fiscal Information

5. Aggregate anticipated cost or savings to:			
A) State budget:			
There is no anticipated cost or savings to the state budget. WCF was not compensated by the UID during its tenure as carrier of last resort, and the contract with the carrier selected through the request for proposal process will have the same arrangement.			
B) Local governments:			
There is no anticipated cost or savings to local governments. This rule merely sets a carrier of last resort that employers can use when purchasing workers' compensation insurance. This rule will be replaced by a contract that will have similar terms.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
There is no anticipated cost or savings for small businesses. This rule merely sets a carrier of last resort that employers can use when purchasing workers' compensation insurance. This rule will be replaced by a contract that will have similar terms.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
There is no anticipated cost or savings for non-small businesses. This rule merely sets forth a carrier of last resort that employers can use when purchasing workers' compensation insurance. This rule will be replaced by a contract that will have similar terms.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):			
There is no anticipated cost or savings for any other persons. This rule merely sets a carrier of last resort that employers can use when purchasing workers' compensation insurance. This rule will be replaced by a contract that will have similar terms.			
F) Compliance costs for affected persons:			
There are no compliance costs for any affected persons.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Interim Commissioner of the Insurance Department, Tanji J. Northrup, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
The above analysis represents the Insurance Department's best estimate of the fiscal impact that this rule may have on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
Tanji J. Northrup, Interim Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Section 31A-2-201	Section 31A-19a-404	Section 31A-20-103
Section 31A-22-1010		

Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021

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

Agency Authorization Information

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	12/01/2020
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R590. Insurance, Administration.

~~R590-231. Workers' Compensation Market of Last Resort. R590-231-1. Authority.~~

~~This rule is promulgated pursuant to the following statutes:
 (1) 31A-19a-404, rulemaking authority for the recording and reporting of statistical data and experience rating data;
 (2) 31A-20-103, rulemaking authority to define lines and classes of insurance;
 (3) 31A-22-1010, rulemaking authority for reporting requirements for workers' compensation deductible policies; and
 (4) 31A-2-201, rulemaking authority to implement the provision of Title 31A.~~

~~R590-231-2. Findings and Interpretation.~~

~~(1) The commissioner finds that the legislature intended that the Workers' Compensation Fund created under Title 31A, Chapter 33, was to provide workers' compensation insurance for Utah employers who are not able to obtain such insurance in the voluntary marketplace.
 (2) Based upon this finding, the commissioner interprets Section 31A-22-1001 to mean that the Workers' Compensation Fund, created under Title 31A, Chapter 33, is the insurer that provides workers' compensation insurance for the market of last resort in Utah.~~

~~R590-231-3. Purpose and Scope.~~

~~(1) The purpose of this rule, regarding the workers' compensation market of last resort, is to:
 (a) define the workers' compensation market of last resort;
 (b) provide eligibility criteria;~~

NOTICES OF PROPOSED RULES

- ~~_____ (c) provide requirements for designation of existing insured employers; and~~
- ~~_____ (d) provide reporting requirements to the department and the designated rate service organization.~~
- ~~_____ (2) This rule applies to the insurer for the market of last resort.~~

R590-231-4. Definitions.

- ~~_____ (1) "Insurer for the market of last resort" means the Workers' Compensation Fund.~~
- ~~_____ (2) "Market of Last Resort" means the workers' compensation class of risk that cannot be placed with a voluntary workers' compensation insurer because of certain underwriting restrictions or class codes.~~
- ~~_____ (3) "Voluntary workers' compensation insurer" means an admitted workers' compensation insurer actively seeking workers' compensation business in Utah, including the Workers' Compensation Fund.~~

R590-231-5. Eligibility.

- ~~_____ (1) To be eligible for the workers' compensation market of last resort, an employer must meet the underwriting and rating criteria established by the insurer for the market of last resort.~~
- ~~_____ (2) An employer being insured by the insurer for the market of last resort remains eligible for the market of last resort until the employer obtains workers' compensation insurance from a voluntary workers' compensation insurer.~~

R590-231-6. Underwriting and Rating.

- ~~_____ (1) The insurer for the market of last resort shall file separate underwriting and rating criteria for the market of last resort or a separate rating plan for the market of last resort.~~
- ~~_____ (2) Underwriting criteria for eligibility in the market of last resort shall include:

 - ~~_____ (a) premium size;~~
 - ~~_____ (b) class code and risk characteristics; and~~
 - ~~_____ (c) loss and payroll experience.~~~~
- ~~_____ (3) Policy files for employers eligible for the market of last resort must include the underwriting criteria or follow underwriting protocols used for placement in the market of last resort.~~

R590-231-7. Designation and Reporting.

- ~~_____ (1) Because the Workers' Compensation Fund is a voluntary workers' compensation insurer, and the insurer for the market of last resort, the Workers' Compensation Fund shall:

 - ~~_____ (a) Designate its existing insured employers as insured in the voluntary workers' compensation market or in the market of last resort; and~~
 - ~~_____ (b) Such designation can be done:

 - ~~_____ (i) immediately; or~~
 - ~~_____ (ii) as each employer renews; or~~
 - ~~_____ (iii) at the time a new application is made for workers' compensation coverage.~~~~~~
- ~~_____ (2) The insurer for the market of last resort shall report its data, including market of last resort data to the designated rate service organization. Such reporting shall be timely and consistent with the designated rate service organization's reporting requirements for all workers' compensation insurance carriers operating in Utah.~~
- ~~_____ (3) Upon request, the insurer for the market of last resort shall make available to the Insurance Department, information about the market of last resort. Requested information may include the market of last resort data reported to the designated rate service organization.~~

R590-231-8. Enforcement Date.

~~_____ The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule.~~

R590-231-9. Severability.

~~_____ If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances shall not be affected.~~

KEY: workers' compensation insurance

Date of Enactment or Last Substantive Amendment: May 20, 2005

Notice of Continuation: April 29, 2015

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-19a-404; 31A-20-103; 31A-22-1010]

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R655-18	Filing No. 53224

Agency Information

1. Department:	Natural Resources	
Agency:	Water Rights	
Room no.:	220	
Building:	Department of Natural Resources	
Street address:	1594 W North Temple	
City, state:	Salt Lake City, UT	
Mailing address:	PO Box 146300	
City, state, zip:	Salt Lake City UT 84114-6300	
Contact person(s):		
Name:	Phone:	Email:
Marianne Burbidge	801-538-7370	marianneburbidge@utah.gov

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

General Information

2. Rule or section catchline:
R655-18. Public Water Supplier 40 Year Water Requirement Plan Standards
3. Purpose of the new rule or reason for the change:
H.B. 96 from the 2020 General Session directed the State Engineer to implement a new rule to establish standards for 40 Year Plans submitted by public water suppliers to the Division of Water Rights.
4. Summary of the new rule or change:
This rule establishes standards for 40 Year Plans submitted by public water suppliers to the Division of Water Rights that

define reasonable future water requirement of the public in the next 40 years.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This proposed rule is not expected to have any fiscal impact on state government revenues or expenditures because it is implementing standards for clarity of procedures already required to be completed by state law.
B) Local governments:
This proposed rule is not expected to have any fiscal impact on local governments' revenues or expenditures because it is implementing standards for clarity of procedures already required to be completed by state law.
C) Small businesses ("small business" means a business employing 1-49 persons):
This proposed rule is not expected to have any fiscal impact on small businesses' revenues or expenditures because it is implementing standards for clarity of procedures already required to be completed by state law.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This proposed rule is not expected to have any fiscal impact on non-small businesses' revenues or expenditures because it is implementing standards for clarity of procedures already required to be completed by state law.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
This proposed rule is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities business revenues or expenditures because it is implementing standards for clarity of procedures already required to be completed by state law.
F) Compliance costs for affected persons:
This proposed rule is not expected to have any compliance costs for affected persons.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)
Regulatory Impact Table

Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Executive Director of the Department of Natural Resources, Brian C. Steed, has approved this impact analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
No fiscal impact on businesses. This has been processed with the Utah Task Force Committee, as well as the Water Community for any concerns and none were expressed.			
B) Name and title of department head commenting on the fiscal impacts:			
Brian C. Steed, Executive Director			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 73-2-1(4)(h)	Subsection 73-1-4(2)(f)(iii)	

Public Notice Information

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

A) Comments will be accepted until:	01/14/2021
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10. This rule change MAY become effective on:	01/21/2020
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NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Teresa Wilhelmsen, PE, Director / State Engineer	Date:	11/23/2020
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R655. Natural Resources, Water Rights.

R655-18. Public Water Supplier 40 Year Water Requirement Plan Standards.

R655-18-1. Purpose.

The purpose of this rule is to establish standards for 40 Year Plans submitted by Public Water Suppliers to the Division of Water Rights that define reasonable Future Water Requirement of the public in the next 40 years.

R655-18-2. Authority.

These rules are issued pursuant to Subsection 73-2-1(4)(h) which directs the state engineer to make rules establishing standards for written plans that may be presented as evidence of the reasonable Future Water Requirement of the public.

R655-18-3 Definitions.

(1) Terms used in this rule are defined as follows:

(a) "40 Year Plan" is a written plan of the reasonable Future Water Requirement in the next 40 years in conformance with Subsection 73-1-4(2)(f).

(b) "Future Water Requirement" is the amount of water needed in the next 40 years by: the persons within the Public Water Supplier's reasonably anticipated Service Area based upon reasonably anticipated population growth; or other water use demand.

(c) "Professional Engineer" is a professional engineer, with an active license in Utah in accordance with Chapter 58-2.

(d) "Public Water Supplier" is a system that meets the criteria under Subsection 73-1-4 (1)(b).

(e) "Public Water Supplier's Service Area" is the geographic limits designated by the Public Water Supplier of any water supply system or any area to which it is or may be obligated to deliver water as defined by statute, local ordinance, rules of operation, contract, or other legal obligation evidenced in writing.

(f) "Utah Population Committee" is the committee created by Title 63C, Chapter 20, Utah Population Committee. In accordance with Subsection, 63C-20-105 (1), if an executive branch entity, legislative branch entity, or independent entity is required to perform an action or make a determination based on a population estimate, the entity shall use a population estimate that the committee produces, if available.

R655-18-4. When A Plan Must Be Submitted.

(1) A 40 Year Plan must be submitted to the Division of Water Rights when:

(a) a Public Water Supplier is providing evidence to the state engineer in support of an exemption from forfeiture due to nonuse in accordance with Subsection 73-1-4 (2)(e)(vii)(B); or

(b) a Public Water Supplier files a request for an extension of time to perfect an approved water right application that will extend the time in which to file proof beyond 50 years from the day on which the application is approved in accordance with Subsection 73-3-12 (4)(b)(ii).

R655-18-5. Plan Standards.

(1) Each 40 Year Plan or supplement to an existing Plan submitted to the Division of Water Rights shall be signed and certified by a Professional Engineer with their respective professional seal affixed.

(2) A 40 Year Plan must explicitly identify each specific water right or rights for which the Plan is being submitted.

(3) A previously submitted Plan may be supplemented to address a specific water right or rights for which a Public Water Supplier includes as part of a previously submitted Plan.

(4) When a Public Water Supplier submits a 40 Year Plan or a supplement to a Plan each part of the Plan must be up-to-date and current.

(5) A Public Water Supplier may prepare multiple 40 Year Plans to address separate and distinct water systems, which may include areas to which the Public Water Supplier supplies or reasonably plans to supply water.

(6) A 40 Year Plans shall include the following for a Public Water Supplier:

(a) amount of physical water currently diverted and used in the system;

(b) a description of the system and sources of water;

(c) the projected Future Water Requirements for the system;

(d) a comprehensive inventory list for the system of the Public Water Supplier's interest in either water rights, ownership shares in water companies, or any contracts or other documents evidencing its right to receive water from other entities; and

(e) an explanation of how each specific water right, for which the 40 Year Plan is being submitted, is needed to meet the projected Future Water Requirements of the system.

(7) The projected population within the Public Water Supplier's Service Area shall be based upon population estimates prepared by the Utah Population Committee or a comparable estimate including estimates prepared by a state agency, political subdivision of the state, an association of governments, or an Interlocal Cooperation Act entity.

(8) Projected water use per capita and other water use demand estimates shall be based upon established engineering principles, actual water use data, or other reliable measures.

KEY: public water supplier, 40 Year Plan, water rights
Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 73-2-1(4)(h); 73-1-4(2)(f)(iii)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R765-165	Filing No. 53159

Agency Information

1. Department:	Regents (Board of)	
Agency:	Administration	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R765-165. Concurrent Enrollment
3. Purpose of the new rule or reason for the change:
Section 53E-10-302 requires the Utah State Board of Education and the Utah Board of Higher Education to establish and maintain a concurrent enrollment program. In addition, the H.B. 336 passed in the 2020 General Session requires rulemaking on the part of the Utah Board of Higher Education with regard to the transferability of credits earned.
4. Summary of the new rule or change:
This rule provides for the establishment and maintenance of a concurrent enrollment program between the Utah State Board of Education and the Utah Board of Higher Education. This rule provides for credits earned by qualifying students who receive the LAUNCH and DISCOVER Certificates from the Utah State Board of Education and the TRANSFORM Certificate from an

institution of higher education to be transferable to institutions of higher education.

Fiscal Information

5. Aggregate anticipated cost or savings to:			
A) State budget:			
Enactment of this rule likely will not materially impact state revenue because this rule applies only to students who participate in the concurrent enrollment program.			
B) Local governments:			
Enactment of this rule likely will not result in direct, measurable costs for local governments because this rule does not apply to or affect local governments.			
C) Small businesses ("small business" means a business employing 1-49 persons):			
Enactment of this rule likely will not result in direct expenditures from tax or fee changes for small businesses because this rule does not apply to or affect small businesses.			
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):			
Enactment of this rule likely will not result in direct expenditures from tax or fee changes for non-small businesses because this rule does not apply to or affect non-small businesses.			
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):			
Enactment of this rule likely will not change the regulatory burden for persons other than small businesses, non-small businesses, state, or local government entities because this rule applies only to students who participate in the concurrent enrollment program.			
F) Compliance costs for affected persons:			
There are no compliance costs for affected persons since the concurrent enrollment program is voluntary.			
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)			
Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0

NOTICES OF PROPOSED RULES

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0
H) Department head approval of regulatory impact analysis:			
The Commissioner of Higher Education, David R. Woolstenhulme, has reviewed and approved this fiscal analysis.			
6. A) Comments by the department head on the fiscal impact this rule may have on businesses:			
This rule affects the transferability of credits earned by qualifying students to institutions of higher education and has no fiscal impact on businesses.			
B) Name and title of department head commenting on the fiscal impacts:			
David R. Woolstenhulme, Commissioner			

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):		
Subsection 53E-10-309(6)	Section 53E-10-302	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also
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request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)
A) Comments will be accepted until: 01/14/2021

10. This rule change MAY become effective on: 01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Designee and Assistant Attorney General	Date:	10/30/2020
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R765. Regents (Board of), Administration.

R765-165. Concurrent Enrollment.

R765-165-1. Purpose.

The purpose of this rule is to establish the rules and procedures that govern Utah public higher education institutions when providing concurrent enrollment opportunities to Utah public education students. This rule does not apply when a USHE institution is contracting concurrent opportunities with public education students of other states or with private high schools located within Utah.

R765-165-2. Authority.

This rule is authorized by Subsection 53E-10-309(6).

R765-165-3. Definitions.

3.1. "Concurrent Enrollment" means college courses that Utah System of Higher Education institutions offer to public school under a contractual agreement between the USHE institution and a Local Education Agency. Students continue to be enrolled in public schools, are counted in average daily membership, receive credit toward graduation, and concurrently receive college credit for courses. Concurrent enrollment is distinct from early college admission.

3.2. "Career and Technical Education Courses" and "CTE" mean higher education courses that align to Utah State Board of Education 11-digit assignment codes beginning with "30 Agriculture" through "41 Work-Based Learning" that are not designated as general education courses, and that may qualify for funding under the Strengthening Career and Technical Education for the 21st Century Act, Pub. L. No. 115 224.

3.3. "Contractual Basis" means courses and instruction offered under an annual contract between a LEA and a USHE

institution. Contractual basis concurrent enrollment is eligible for state funding through the appropriation for concurrent enrollment authorized under Section 53 E-10-303.

3.4. "Early College" means enrollment in college credit courses by high school students who are academically prepared, meet college admissions requirements, have left high school prior to graduation, and are no longer counted in average daily membership. Concurrent enrollment policies and funding mechanisms do not apply to early college admission enrollment. Early college admission enrollments are reported as regular enrollments by USHE institutions.

3.5. "Early College High School" means a public high school, generally affiliated with a college or university, whose academic goal is to assist accelerated students in earning college credit up to an associate degree concurrent with a high school diploma. Students are counted in the average daily membership of the high school. College credit is earned through concurrent enrollment and early college courses. The early college high school negotiates for and pays any applicable tuition and fees for early college courses.

3.6. "Instructor" means a licensed LEA K-12 educator who qualifies and is approved to teach concurrent enrollment courses as an adjunct faculty within an institution's academic department.

3.7. "Interactive Video Conferencing" and "IVC" mean two-way, real-time transmission of audio and video signals between computer equipment at two or more locations.

3.8. "Local Education Agency" and "LEA" mean a school board, public school district or public charter school.

3.9. "Non-contractual Basis" means college credit courses public education students pursue on their own initiative. Such students must enter into an agreement between the student, the student's parent or guardian, the high school administrator, and the USHE institution for the student to take the course; the course is considered to be offered on a non-contractual basis. The student is responsible for all enrollment expenses. USHE institutions report non-contractual enrollments as regular enrollments. Non-contractual basis concurrent enrollment is not eligible for state funding.

3.10. "Qualifying Experience" means an LEA employee's experience in an academic field that qualifies the LEA employee to teach a concurrent enrollment course in the academic field and may include the employee's (a) number of years teaching in the academic field; (b) holding a higher level secondary teaching credential issued by the state board; (c) research, publications, or other scholarly work in the academic field; (d) continuing professional education in the academic field; (e) a portfolio of work related to the academic field; or (f) professional work experience or certifications in the academic field.

3.11. "Snow College Concurrent Education Program" and "Snow CE" mean a consistent two-year schedule of concurrent enrollment courses that Snow College delivers through IVC. Snow CE courses create a pathway for secondary school students, particularly in rural high schools, to earn college credits that apply toward earning an Associate of Science or Associate of Arts degree, or satisfy scholarship requirements and other objectives that best meet students' needs. Snow CE includes advisory support to participating secondary school students and their high school counselors to ensure that students' concurrent enrollment courses align with their academic and career goals. Rule R765-165 governs the Snow CE program. Funding is appropriated under Section 53B-16-206.

3.12. "Plan for College and Career Readiness" means secondary school process for academic and career planning,

facilitated by school counselors with students and their parents or guardians.

3.13. "Supervision of CE Instructors" means professional development opportunities provided to public educators who qualify as concurrent enrollment instructors to prepare them to teach the CE post-secondary curriculum.

3.14. "Technology Delivered Instruction" means course instructions provided to students by common technology such as broadcast, interactive videoconferencing, or the Internet.

3.15. "Technology Intensive Concurrent Enrollment" and "TICE" mean hybrid concurrent enrollment courses that blend different learning activities, both in classrooms and online. TICE courses include common course assessments and, when possible, utilize open education resources. Each USHE institution may offer TICE courses.

3.16. "Unique Student Identifier" and "SSID" mean an alphanumeric code assigned to each public education student for identification purposes.

3.17. "Utah Board of Higher Education" and "UBHE" mean the governing body for the Utah System of Higher Education.

3.18. "Utah System of Higher Education" and "USHE" mean the system of public colleges and universities governed by the Utah Board of Higher Education.

3.19. "USHE Institution" and "Institution" mean a credit-granting community college or university within the Utah System of Higher Education.

3.20. "USHE Technical College" means a technical college within USHE that provides technical education as defined in Subsection 53B-1-101.5(8).

3.21. "Utah State Board of Education" and "USBE" mean the system of public education districts and charter schools governed by the Utah State Board of Education.

R765-165-4. Purpose of Concurrent Enrollment Program.

The concurrent enrollment program provides course options to a prepared high school student who earns high school and college credit. The concurrent enrollment program is intended to allow a student to complete a high school diploma while concurrently earning credits for first or second-year coursework at a USHE Institution, which can accelerate college completion and reduce college costs. To accomplish the purpose for the concurrent enrollment program, the UBHE and the USBE shall ensure that the following is done:

4.1. High Quality Opportunities - Concurrent enrollment courses shall provide high quality, college-level academic and career and technical education opportunities to qualified high school students.

4.2. Qualitative Safeguards - College instruction offered in the high school setting must have qualitative safeguards to preserve the rigor and standards of college requirements. The USHE Institution granting the college credit for a given course is responsible to establish appropriate qualitative safeguards. To help ensure quality, consistent instruction, and student success, the sponsoring institutions should officially enroll students as concurrent enrollment students.

4.3. Participating Institutions - USHE credit-granting institutions may participate in the contractual basis concurrent enrollment program in compliance with controlling law and consistent with USBE rules governing the use of public education funds.

4.4. Program Evaluation - The USBE and UBHE shall work in close cooperation in developing, implementing, and evaluating the concurrent enrollment program.

R765-165-5. Students.

5.1. Student Status - Students must be enrolled in, and counted in the average daily membership of, a Utah public school and have high school student status before and throughout enrollment in concurrent enrollment courses. Students must complete contractual basis concurrent enrollment courses prior to their high school graduation or participation in high school graduation exercises. Students who have received a diploma, whose class has graduated from high school, or who have participated in graduation exercises are not eligible to participate in the concurrent enrollment program.

5.2. Eligibility Requirements - USHE institutions and LEAs shall jointly establish student eligibility requirements. To predict a successful experience, institutions and LEAs may require:

5.2.1. students are in grade 9, 10, 11, or 12;

5.2.2. a grade point average, ACT score, or a placement score which predicts success, which is generally considered to be a "B" grade point average or ACT score of 22 or higher;

5.2.3. supportive letters of recommendation;

5.2.4. approval of high school and college officials;

5.2.5. appropriate placement assessments for courses such as mathematics and English;

5.2.6. completion of Secondary Math I, II, and III with a "C" average or better course grade in all three classes to enroll in a CE mathematics course; and

5.2.7. completion of institutionally established prerequisites for a course; and

5.2.8. have on file a completed plan for college and career readiness.

5.3. Concurrent Enrollment Participation Form and Parent Permission to Participate - Before allowing an eligible student to participate in the concurrent enrollment program for the academic year, an institution shall ensure the student has completed the USHE concurrent enrollment participation form, signed an acknowledgement of program participation requirements, and obtained a permission form signed by a parent or guardian.

5.4. Identification of Eligible Students - LEAs have the primary responsibility for identifying students who are eligible to participate in the concurrent enrollment program.

5.5. Advising - USHE institutions and LEAs shall jointly coordinate advising to prospective or current high school students who participate in the concurrent enrollment program. Advising shall include information on general education requirements at USHE institutions and how the students can choose concurrent enrollment courses to avoid duplication or excess credit hours.

5.6. Tracking Student Achievement - USHE institutions and LEAs shall jointly coordinate information technology systems to track individual students' academic achievement through both education systems in accordance with Sections 53B-1-109 and 53E-4-308.

5.6.1. USBE and USHE staff shall coordinate access to the SSID of a public education student who later attends an institution within the Utah System of Higher Education.

5.6.2. USHE information technology systems shall utilize the SSID of all students who have previously been assigned a unique student identifier.

5.7. Advising Report - Twelve weeks after the end of each semester, participating institutions may request from the Commissioner's Office a report listing each public high school

student admitted to a USHE institution who was enrolled in 12 or more credit hours of concurrent enrollment courses per year and completed at least six of those credit hours from that institution. The report shall include:

5.7.1. student's name and SSID;

5.7.2. the student's LEA;

5.7.3. the name of each concurrent enrollment course taken by the student;

5.7.4. the institution where the student enrolled to take each concurrent enrollment course; and

5.7.5. the number of college credits the student earned in each concurrent enrollment course with a designation that indicates which credits the student earned at a grade "C" or higher.

R765-165-6. Courses.

6.1. Choice of Courses - The courses offered through concurrent enrollment shall be introductory-level general education, career and technical education, pre-major college courses, or select upper division courses when approved by the Utah Board of Higher Education after consulting with the Utah State Board of Education. Concurrent enrollment courses must assist students in earning post-secondary certificates or degrees. Concurrent enrollment may only include college courses that correspond to high school courses typically offered in grades 11 or 12. Courses selected shall reflect the strengths and resources of the respective schools and USHE institutions. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career and technical education.

6.2. Accelerated Foreign Language Courses - Institutions may offer 3000 level foreign language courses to accelerated foreign language students, including dual language immersion students.

6.3. Master List - The Office of the Commissioner of Higher Education and the USBE will jointly approve courses that are added to an institution-specific Concurrent Enrollment Master List. Only courses taken from the master list for a given academic year shall be reimbursed from state concurrent enrollment funds.

6.4. Changes to Concurrent Enrollment Master List - USHE institutions, after consultation with LEAs, shall provide the USBE with proposed new course offerings, including syllabi and curriculum materials by November 15 of the year preceding the school year in which courses shall be offered.

6.5. Number of Courses - In general, institutions should limit the number of concurrent enrollment courses so they can focus on quality instruction and assure coordinated professional development activities for participating teachers and transferability of credit from institution to institution.

6.6. Institution Responsibility - The offering institution is responsible for course content, procedures, examinations, teaching materials, and monitoring of CE courses taught at a high school. The institution shall ensure the curriculum is consistent with Utah law and of comparable rigor and quality with courses offered on the institution campus. The institution shall ensure CE curriculum standards of instruction, practices for administering and grading assessments, and the course grade rubric are the same as when the course is taught on the institution campus. When possible, department exams should be used in the CE course. For courses that transfer as equivalent credit among USHE institutions, the institution will ensure articulated learning outcomes are met.

R765-165-7. Credit.

7.1. Permanent College Transcript - The registrations and grades of each concurrent enrollment course shall be recorded on

permanent college transcripts. A student who registers for a concurrent enrollment shall commit to having the final course grade recorded on that student's permanent college record, regardless of the results.

7.2. Credit Value - College level courses taught in the high school shall carry the same credit hour value as when taught on a college or university campus and shall apply toward graduation from a USHE Institution on the same basis as courses taught at the USHE institution where the credits are earned.

7.3. Credit Hours Permitted - Individual students will be permitted to earn up to 30 semester hours of college credits per year through contractual concurrent enrollment. Credits earned in excess of 30 must be on a non-contractual basis.

7.4. Institution Credit - USHE institutions are responsible for course registration and awarding college credit for concurrent enrollment courses.

7.5. Transferability - Credit earned through the concurrent enrollment program shall be transferable between USHE institutions. Students should be encouraged to seek advice from a college academic adviser to make course choices that will meet the student's educational goals.

R765-165-8. Tuition, Fees, and Other Charges.

Regular tuition and fees may not be charged to high school students for participation in this program.

8.1. Admissions Fee - Students may be assessed a one-time admissions application fee per institution, which satisfies the general admissions application fee requirement for a full-time or part-time student at an institution. The institution may not charge any additional admissions application fees for continuous enrollment at that institution following high school graduation.

8.2. Participation Fee - The UBHE may charge a one-time fee for students to participate in the concurrent enrollment program. Paying this fee does not satisfy the general admissions application fee required for full-time or part-time students at a USHE institution.

8.3. Partial Concurrent Enrollment Tuition - USHE institutions may charge a secondary student partial tuition for each concurrent enrollment course for which the student receives college credit in the following amounts:

8.3.1. a USHE institution may charge a concurrent enrollment student who qualifies for free or reduced school lunch partial tuition of up to \$5 per credit hour;

8.3.2. if a concurrent enrollment course is taught by a public school educator in a public school facility, a USHE institution may charge up to \$10 per credit hour;

8.3.3. if a concurrent enrollment course is taught over interactive video conferencing (IVC), a USHE institution may charge up to \$15 per credit hour; and

8.3.4. if a concurrent enrollment course is taught on a USHE campus, a USHE institution may charge up to \$30 per credit hour.

8.4. The UBHE shall annually report to the Legislature's Higher Education Appropriations Subcommittee on regular tuition savings to CE students, any partial CE tuition charged, and justification for the distribution of money appropriated for concurrent enrollment, pursuant to Section 53E-10-308.

8.5. Fee Waivers - Concurrent enrollment program costs attributable only to college credit or enrollment are not subject to fee waiver under Rule R277-407. A student's costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with Rule R277-407. The

LEA is responsible for these waivers. The contract between the USHE institution and the LEA may address the responsibility for fee waivers.

R765-165-9. Location and Delivery.

Concurrent enrollment courses shall be offered at the most appropriate location, using the most appropriate educational technology for the course content, the faculty, and the students involved. Instruction may be delivered through live classroom instruction or other accepted instruction technologies. Instruction normally occurs during the school day with students released from regular high school coursework to participate in concurrent enrollment.

9.1. Students within Commuting Distance - Qualified students residing within commuting distance of a USHE institution may pursue their concurrent enrollment study on the institution campus with approval from their LEA.

9.2. Designated Service Region Delivery - Each USHE institution has the responsibility for offering concurrent enrollment courses within their designated service region per UBHE policy R315. If the local institution chooses not to offer a concurrent enrollment course, a LEA may ask another USHE institution to provide the course.

9.3. Right of First Refusal - A LEA shall contact the USHE institution with responsibility for that LEA's service region to request a CE course offering. The local institution shall indicate in writing whether it will offer the requested course within 30 days of the LEA contact and request.

9.3.1. Exception for Technology Delivered Courses - Concurrent enrollment courses which meet the definition of "Technology Delivered Instruction" are subject to designated service region requirements. Institutions desiring to offer technology delivered CE courses outside their designated service region must receive a written endorsement from the local institution for each course they desire to offer before contracting with LEAs outside their designated service area. An annual system review of technology delivered courses shall be completed prior to November 30 of the year preceding the school year in which courses shall be offered to assure efficient and effective use of resources.

R765-165-10. CE Instructor Qualifications.

College or university faculty or public school educators teach concurrent enrollment courses for the offering institution.

10.1. Selection of CE Instructors LEAs and the participating USHE institution shall jointly select instructors for concurrent enrollment courses. Selection criteria for instructors are the same as those criteria applied to other adjunct faculty appointments in specific departments within the USHE institution. Once approved as an adjunct, a CE instructor who teaches a CE course in 2018-19 or 2019-20 may continue to teach CE courses given curricular standards and student performance outcomes in the CE instructor's classes meet sponsoring academic department standards. Institutions shall establish a process for determining, in consultation with LEA partners, whether an eligible instructor who previously taught a CE course is no longer qualified to teach the CE course. The appropriate academic department at the institution must approve each CE instructor prior to teaching a concurrent enrollment class.

10.2. Institutional Faculty CE Instructors - A USHE institution faculty member is an eligible CE instructor.

10.3. LEA Employee Instructor Qualifications - An LEA employee is an eligible CE instructor if the LEA employee is licensed

NOTICES OF PROPOSED RULES

under statutory Education Professional Licensure, is supervised by an institution of higher education, and meets the following requirements:

10.3.1. is approved as an eligible instructor by the institution of higher education that provides the concurrent enrollment course taught by the LEA employee as provided under Subsection R765-165-10.4;

10.3.2. has an upper level mathematics credential issued by the State Board of Education, or

10.3.3. teaches a concurrent enrollment course that the LEA employee taught during the 2018-19 or 2019-20 school year.

10.4. A USHE institution shall approve an LEA employee as an eligible instructor:

10.4.1. for a career and technical education concurrent enrollment course, if the LEA employee has:

10.4.1.1. a degree, certificate, or industry certification in the concurrent enrollment course's academic field; or

10.4.1.2. qualifying experience, as determined by the institution of higher education.

10.4.2. for a concurrent enrollment course other than a career and technical education course, if the LEA employee has:

10.4.2.1. a master's degree or higher in the concurrent enrollment course's academic field;

10.4.2.2. a master's degree or higher in any academic field and at least 18 completed credit hours of graduate course work in an academic field that is relevant to the concurrent enrollment course; or

10.4.2.3. qualifying experience, as determined by the institution of higher education.

10.5. Appeals Process for Instructor Qualification Approvals - If a designated service area USHE institution determines an LEA employee is not qualified to teach a concurrent enrollment course and the LEA has exhausted all administrative remedies available at the institution, the LEA may appeal the decision in writing to the Commissioner of Higher Education within 15 calendar days of the institution's final decision. The Commissioner shall appoint an appeals committee consisting of the associate commissioner for academic affairs and two USHE chief academic officers who are uninvolved in the decision being appealed.

10.5.1. The appeals committee will review the LEA's appeal and the institution's decision.

10.5.2. The institution and LEA will provide the appeals committee with any material documents and information necessary for a complete review. The committee may request additional documentation or information as necessary.

10.5.3. The appeals committee will provide a recommendation to the Commissioner, which may include affirming or reversing the institution's decision.

10.5.4. The Commissioner shall make a final decision and issue it to the institution and the LEA in writing.

10.5.5. After the Commissioner has issued a decision, there will be no further appeals or reviews.

10.6. Criminal Background Checks - USHE faculty who are not public school educators and who teach concurrent enrollment courses defined under this policy in a high school shall complete a criminal background check consistent with Title 53G, Chapter 11, Part 4. The faculty's institution must determine if a criminal background check is required and, if so, must complete the background check and maintain required documentation consistent with the law.

10.7. Faculty Development - Concurrent enrollment instructors shall be included as fully as possible in the academic life

of the supervising academic department. USHE institutions and LEAs shall jointly initiate faculty development, including appropriate workshop experiences to adequately prepare instructors to teach concurrent enrollment students and course content prior to offering concurrent enrollment courses. If a USHE institution uses an instructor of record or co-teaching instructional model, the institution faculty shall fully engage and prepare the public school educator to successfully teach the curriculum prior to the beginning of the course. Each CE instructor must complete any faculty development required by the sponsoring academic department at the institution prior to teaching the concurrent enrollment class. USHE faculty are responsible to understand and comply with federal and state laws governing public school student privacy and student records.

R765-165-11. Funding.

11.1. Source of Funds - Each year that the Utah legislature appropriates funds for accelerated learning programs, a portion of those accelerated learning funds shall be allocated to the concurrent enrollment program.

11.2. Eligibility to Receive Concurrent Funds - To qualify for funds, a concurrent enrollment program shall comply with the requirements described in Section 53E-10-302, including rules adopted in accordance with Section 53E-10-307.

11.3. Allocation of Funds - Money appropriated to the USBE for concurrent enrollment shall first be allocated between LEAs and the UBHE based upon completed student credit hours taught by public school educators and taught by college or university faculty. "Completed" means that a student earned credit for the course. Concurrent enrollment funds may not reimburse institutions for concurrent enrollment courses repeated by students. In accordance with Section 53F-2-409, funds shall be allocated as follows:

11.3.1. for courses that are taught by public school educators where the cost of instruction is borne by the LEA, 60 percent shall be allocated to LEAs and 40 percent shall be allocated to the UBHE; and

11.3.2. for courses that are taught by college or university faculty or where the cost of instruction is borne by the USHE institution, 40 percent shall be allocated to LEAs; and 60 percent shall be allocated to the UBHE.

11.4. Distribution of Funds among USHE Institutions - The UBHE shall make rules regarding the allocation of funds pertaining to USHE institutions participating in contractual basis concurrent enrollment. Each institution, except Snow CE, shall receive a pro-rated amount according to the number of semester credit hours completed. The Snow CE Program, which receives a separate appropriation through Section 53B-16-206 for instructional, advising, and administrative costs, will not receive the pro-rated per credit funding as long as the separate appropriation funding is in place.

11.5. Annual Reports - Annual reports shall be provided to legislative committees as follows:

11.5.1. Higher Education Appropriations - USHE staff shall annually report to the Higher Education Appropriations Subcommittee on concurrent enrollment participation and growth, including data on what higher education tuition would have been charged for the hours of concurrent enrollment credit granted as required by Section 53E-10-308.

11.5.2. Public Education Appropriations - USHE and USBE staff shall annually report to the Public Education Appropriations Subcommittee an accounting of the money

appropriated for concurrent enrollment; and a justification of the split described in Section 11.2.

R765-165-12. Annual Concurrent Enrollment Contract.

Collaborating LEAs and USHE institutions will annually sign a contract that establishes the terms, conditions, and duties for the institution to offer concurrent enrollment courses to the LEA's students.

12.1. Annual Contract Content - The contracts shall include relevant policy for student eligibility and participation, course eligibility and delivery, and faculty eligibility and professional development. USHE and USBE staff review and amend the contract annually, as needed, to reflect current statute and rule.

12.2. Annual Contract Deadline - Copies of each annual contract entered into between institutions and LEAs for the upcoming school year must be submitted by each institution to the USHE system office no later than May 30 annually. USHE will convey copies of all contracts to USBE.

R765-165-13. Utah System of Higher Education Technical College Agreements.

High school students may participate at a USHE technical college campus to take contractual basis concurrent enrollment courses under the following conditions:

13.1. Concurrent Enrollment Contract - A concurrent enrollment contract required under Section R765-165-12 must be in place between the LEA and the USHE institution covering the instruction to be given at the USHE technical college campus.

13.2. Instruction and Costs -The USHE institution enters into an agreement with the USHE technical college to provide the instruction. The agreement clearly establishes apportionment of cost and revenue that could be transferred to the technical college and the process for approval of technical college instructors as institutional adjunct faculty as provided under Section R765-165-10.

KEY: concurrent enrollment, concurrent enrollment program
Date of Enactment or Last Substantive Amendment: 2021
Authorizing, and Implemented or Interpreted Law: 53E-10-302; 53E-10-309(6)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R810-11-1	Filing No. 52918

Agency Information

1. Department:	Regents (Board of)	
Agency:	University of Utah, Commuter Services	
Building:	Fort Douglas	
Street address:	311 S Fort Douglas Blvd	
City, state:	Salt Lake City, UT 84113	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Hanson	801-585-9481	Jennifer.hanson@utah.edu

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

General Information

2. Rule or section catchline:
R810-11-1. Appealing Parking Tickets
3. Purpose of the new rule or reason for the change:
Due to safety concerns, moving buildings, and requiring all appeals in writing; the Division of Commuter Services (Division) is moving to conduct all appeals on-line.
4. Summary of the new rule or change:
Ticket appeals must be submitted on-line.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
This rule does not apply to state budgets. There is no cost associated with submitting an appeal.
B) Local governments:
This rule does not apply to local governments. There is no cost associated with submitting an appeal.
C) Small businesses ("small business" means a business employing 1-49 persons):
This rule does not apply to small businesses. There is no cost associated with submitting an appeal.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
This rule does not apply to non-small businesses. There is no cost associated with submitting an appeal.
E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):
Submitting an appeal on-line is free and does not cost the individual appealing their parking ticket anything to do so.
F) Compliance costs for affected persons:
\$0--The Division already does appeals on-line so there is no cost to the Division's business or the individual appealing the parking ticket.
G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in

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

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

H) Department head approval of regulatory impact analysis:

President of the University of Utah, Ruth Watkins, has reviewed and approved this analysis.

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

There is no financial impact.

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

Ruth Watkins, President

Citation Information

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

Section 53B-3-103	Section 53B-3-107
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Public Notice Information

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

A) Comments will be accepted until: 01/14/2020

10. This rule change MAY become effective on: 01/21/2020

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

Agency Authorization Information

Agency head or designee, and title:	Collin Simmons, Interim Director	Date:	07/01/2020
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R810. Regents (Board of), University of Utah, Commuter Services. R810-11. Appeals System. R810-11-1. Appealing Parking Tickets.

1. First Level Appeals. Ticket appeals must be ~~made to the Appeals Office in person, by fax, in writing, by email, or on-line~~ submitted on-line.

2. Second Level Appeals. The decision of the Appeals officer may be appealed to the Campus Parking Ticket Appeals Committee after the ticket has been paid.

KEY: parking facilities

Date of Enactment or Last Substantive Amendment: ~~May 19, 2015~~ 2021

Notice of Continuation: February 13, 2017

Authorizing, and Implemented or Interpreted Law: 53B-3-103; 53B-3-107

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

Utah Admin. Code Ref (R no.):	R920-60	Filing No.	53232
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Agency Information

1. Department:	Transportation
Agency:	Operations, Traffic and Safety
Room no.:	Administrative Suite, 1st Floor

Building:	Calvin Rampton	
Street address:	4501 S 2700 W	
City, state:	Taylorsville, UT	
Mailing address:	PO Box 148455	
City, state, zip:	Salt Lake City, UT 84114-8455	
Contact person(s):		
Name:	Phone:	Email:
Linda Hull	801-965-4253	lhull@utah.gov
James Palmer	801-965-4197	jimpalmer@agutah.gov
Lori Edwards	801-965-4048	ledwards@agutah.gov
Jesse Sweeten	801-910-2206	jsweeten@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R920-60. Amusement Ride Safety
3. Purpose of the new rule or reason for the change:
This rule establishes the amusement ride standard of operation in the general public's interest and safety and satisfies the requirements of H.B. 381 adopted in the 2019 General Session and H.B. 154 adopted in the 2020 General Session.
4. Summary of the new rule or change:
This rule provides the permit process for amusement ride safety and sets the standard for a qualified safety inspector to be certified. This rule also implements additional powers and duties of the Utah Amusement Ride Safety Committee, sets the general requirements for amusement ride operation, establishes a process to apply for operating permits, establishes a process for reporting injuries, and establishes penalties for violating this rule.

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
The Utah Amusement Ride Safety Committee (Committee) expects this rule will have an impact on the state's budget relative to the fees imposed under this rule. As required in the enabling statute, the Department of Transportation's executive director must hire a Committee director. Additionally, the Department of Transportation is responsible to pay incidental staffing support and per diem

for Committee members. Administrative costs associated with responsibilities of the Committee will be partially paid by revenue generated from fees to issue statutorily required amusement ride permits and certification of ride inspectors. The Committee estimates it will need to annually permit approximately 250 rides throughout the . This rule establishes a fee of \$100 per ride for the permit. In addition, the Committee anticipates it will annually permit approximately 20 qualified safety inspectors at a cost of \$25 annually (\$50 every other year). The anticipated cost to support the Amusement Ride Safety Committee and its oversight functions is approximately \$200,000 per year. Because fees will not cover the full cost to operate the new amusement ride safety oversight program, it is anticipated that the state budget will be impacted by \$174,500 annually.

This rule also establishes the rate of fines for noncompliance. It is impossible to determine the amount of revenue that could be generated annually from payment of fines since it is unknown how frequently persons will fail to comply with amusement ride safety requirements established in statute and this rule.

When setting fee rates, the Committee considered the rate of fees imposed in other states with program features for third-party ride inspectors similar to the Utah program, taking into consideration the comparatively small number of rides that would be permitted to operate in Utah each year and the size of the state's amusement ride safety program. The Committee established a fee rate that the Committee members considered reasonable compared to other state programs and that wouldn't impose an undue financial hardship on affected amusement ride businesses, particularly for small business owners and operators. The Committee members understand that the fee revenue generated under this rule will be unable to self-sustain the amusement ride safety program and it will require on-going funding from the state or other sources.

B) Local governments:

Generally, this rule will not impact local governments unless the local government owns or operates amusement rides. Local governments that own or operate amusement rides will bear the cost of fees required to obtain an operating permit. It is unknown how many amusement rides may be owned by a local government now or in the future and, therefore, costs are impossible to determine at this time.

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

These proposed administrative rules will impact small businesses that own or operate amusement rides.

State law requires a person to obtain an annual permit in order to operate an amusement ride in the state. This rule establishes a fee of \$100 to obtain the required annual permit. The Committee estimates a total of 185

amusement rides owned by small businesses that would need to obtain the required permit and pay the fee.

Ride inspectors are also considered a small business. The Committee estimates that there will be approximately 20 inspectors permitted to inspect rides in the . The cost per year that will be incurred by each small business ride inspector is \$25 for the permit (\$50 every other year).

It should be noted that while this rule outlines the minimum inspector required insurance and minimum amusement ride insurance, this is simply a repeat of insurance requirements mandated by statute and, therefore, does not impose any new requirements or costs under this rule to small businesses.

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

The proposed administrative rule will impact non-small businesses that own or operate amusement rides.

State law requires a person to obtain an annual permit in order to operate an amusement ride in the state. This rule establishes a fee of \$100 to obtain the required annual permit. The Committee estimates a total of 65 amusement rides owned by non-small businesses that would need to obtain the required permit and pay the fee.

It should be noted that while this rule outlines minimum amusement ride insurance, this is simply a repeat of insurance requirements mandated by statute and, therefore, does not impose any new requirements or costs under this rule to non-small businesses.

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

Persons other than small businesses, non-small businesses, state, or local government entities that own or operate amusement rides will pay fees to obtain the statutorily required ride operation permits or certification fees for a ride inspector. It is unknown how many persons that are not a small business, non-small business, state or local government may seek to operate an amusement ride in the or secure ride inspector certification. Therefore, these costs are impossible to determine at this time.

The public may benefit from the increased safety of amusement rides associated with establishment of the amusement ride safety program; however it is impossible to quantify the potential benefit that may be realized by the public.

F) Compliance costs for affected persons:

Compliance costs to a small business, non-small business or person will be dependent on the number of amusement rides operated by a person. A small business that owns

and operates a single ride will incur an annual cost of \$100 to secure the statutorily required permit to operate a ride in the . A person that operates multiple rides in the will incur \$100 annually for each ride that must be permitted.

Ride safety inspectors will incur \$25 each year (\$50 every other year) to be certified to inspect amusement rides in the .

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

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$200,000	\$174,500	\$174,500
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$19,000	\$19,000
Non-Small Businesses	\$0	\$6,500	\$6,500
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$200,000	\$200,000	\$200,000
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	(\$200,000)	(\$200,000)	(\$200,000)

H) Department head approval of regulatory impact analysis:

Carlos M. Braceras, PE, Executive Director of the Department of Transportation, approves this regulatory impact analysis.

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

This proposed rule change will not have a fiscal impact on businesses generally.

B) Name and title of department head commenting on the fiscal impacts:
Carlos M. Braceras, PE, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):
Section 72-16-203

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:	
	First Incorporation
Official Title of Materials Incorporated (from title page)	ASTM F-24 standard F770-19 Standard Practice for the Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices
Publisher	ASTM International
Date Issued	November 2020
Issue, or version	F770 - 19

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)	
A) Comments will be accepted until:	01/14/2021

10. This rule change MAY become effective on:	01/21/2021
NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.	

Agency Authorization Information

Agency head or designee, and title:	Carlos M. Braceras, PE, Executive Director	Date:	12/01/2020
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R920. Transportation, Operations, Traffic and Safety.

R920-60. Amusement Ride Safety.

R920-60-1. Purpose.

This rule establishes standards for the inspection and operation of amusement rides operated in Utah in the interest and safety of the general public. This rule also provides a permitting process for amusement rides, a certification process for Qualified Safety Inspectors, and implementation of powers and duties of the Utah Amusement Ride Safety Committee and its director.

R920-60-2. Authority.

This rule is authorized by Section 72-16-203 to implement Title 72, Chapter 16, Amusement Ride Safety Act.

R920-60-3. Scope.

(1) This rule shall apply to all amusement rides operated in Utah and owned/operated by any individual, corporation, company, firm, partnership, association, or state or local government agency.

(2) This rule shall not apply to:

(a) a coin-operated amusement ride that:

(i) is manually, mechanically, or electrically operated;

(ii) is customarily placed in a public location; and

(iii) does not typically require the supervision or services of an operator;

(b) playground equipment including swings, seesaws, stationary spring-mounted animal features, rider propelled merry-go-rounds, climbers, slides, swing sets, and physical fitness devices;

(c) live animal ride or live animal show;

(d) a challenge, exercise, or obstacle course;

(e) a trampoline;

(f) an inflatable device;

(g) a water-based recreational attraction where complete or partial immersion is intended, including a water slide, wave pool, or water park;

(h) a race-kart designed for the sole purpose of racing on a track, street, or another area of competition, and not to be used by the general public in an amusement facility setting;

(i) a skating rink, arcade, laser paintball game, bowling alley, miniature golf course, ball crawl, an item of exercise equipment, jet ski, paddleboat, airboat, hot air balloon whether tethered or untethered, batting cage, game, and sideshow;

(j) an amusement ride operated at a private event that is not open to the general public and not subject to a separate admission charge or any amusement ride owned and operated by a non-profit organization which meets all the requirements in this rule and operates their amusement rides less than eight days in any calendar year;

(k) a passenger ropeway as defined in Section 72-11-102;

(l) a tractor ride and wagon ride; or

(m) a motion seat in a movie theater for which the manufacturer does not require a restraint.

R920-60-4. Definitions.

In addition to terms defined at Section 72-16-102, the following terms are defined:

(1) "Aerial Adventure Course" means a patron participatory facility or facilities consisting of one or more elevated walkways, platforms, Zip Lines, nets, ropes, or other elements that require the use of fall hazard Personal Safety Equipment (PSE). Aerial Adventure Courses are typically referred to as ropes courses, Free Fall Devices, and Zip Lines in the regulation.

NOTICES OF PROPOSED RULES

(2) "AIMS International" means Amusement Industry Manufacturers and Suppliers International.

(3) "Amusement Ride" means a device or combination of devices or elements that carries or conveys one or more riders along, around, or over a fixed or restricted route or course or allows the riders to steer or guide the device within an established area to give the riders amusement, pleasure, thrills, or excitement.

(4) "Amusement Ride, Kiddie Ride" means an amusement ride designed primarily for children up to 12 years of age.

(5) "Amusement Ride, Non-Kiddie Ride" means an amusement ride not defined as a Kiddie Ride amusement ride.

(6) "Annual Permit" means the amusement ride operating permit issued for a Permanent Amusement Ride or a Mobile Amusement Ride and is issued by the director and is valid for a period of one year.

(7) "Certificate of Inspection" means the documentation of an amusement ride inspection conducted by a Qualified Safety Inspector.

(8) "Climbing Wall" means an artificially constructed wall with holds for hands and feet used for climbing. Regulated climbing walls include climbing walls located in amusement settings and fixed or portable climbing walls for use by the general public as amusement rides and not for sport or fitness training.

(9) "Concession Go-Karts" means a single-vehicle that is powered without connection to a common energy source, which is driver-controlled for acceleration, speed, braking, and steering, which operates within the containment system of a defined track, which simulates competitive motorsports, and which is used by the general public. Concession go-karts typically operate at speeds of up to 25 miles per hour.

(10) "Director" means the director of the Amusement Ride Safety Committee in the Utah Department of Transportation, or a designee thereof, which may include an employee of the Department of Transportation or another person.

(11) "Free Fall Device" means a component of an Aerial Adventure Course used to control a patron's intentional descent from an elevated structure and engineered to allow the patron to experience a rapid initial drop while ensuring a controlled landing.

(12) "Information Plate" means a manufacturer-issued information plate, printed in English, which is permanently affixed to an amusement ride in a visible location and designed to remain legible for the expected life of an amusement ride. The plate shall include the following applicable items:

(a) "Ride Serial Number" means a manufacturer-issued unique identifying number or code affixed to the amusement ride in a permanent fashion.

(b) "Ride Name and Manufacturer" means a manufacturer-issued unique identifying ride name, including the manufacturer's name by city, state, and country.

(c) "Ride Model Number" means a manufacturer-issued unique identifying number or code assigned to each manufactured type of amusement ride having the same structural design or components.

(d) "Date of Manufacture" means the date determined by the manufacturer that the given amusement ride met the required construction specifications.

(e) "Ride Speed" means maximum and minimum revolutions per minute, feet per second, or miles per hour, as applicable.

(f) "Direction of Travel" means when the proper direction of travel is essential to the amusement ride's design operation, the

manufacturer shall designate the direction of travel, including a reference point for this designation.

(g) "Rider Capacity by Weight" means the maximum total rider weight per rider position.

(h) "Rider Capacity by Number" means the maximum total number of adult or child riders per rider position and per amusement ride.

(13) "Inspection for Annual Permit" means a procedure to be conducted before applying for an Annual Permit, or at the time of a Major Modification, by a Qualified Safety Inspector to determine whether an amusement ride complies with the standards under this rule.

(14) "Inspection, Daily" means a procedure to be performed and recorded by the owner-operator of an amusement ride, or the operator's designee on days the amusement ride will be operated for the general public that confirms the current operational safety of the amusement ride following this rule and the manufacturer's recommendations, as applicable.

(15) "Major Modification" means any change in either the structural or operational characteristics of the amusement ride that will alter its performance from that specified in the manufacturer's design criteria.

(16) "Mobile Amusement Ride" means an amusement ride that is:

(a) designed or adapted to be moved from one location to another;

(b) not fixed at a single location; and

(c) relocated at least once each calendar year.

(17) "Multi Ride Annual Permit" means the amusement ride operating permit issued for multiple rides at an amusement park that employs more than 1000 individuals in a calendar year and is issued by the director and is valid for a period of one year.

(18) "NAARSO" means National Association of Amusement Ride Safety Officials.

(19) "Operator" means an individual who controls the starting, stopping or speed of an amusement ride.

(20) "Owner-Operator" means an individual who has control over and responsibility for the maintenance, setup, and operation of an amusement ride.

(21) "Permanent Amusement Ride" means an amusement ride that is not a mobile amusement ride.

(22) "Qualified Safety Inspectors (QSI)" means an individual who holds a valid qualified Utah safety inspector certification.

(23) "Race-Karts" means go-karts designed for the sole purpose of racing on tracks, streets, or other areas of competition, and not to be used by the general public in an amusement facility setting.

(24) "Reportable Serious Injury" means an injury to a rider that:

(a) occurs when there is a failure or malfunction of an amusement ride; and

(b) results in death, dismemberment, permanent disfigurement, permanent loss of the use of a body organ, member, function or system, or a compound fracture.

(25) "Serious Injury" means an injury to a rider that:

(a) occurs when there is a failure or malfunction of an amusement ride; and

(b) requires immediate admission to a hospital and overnight hospitalization and observation by a licensed physician.

(26) "Service Proven" means, as defined in ASTM F2291-18, "an amusement ride or major modification to an amusement ride

of which units have been in service to the public for a minimum of five years and units that have been in service have done so without any significant design-related failures or significant design-related safety issues that have not been mitigated."

(27) "Service Proven Practice" means as defined in ASTM F2291-18, "a policy or procedure used in association with an amusement ride or device, which (1) has been in service to the public for a minimum of five years, and (2) has done so without any significant safety-related issues that have not been mitigated."

(28) "Zip Line" means a concession, commercial amusement device where participants attached to a pulley traverse by gravity from one point to another by use of a cable or rope line suspended between support structures.

(29) "Zip Line Tour or Zip Line Course" means a guided aerial exploration or transit of a landscape employing a series of Zip Lines and platforms typically supported by human-made structures.

R920-60-5. General Requirements for Amusement Rides.

(1) General Requirements for Amusement Ride Operation. Beginning on April 1, 2022, a person may not operate an amusement ride in the state that is open to the public until they meet the following general requirements:

(a) apply for and receive a valid permit to operate an amusement ride in the state;

(b) to apply for a permit, provide certification of an inspection completed following Section R920-60-8 for each inspection conducted by a Qualified Safety Inspector;

(c) report serious injuries as required by statute and rule;

(d) not operate a mobile amusement ride after a Reportable Serious Injury until authorized by the director;

(e) maintain insurance on amusement rides as required by statute and rule; and

(f) conduct daily inspections and maintain documentation for daily inspections for one year.

(2) General Requirements for Qualified Safety Inspectors:

(a) become certified by the director as a Qualified Safety Inspector;

(b) as a Qualified Safety Inspector, conduct inspections following this rule; and

(c) as a Qualified Safety Inspector, maintain insurance as required by this rule.

R920-60-6. Application for Annual Permit.

To obtain or renew an Annual Permit or Multi Ride Annual Permit, the owner-operator shall submit an application to the director that contains the following information:

(1) Annual Permit for Mobile Amusement Ride. The owner-operator shall submit an application to the director that contains the following and is in a form prescribed by the director:

(a) the owner-operator's name and address;

(b) a description of the mobile amusement ride, including the manufacturer's name, the serial number, and model number;

(c) each known location in the state where the owner-operator intends to operate the mobile amusement ride during the 12-month period for which the Annual Permit is valid;

(d) the name and contact information of the fair, show, landlord, or property owner for each location of operation;

(e) the dates on which the owner-operator intends to set up the mobile amusement ride at each location;

(f) the dates on which the owner-operator intends to operate the mobile amusement ride for use by the general public at each location listed;

(g) proof of compliance with insurance requirements as described in Subsection (6);

(h) a safety inspection certification in a form approved by the director, signed by a Qualified Safety Inspector dated no more than 30 days before the day on which the owner-operator submits the application for an Annual Permit; and

(i) a fee established by the committee.

(2) Owner-operators of mobile amusement rides shall update the information described in Subsection (1)(c) if the owner-operator learns of a new location where the owner-operator intends to operate the mobile amusement ride. A mobile amusement ride cannot be operated unless the owner-operator includes the location of the ride:

(a) in the owner-operator's application or renewal for an Annual Permit; or

(b) in an update that the owner-operator submits to the director at least 30 days before the day on which the owner-operator sets up the mobile amusement ride at the location.

(3) Annual Permit for Permanent Amusement Ride. The owner-operator shall submit an application to the director that contains the following and is in a form prescribed by the director:

(a) the owner-operator's name and address;

(b) a description of the permanent amusement ride, including the manufacturer's name, the serial number, and model number;

(c) the location in the state where the owner-operator will operate the permanent amusement ride;

(d) the first date on which the owner-operator intends to operate the permanent amusement ride for use by the general public;

(e) proof of compliance with insurance requirements as described in Subsection (6) Insurance;

(f) a safety inspection certification in a form approved by the director, signed by a Qualified Safety Inspector dated no more than 30 days before the day on which the owner-operator applies for an Annual Permit; and

(g) a fee established by the committee.

(4) Multi Ride Annual Permit. For each amusement ride located at an amusement park that employs more than 1,000 individuals in a calendar year, the owner-operator shall submit an application to the director that contains the following and is in a form prescribed by the director:

(a) the amusement park's name and address;

(b) a list of each amusement ride located at the amusement park, including a description of each amusement ride;

(c) the first date on which the owner-operator intends to operate the permanent amusement ride for use by the general public;

(d) proof of compliance with insurance requirements as described in Subsection (6) Insurance;

(e) safety inspection certification in a form approved by the director, signed by a Qualified Safety Inspector dated no more than 30 days before the day on which the owner-operator submits the application for an Annual Permit; and

(f) a fee established by the committee.

(5) Permit Fees.

(a) Annual Permit:

(i) Kiddie Ride: \$100.00; or

(ii) Non-Kiddie Ride: \$100.00.

(b) Multi Ride Annual Permit. For each amusement ride located at an amusement park that employs more than 1,000 individuals in a calendar year:

(i) Kiddie Ride: \$100.00; or

(ii) Non-Kiddie Ride: \$100.00.

(6) Insurance. Amusement ride owner-operators shall be covered by liability insurance in not less than the following minimum amounts:

(a) Owner-operators with 1,000 employees or fewer:

- (i) \$1,000,000 for bodily injury per occurrence;
- (ii) \$250,000 for property damage per occurrence; and
- (iii) \$3,000,000 annual aggregate limit.

(b) Owner-operators with more than 1,000 employees:

- (i) \$5,000,000 for bodily injury per occurrence;
- (ii) \$1,000,000 for property damage per occurrence; and
- (iii) \$10,000,000 annual aggregate limit.

(c) An owner-operator or amusement park must maintain proof of insurance covering each amusement ride and make the documentation available to the director upon request.

(7) Issuance of Annual Permit. If the director provides written notice of deficiency in the application, the director will provide the Annual Permit or a written denial within a reasonable amount of time.

R920-60-7. Safety Inspection Certification.

(1) Daily inspection. Each day an amusement ride is to be operated for the general public, the owner-operator, or the owner-operator's designee, shall conduct a daily documented and signed pre-opening inspection, based upon provided instructions, to verify the proper operation of the amusement ride. Daily Pre-Opening Inspections shall be consistent with the Inspection Program Requirements outlined in practices ASTM F770-19 Section 7.1 and 7.2, or the other applicable standards in section R920-60-9. A record of each daily inspection shall be maintained for at least one year after the day on which the inspection is performed.

(2) Inspection for Annual Permit Application. Each amusement ride intending to operate in the State must be inspected by a qualified safety inspector (QSI) no more than 30 days prior to the submittal of the application for an Annual Permit in the State. Upon successfully completing the inspection, the QSI shall provide the owner-operator a certificate of inspection in a form approved by the director for submission with the application for an Annual Permit.

R920-60-8. Qualified Safety Inspector Requirements.

(1) Certification Requirements. To obtain a qualified safety inspector certification from the director, the applicant shall submit an application and fee as established by the committee that must include the following information that demonstrates the applicant:

(a) is a professional engineer, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or an engineer with a comparable license from another state as determined by the committee; and has at least three years of experience in the amusement ride industry, at least two of which include actual inspection of amusement rides for an owner-operator, manufacturer, government agency, amusement park, carnival, or insurer; or

(b) has at least three years of experience inspecting amusement rides for an owner-operator, manufacturer, government agency, amusement park, carnival, or insurer; and has obtained and maintains at least a current Level II NAARSO or Level II AIMS, International certification; or

(c) has at least three years of experience inspecting amusement rides for an owner-operator, manufacturer, government agency, amusement park, carnival, or insurer; and is a member of and actively participates in an entity that develops standards applicable to the operation of amusement rides and:

(i) is employed by an amusement park that employs more than 1,000 individuals in a calendar year; or

(ii) the individual is an employee or authorized agent of an insurance company.

(2) The director may deny, suspend, or revoke a qualified safety inspector certification if an individual fails to satisfy a requirement of this rule.

(3) Qualified Safety Inspector shall pay the following Registration Fees:

- (a) initial application fee: \$50.00; or
- (b) renewal fee, every two years: \$40.00.

(4) Qualified Safety Inspector shall:

(a) maintain insurance in not less than the following minimum amounts:

- (i) \$1,000,000 bodily injury;
- (ii) \$250,000 property damage; and
- (iii) \$2,000,000 aggregate; and

(b) maintain proof of insurance and make the documentation available to the director upon request.

(5) Certification Renewal. To obtain a renewal of a qualified safety inspector certification, a qualified safety inspector shall submit to the director a fee established by the committee and a renewal application that demonstrates that the qualified safety inspector:

(a) satisfies the requirements described in subsection 1 of this section; and

(b) during the previous two-year period, completed at least 12 hours of continuing education instruction provided by:

(i) a nationally recognized amusement industry organization;

(ii) a nationally recognized organization in a relevant technical field;

(iii) an owner-operator, through an owner-operator-run safety program approved by the committee; or

(iv) an amusement park that employs more than 1,000 individuals in a calendar year.

(6) Certification issuance. The director shall issue a Qualified Safety Inspector certification to each individual who submits an application or a renewal application in a form prescribed by the director and complies with the requirements of this section and any applicable rules and fees.

(7) Certification expiration. A qualified safety inspector certification expires two years after the day on which the director issues the qualified inspector certification.

(8) Suspension or Revocation of Certification. Notification of Suspension. The director shall notify a Qualified Safety Inspector of the suspension of a certification. The director may suspend the certification of a QSI with intent to revoke for the following reasons:

(a) The QSI has been convicted of or entered a plea of guilty or no contest to a crime related to the performance of amusement ride safety inspections in any court in the United States.

(b) The QSI has admitted to conduct constituting a crime related to the performance of an amusement ride safety inspection.

(c) The QSI has falsified information or submitted a deceptive or fraudulent statement or document connected with certification as a QSI or inspection of an amusement ride.

(d) The QSI has demonstrated willful wrongdoing that reflects a lack of integrity in certification as a QSI or Inspection of an amusement ride.

(e) The QSI has been suspended as a QSI in another state.

(f) The QSI has performed previous or current work in an unsatisfactory manner as determined by the director.

(g) Failure of the QSI to observe the owner or operator of an amusement ride facility's safety practices and policies.

(h) The director reasonably believes and finds that the public health, welfare, or safety require suspension.

(9) The QSI may not perform inspections of amusement rides during a suspension of their certification.

(10) Right to Appeal. Upon notification of suspension, the QSI has 30 days to appeal to the director. The director will promptly schedule a hearing with the Amusement Ride Safety Committee to hear the appeal. The committee may choose to uphold the suspension and revoke the certificate or return the QSI to good standing. The committee shall determine the length of the revocation and notify the QSI in writing. If the QSI chooses not to appeal within the stated time frame, the director may issue the certificate's written revocation.

R920-60-9. Amusement Ride Operating Requirements and Governing Standards.

(1) The operation of an amusement ride in the State shall comply with the following applicable sections of the ASTM F-24 standards:

(a) F770-19 Standard Practice for the Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices:

(i) Section 4. Owner/Operator's Responsibility;

(ii) Section 5. Operations Program Requirements;

(iii) Section 6. Maintenance Program Requirements;

(iv) Section 7. Inspection Program Requirements; and

(v) Section 8. Training Program Requirements;

(b) F2007-18 Standard Practice for Design, Manufacture, and Operation of Concession Go-Karts and Facilities, Section 7. Concession Go-Kart Facility Operations;

(c) F2460-19 Standard Practice for Special Requirements for Bumper Boats:

(i) Section 6. Ownership and Operation Requirements;

(ii) Section 7. Operational Requirements; and

(iii) Section 8. Maintenance Requirements;

(d) F2959-19 Standard Practice for Aerial Adventure Courses, Section 5. Ownership, Operation, Maintenance, Inspection, and Training Requirements; and

(e) F3054-19 Standard Practice for Operations of Amusement Railway Rides, Devices, and Facilities.

R920-60-10. Rider Responsibility.

Section 78B-4-507 governs rider responsibility.

R920-60-11. Reporting of Injuries.

(1) Reporting of Injuries. As defined in Section 72-16-102, every reportable serious injury must be reported to the director within eight hours after the owner-operator learns of the reportable serious injury. The report to the director must include the following information:

(a) the owner-operator's name and contact information;

(b) the location of the amusement ride at the time the reportable serious injury occurred;

(c) a description of the amusement ride;

(d) a description of the nature of the reportable serious injury; and

(e) other information required by this rule.

(2) In addition to the report to the director required by Subsection (1), an owner-operator of a mobile amusement ride shall

report each known reportable serious injury and serious injury to the fair, show, landlord, or owner of the property upon which the mobile amusement ride was located at the time the reportable serious injury or serious injury occurred.

(3) After a reportable serious injury, the owner-operator may not operate the mobile amusement ride until the owner-operator receives written authorization from the director.

R920-60-12. Modification of an Amusement Ride.

Intentionally left blank.

R920-60-13. Penalty for Violation.

(1) If an owner-operator or operator violates a provision of this rule concerning an amusement ride, the director may:

(a) deny, suspend, or revoke, in whole or in part, the owner-operator's annual amusement ride permit or multi-ride permit for the amusement ride;

(b) impose fines or administrative penalties per this rule;

or

(c) both.

(2) The director may file an action in district court to enjoin the operation of an amusement ride if the director finds an owner-operator has violated a provision of this rule.

(3) If the director finds an owner-operator has violated this rule, the director may issue a citation according to the following schedule, maximum by type of violation:

(a) Operating an amusement ride without a current permit, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

(b) Owner-operator fails to notify the director of intent to operate within the state;

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

(c) Operating an amusement ride without proper liability insurance, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

(d) Operating an amusement ride without current safety inspection certification, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

(e) Operating an amusement ride in violation of a cease and desist order, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$1,000.00; or

(ii) 2nd Offense: \$2,500.00.

(f) Failing to report a reportable injury to the director within eight hours after the owner-operator learns of the reportable serious injury, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$1,000.00; or

(ii) 2nd Offense: \$1,500.00.

(g) Operating an amusement ride by an unqualified person, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

NOTICES OF PROPOSED RULES

(h) Failing to maintain records of an amusement ride following this rule:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$1,000.00.

(i) Failing to report a serious physical injury to a fair, show, landlord, or property owner, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$500.00; or

(ii) 2nd Offense: \$750.00.

(j) Failing to update operation locations with the director before operating, the director may issue a citation per violation, per amusement ride, per day of:

(i) 1st Offense: \$250.00; or

(ii) 2nd Offense: \$500.00.

(k) Falsifying an application to the director:

(i) 1st Offense: \$1,000.00; or

(ii) 2nd Offense: \$1,500.00.

(l) Denying the director access to an amusement ride:

(i) 1st Offense: \$1,000.00; or

(ii) 2nd Offense: \$1,500.00.

(m) Other violations of Title 72, Chapter 16, Amusement Ride Safety Act or this rule not listed:

(i) 1st Offense Warning; or

(ii) 2nd Offense: \$250.00.

(4) The director will not renew an annual permit if the owner-operator has unresolved outstanding violations or unpaid fines.

KEY: transportation safety, amusement ride, amusement ride permit, amusement ride penalty

Date of Enactment or Last Substantive Amendment: 2021

Authorizing, and Implemented or Interpreted Law: 72-16-203

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End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

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

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

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

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

From the end of the 30-day waiting period through April 14, 2021, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

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

The Changes in Proposed Rules Begin on the Following Page

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R70-580	Filing No. 52663

Agency Information

1. Department:	Agriculture and Food	
Agency:	Regulatory Services	
Street address:	350 N Redwood Road	
City, state, zip:	Salt Lake City, UT 84115	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:		
R70-580. Kratom Product Registration and Labeling		
3. Change in Proposed Rule:		
Changes in Name, Publication date of prior filing:	FILING	R70-580. Kratom Product Registration and Labeling, Second CPR Filing No. 52663, Published 10/15/2020
4. Reason for this change:		
This change is needed to increase the limit for microbial contamination set in the original filing and adopt the standards of the American Herbal Products Association. These changes will make it easier for kratom processors to comply with the rule while maintaining product safety for consumers. Changes are also needed to expand acceptable kratom product forms.		
5. Summary of this change:		
This change updates the microbial limit standards in this rule and allows for a gummy as an acceptable kratom product form. (EDITOR'S NOTE: This is the third change in proposed rule (CPR) for Rule R70-580. The original proposed new rule upon which the first CPR was based was published in		

the May 1, 2020, issue of the Utah State Bulletin, on page 16. The first CPR upon which the second CPR is based was published in the June 15, 2020, issue of the Utah State Bulletin, on page 105. The second CPR upon which this third CPR is based was published in the October 15, 2020, issue of the Utah State Bulletin, on page 68. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike out indicates text that has been deleted. You must view the first CPR, the second CPR, this third CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

Fiscal Information

6. Aggregate anticipated cost or savings to:
A) State budget:
There are no anticipated cost or savings to the state budget because this change just clarifies the microbial standards and allowed product forms set forth in this rule and does not change compliance costs or fees charged by the Department of Agriculture and Food (Department).
B) Local government:
There are not anticipated costs or savings to local governments because they do not produce kratom products or regulate kratom production.
C) Small businesses ("small business" means a business employing 1-49 persons):
There are no anticipated cost or savings to small businesses because this change just clarifies the microbial standards and allowed product forms set forth in this rule and does not change compliance costs or fees charged by the Department.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):
There are no anticipated costs or savings non-small businesses because this change just clarifies the microbial standards and allowed product forms set forth in this rule and does not change compliance costs or fees charged by the Department.
E) Persons other than small businesses, non-small businesses, or state or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):
There are no anticipated cost or savings to other persons because this change just clarifies the microbial standards and allowed product forms set forth in this rule and does not change compliance costs or fees charged by the Department.

F) Compliance costs for affected persons:

The compliance costs for affected persons remains the same because the changes just change the microbial limits in this rule to make them slightly less stringent and changed this rule to allow for additional product forms.

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

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

H) Department head approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture, R. Logan Wilde, has reviewed and approves the regulatory impact analysis.

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

This rule change will make it easier for businesses to produce kratom products while maintaining product safety. There is no anticipated fiscal impact on businesses.

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

R. Logan Wilde, Commissioner

Citation Information

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

Section 4-45-107

Public Notice Information

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

A) Comments will be accepted until: 01/14/2021

11. This rule change MAY become effective on: 01/21/2021

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 11, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	11/25/2020
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**R70. Agriculture and Food, Regulatory Services.
R70-580. Kratom Product Registration and Labeling.
R70-580-1. Authority and Purpose.**

Pursuant to Section 4-45-107, this rule establishes the requirements for labeling and registration of products made from and containing kratom.

NOTICES OF 120-DAY (EMERGENCY) RULES

R70-580-2. Definitions.

1) "Certificate of Analysis (COA)" means a certificate from a third-party laboratory describing the results of the laboratory's testing of a sample.

2) "End Consumer" means an individual who does not resell the purchased kratom product.

3) "Food" means a raw, cooked, or processed edible substance, ice, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

4) "Label" means the display of all written, printed, or graphic matter upon the immediate container of a kratom product or a statement by the kratom processor directly related to and accompanying the kratom product bearing the label.

5) "Third-party Laboratory" means a laboratory that has no direct interest in a processor of kratom product that is capable of performing mandated testing utilizing validated methods.

6) "Approved Kratom Delivery Form" means a kratom product in raw leaf, capsule, tablet, powder, liquid tincture, tea bag, concentrated, ~~or~~ extract, or gummy forms. The following are not an approved kratom delivery form:

a) ~~[A]any form that is combustible or intended to be used for vaporization[is not an approved kratom delivery form];~~

b) ~~[A]any form that is intended to be added to food[is not an approved kratom delivery form];or~~

c) any form that mimics a candy product or is manufactured, packaged, or advertised in a way that appeals to children.

7) "Kratom Type" means the specified strain of *Mitragyna speciosa*.

8) "Kratom Processor" means any kratom product manufacturer, distributor, or retailer who offers a kratom product for sale or resale to consumers in the state.

9) "Kratom Product" means a product manufactured or processed from kratom raw materials acquired by a kratom processor that is certified to be compliant with provisions of Title 4, Chapter 45~~[, U.C.A.]~~, ~~[the]~~ Kratom Consumer Protection Act.

10) "Kratom Retailer" means a kratom processor who sells a kratom product to an end consumer.

R70-580-3. Product Registration.

1) A kratom product distributed or available for distribution that is intended to be offered for sale to an end consumer in Utah, including on internet or social media platforms, shall be:

a) in an approved kratom delivery form; and

b) registered with the department annually by the kratom processor.

2) A product that contains the same kratom ingredients in the same kratom delivery form but a different container, package, or volume shall be included in a single registration.

3) Application for registration shall be made on a form provided by the department that includes the following information:

a) the name and address of the kratom processor and the name and address of the person whose name will appear on the label, if other than the kratom processor;

b) the name of the kratom product included in the registration;

c) the kratom type and recommended usage, including directions for use or serving size for the kratom product;

d) the approved kratom delivery form;

e) the weights or volumes, as appropriate, of the package of kratom product offered for sale for the recommended usage and for the entire package;

f) a complete copy of the label that will appear on the kratom product or the document that can be reached via scannable bar code, QR code or web address, pursuant to Subsection R70-580-6 (7);

g) a certificate of analysis for the kratom product from a third-party laboratory that shall obtain and keep the International Organization for Standardization (ISO) 17025:2017 accreditation;

h) a third-party laboratory may test kratom product prior to obtaining ISO 17025:2017 accreditation provided the third-party laboratory:

i) adopts and follows minimum good laboratory practices which satisfy the OECD Principles of Good Laboratory Practice and Compliance Monitoring published by the Organization for Economic Co-operation and Development; and

ii) becomes ISO 17025:2017 accredited within 18 months;

j) if a kratom processor uses an out-of-state laboratory they shall include a copy of the laboratory accreditation with the registration;

k) certification that:

i) the kratom manufacturer has not added any substance to the kratom product that is listed in Title 58, Chapter 37, ~~[U.C.A., the]~~ Utah Controlled Substances Act;

ii) the kratom manufacturer has not mixed or packed any nonkratom substance that affects the quality or strength of the kratom product to such a degree as to render the kratom product injurious to a consumer;

iii) the kratom product manufacturer has not added any synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compound of the kratom plant;

iv) the registrant assumes full responsibility and liability for the product; and

v) that the registered kratom product is compliant with current state and federal guidelines for food safety.

4) A non-refundable registration fee, as set forth in the fee schedule approved by the legislature, shall be paid to the department with the submission of a registration application.

5) A separate registration fee shall be required for each kratom product manufactured or processed from raw materials with the same specifications, same name, and same kratom delivery form.

6) The department may deny registration for an incomplete application.

7) The department shall deny or withdraw registration for a kratom product that:

a) violates Title 4, Chapter 45, ~~[U.C.A., the]~~ Kratom Consumer Protection Act;

b) is adulterated with foreign materials that would be injurious to a consumer;

c) makes a material change in the alkaloid content of the kratom product; or

d) if there is any reasonable basis to suspect that the kratom product is unsafe or that ingredients violate state law~~[or rules]~~.

8) A new registration application is required for the following:

a) a change in the kratom product ingredients or processes that materially alters the product;

b) a change to the recommended usage; and

- c) a change of name for the product.
- 9) Other changes shall not require a new registration application but the registrant shall submit copies of all label changes to the department as soon as they are effective.
- 10) The kratom processor registering the kratom product is responsible for the accuracy and completeness of the information submitted.
- 11) A registration is renewable for up to a one-year period with an annual renewal fee per kratom product that shall be paid on or before June 30th of each year.
- 12) A kratom product that has been discontinued shall continue to be registered in Utah until the kratom product is no longer available for distribution.
- 13) A late fee shall be assessed for a renewal of a kratom product registration submitted after June 30th and shall be paid before the registration renewal is issued.

R70-580-4. Establishment Registration.

- 1) Pursuant to Subsection 4-45-104(5), a kratom processor shall register as a food establishment under Section 4-5-301.
- 2) A kratom processor may be registered in another state that meets or exceeds the requirements in Section 4-5-301, if they provide the department with a copy of the registration from the federal or state regulatory agency.
- 3) A kratom processor shall be subject to ~~all~~ any statutes, rules, regulations, policies, and procedures for food establishments specific to the form of the kratom product offered for sale in Utah.
- 4) A kratom processor shall not have more than one DBA.
- 5) The application for registration shall include a certification that the kratom processor maintains a master manufacturing record (MMR) that documents:
 - a) batch-to-batch uniformity;
 - b) that each batch conforms to kratom raw material specifications;
 - c) that each batch record shows that each step of the MMR was performed;
 - d) that the product processes, controls, and tests ensure reliable, reproducible results; and
 - e) that the finished kratom product meets each specification before the product is released for distribution.
- 5) MMR testing shall be performed on finished kratom product as identified by lot or batch number.
- 6) Each MMR shall also include the following information:
 - a) the lot or batch identification number of the tested product;
 - b) the date received;
 - c) the date of testing completion;
 - d) the method of analysis for each test conducted;
 - e) a photo of the kratom product that was tested;
 - f) the name and address of the kratom processor that manufactured the product; and
 - g) the name and address where the MMR records are maintained and available for inspection by the department.

R70-580-5. Certificate of Analysis.

- 1) At a minimum, the certificate of analysis for each batch of kratom product shall include the following test results:

- a) the contents of mitragynine and 7-hydroxymitragynine in the kratom product certifying compliance with this ~~R~~ rule and Subsection 4-45-104(1);
- b) at a minimum, test results that indicate:
 - i) that the level of pathogens in the kratom product do not exceed the amounts listed in Table 1 when a one gram or greater sample is tested;

TABLE 1

Microbial Analytes and Action Levels
Microbial Limit Requirement

Total Aerobic Microbial Count NMT	≤[100,000] 10,000,000 cfu/g
Total Combined Yeast and Mold NMT	≤[1,000] 100,000 cfu/g
Total Bile-tolerant Gram-negative Bacteria NMT	<[1,000] 10,000 cfu/g
Absence of Salmonella spp. and E. coli in	[40] 100g

- ii) that the levels of heavy metals in the kratom product do not exceed the amounts listed in Table 2;

TABLE 2

Heavy Metals

Metals	Natural Health Products Acceptable limits in parts per million
Arsenic	<2
Cadmium	<0.82
Lead	<1.2
Mercury	<0.4

- 2) Testing shall be performed on finished kratom product as identified by lot or batch number.
- 3) The certificate of analysis shall also include the following information:
 - a) the lot or batch identification number of the tested product;
 - b) the date received;
 - c) the date of testing completion;
 - d) the method of analysis for each test conducted;
 - e) a photo of the kratom product that was tested;
 - f) the name and address of the kratom processor that manufactured the product; and
 - g) the name and address of the laboratory that completed the testing.
- 4) The lot or batch number on the certificate of analysis shall match the lot or batch number on the kratom product and shall be conspicuously placed on the container or label of the kratom product.
- 5) Upon receipt of an adverse or non-compliant test result, the kratom processor shall be required to produce a new certificate of analysis from an independent third-party laboratory on the reported product to affirm compliance.
- 6) Failure to submit a new certificate of analysis shall be cause for withdrawal or denial of a product registration.
- 7) Mycotoxin testing of a kratom product may be required if the department has reason to believe that mycotoxins may be present.

R70-580-6. Label Requirements.

- 1) A kratom product shall be labeled pursuant to 21 CFR 101.1, 21 CFR 101.2, 21 CFR 101.3, 21 CFR 101.4, 21 CFR 101.5,

NOTICES OF 120-DAY (EMERGENCY) RULES

21 CFR 101.7, 21 CFR 101.9(j)(13), 21 CFR 101.9(j)(17), 21 CFR 101.15, and 21 CFR 101.36.

2) The label shall contain the factual basis upon which the kratom processor represents the product as a kratom product.

3) The label shall identify kratom product by batch or lot number for each container that shall match the batch and lot number on the certificate of analysis.

4) A kratom product shall not contain claims that the product is intended to diagnose, treat, cure, or prevent any medical condition or disease on the label.

5) Each kratom product label shall include the following text pursuant to 21 CFR 101.93 (c), prominently displayed:

"This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

6) A kratom product shall meet the standards in 21 U.S.C. 9, the Food Drug and Cosmetic Act, other applicable federal laws and regulations, and all applicable state laws and regulations relating to the labeling of food and cosmetics.

7) If there is not sufficient room on the kratom product label, the kratom product shall display on the label a scannable bar code, QR code, or web address linked to a document containing the information required in Subsections (1) through (6).

8) No other information, illustration, or depiction shall appear on the label.

R70-580-7. Product Appearance and Flavor.

1) A kratom processor may not produce a kratom product that is designed to mimic a candy product.

2) A kratom processor may not produce a product that includes a candy-like flavor or another flavor the facility knows or should know appeals to children.

3) A kratom processor may not shape a kratom product in any way that appeals to children[-], including fruit, stars, cartoon renderings, humans, and animals.

4) A kratom product shall be packaged in child-resistant packaging, pursuant to 16 CFR 1700.

R70-580-8. Inspection and Testing.

1) The department shall conduct randomized inspection of the kratom product distributed or available for distribution in the state for compliance with this rule.

2) The department shall periodically sample, analyze, and test a kratom product distributed within Utah for compliance with registration and labeling requirements and the certificate of analysis.

a) Each department sample shall include at least ten grams of kratom product.

b) The department may test kratom product for any substance listed in Subsection R70-580-5(1) as well as for any of the following, at the discretion of the department:

i) any pesticide;

ii) any fentanyl derivative;

iii) any of the following cannabinoids with an action level of 0.01% (w/w):

A) delta-9-THC;

B) delta-8-THC;

C) THCA;

D) CBD;

E) CBDA;

F) CBG;

G) CBGA; or

H) any other cannabinoid tested for by the laboratory with an action level of 0.01% (w/w);

iv) cocaine; or

v) any of the following Benzodiazepines:

A) diazepam;

B) alprazolam;

C) triazolam;

D) lorazepam; or

E) clonazepam.

c) Kratom product that is found to contain a prohibited substance shall be considered adulterated in violation of this rule.

3) The department may conduct inspection of any kratom product distributed or available for distribution if there is any reasonable basis to suspect that the kratom product is unsafe or that ingredients violate state law or rules.

4) The test results from the department inspection samples shall be the official sample results.

5) Upon request, a kratom processor shall provide documentation certifying that any batch of kratom raw materials acquired pursuant to a compliant specification purchase that is used to process or manufacture a kratom product is compliant with Section R70-580-5.

R70-580-9. Retailer Responsibilities.

1) A retailer shall:

a) ensure that kratom product is labeled correctly; and

b) ensure that kratom product offered for sale is properly registered with the department.

2) A retailer shall provide the identity of the processor of a kratom product sold by the retailer upon request of the department.

3) A retailer shall register a kratom product in lieu of the kratom processor if the product is not registered.

R70-580-10. Violation.

1) Each improperly labeled kratom product shall be a separate violation of this rule.

2) A kratom product shall be considered misbranded if it does not meet the labeling requirements of this rule.

3) A kratom product shall be considered adulterated if it is found to contain pathogenic microorganisms, mold, or fungus.

4) It is a violation to distribute or market a kratom product that is not registered with the department.

5) Each unit manufactured or processed from a batch of raw material or on a single retail invoice shall be considered a separate violation of this rule for an unregistered product marketed for sale.

6) It is a violation:

a) to prepare, distribute, sell, or offer for sale a kratom product that violates Subsection 4-45-104 (1);

b) to prepare, distribute, sell, or offer for sale a kratom product that is not in an approved kratom delivery form, including adding or processing kratom into another form of food;

c) to prepare, distribute, sell, or offer for sale a kratom product that would be potentially harmful to consumers;

d) for a kratom processor to fail to register as a food establishment pursuant to Section 4-5-301 or Subsection R70-580-4(2);

e) for a kratom processor to distribute, sell, or offer for sale a kratom product to an individual under 18 years of age; and

f) for a kratom processor to improperly sample, test, falsify a certificate of analysis, or knowingly submits a falsified certificate of analysis for a kratom product.

R70-580-11. Penalties.

Any violation of or failure to comply with any provision of this rule or any specific requirements, may be grounds for issuance

of citations, fines, recall of kratom product, revocation of registration, or denial of future registration pursuant to Section 4-2-303 and 4-2-304.

KEY: kratom, kratom product registration, kratom processor
Date of Enactment or Last Substantive Amendment: ~~2020~~2021
Authorizing, and Implemented or Interpreted Law: 4-45-107

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R68-8	Filing No. 50138

Agency Information

1. Department:	Agriculture and Food	
Agency:	Plant Industry	
Street address:	350 N Redwood Road	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	PO Box 146500	
City, state, zip:	Salt Lake City, UT 84114-6500	
Contact person(s):		
Name:	Phone:	Email:
Amber Brown	801-982-2204	ambermbrown@utah.gov
Robert Hougaard	801-982-2305	rhougaard@utah.gov
Kelly Pehrson	801-982-2202	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R68-8. Utah Seed Law

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

This rule is enacted under the Department of Agriculture and Food's (Department) general rulemaking authority in Subsection 4-2-103(1)(i), as well as the specific authority of the Noxious Weed Act in Section 4-17-115 and the Utah Seed Act in Section 4-16-103. These statutes allow the Department to make rules regarding regulation of seeds in the state.

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

No written comments were received.

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

This rule should continue because it provides guidelines for the sale and use of seeds in the that serve to protect the public and limit the spread of noxious weeds throughout the state. Specifically, this rule provides guidelines regarding restricted seeds, seed labeling, seed testing, minimum germination standards, seed advertising, and recordkeeping.

Agency Authorization Information

Agency head or designee, and title:	R. Logan Wilde, Commissioner	Date:	11/19/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-3a	Filing No. 52466

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state, zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Steve Duncombe	801-530-6235	sduncombe@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R156-3a. Architect Licensing Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 58, Chapter 3a, provides for the licensure and regulation of architects. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 58-1-202(1)(a) provides that the Architects Licensing Board's duties, functions, and responsibilities includes recommending to the director appropriate rules.. This rule was enacted to clarify the provisions of Title 58, Chapter 3a, with respect to architects.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
Since this rule was last reviewed in January 2016, this rule has been amended one time in November 2016. The Division has received no written comments with respect to this rule since January 2016.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in

Title 58, Chapter 3a. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	07/16/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R156-46b	Filing No. 50282

Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state, zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Deborah Blackburn	801-530-6060	deborahblackburn@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R156-46b. Division Utah Administrative Procedures Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. Subsection 63G-4-102(6) provides that agencies may enact rules affecting or governing adjudicative proceedings.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

Since this rule was last reviewed in January 2016, this rule has been amended two times, but no written comments have been received by the Division with respect to this rule.

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

This rule clarifies the provisions of Title 63G, Chapter 4, as it applies to the Division's adjudicative proceedings. Therefore, the rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	10/27/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R156-87	Filing No. 50316
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Agency Information

1. Department:	Commerce	
Agency:	Occupational and Professional Licensing	
Building:	Heber M. Wells Building	
Street address:	160 E 300 S	
City, state, zip:	Salt Lake City, UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City, UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Robyn Barkdull	801-530-6727	rbarkdull@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R156-87. Revised Uniform Athlete Agents Act Rule
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Title 58, Chapter 87, provides for the registration of athlete agents. Subsection 58-1-106(1)(a) provides that the Division of Occupational and Professional Licensing (Division) may adopt and enforce rules to administer Title 58. This rule was enacted to clarify the provisions of Title 58, Chapter 87, with respect to athlete agents.

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

Since this rule was last reviewed in January 2016, the Division has received no written comments with respect to this rule.

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

This rule should be continued as it provides a mechanism to inform potential registrants of the requirements as allowed under statutory authority provided in Title 58, Chapter 87. This rule should also be continued as it provides information to ensure registrants meet minimum registration requirements, and provides registrants with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

Agency Authorization Information

Agency head or designee, and title:	Mark B. Steinagel, Division Director	Date:	07/16/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

Utah Admin. Code Ref (R no.):	R251-702	Filing No. 50365
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Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14717 S. Minuteman Dr.	
City, state, zip:	Draper, UT 84020	
Contact person(s):		
Name:	Phone:	Email:
Steve Gehrke	385-237-8040	sgehrke@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R251-702. Inmate Communication: Telephones
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by Sections 63G-3-201 and 64-13-10. The purpose of this rule is to provide the policy, procedures,

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

and requirements for the use of and access to inmate communication systems in the Department of Correction's (Department) prison facilities.

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

No comments on this rule have been received since the last five-year review.

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

The purpose of this rule is to provide the policy, procedures, and requirements for the use of and access to inmate communication systems in the Department's prison facilities. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Executive Director	Date:	11/30/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R251-708	Filing No. 50366

Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14717 S. Minuteman Dr.	
City, state, zip:	Draper, UT 84020	
Contact person(s):		
Name:	Phone:	Email:
Steve Gehrke	385-237-8040	sgehrke@utah.gov

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

General Information

2. Rule catchline:
R251-708. Perimeter Patrol
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 63G-3-201, 64-13-10, and 64-13-14. The purpose of this rule is to provide the Department of Correction's (Department) policies and procedures for perimeter patrol of prison facilities.

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

No comments on this rule have been received since the last five-year review.

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

The purpose of this rule is to provide the Department's policies and procedures for perimeter patrol of prison facilities. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Executive Director	Date:	11/30/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R251-711	Filing No. 50368

Agency Information

1. Department:	Corrections	
Agency:	Administration	
Street address:	14717 S. Minuteman Dr.	
City, state, zip:	Draper, UT 84020	
Contact person(s):		
Name:	Phone:	Email:
Steve Gehrke	385-237-8040	sgehrke@utah.gov

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

General Information

2. Rule catchline:
R251-711. Admission and Intake
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized under Sections 63G-3-201, 64-13-10, 64-13-14, and 64-13-15. The purpose of this rule is to provide admission and intake policies applying to individuals committed to the Utah State Prison.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments on this rule have been received since the last five-year review.

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

The purpose of this rule is to provide admission and intake policies applying to individuals committed to the Utah State Prison. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mike Haddon, Executive Director	Date:	11/30/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R277-533	Filing No. 50486

Agency Information

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

General Information

2. Rule catchline:
R277-533. Educator Evaluation Systems
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
This rule is authorized by the Utah Constitution, Article X, Section 3, which vests general control and supervision over public education in the Utah State Board of Education (Board); Title 53G, Chapter 11, Part 5, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

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

There were no written comments received.

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

This rule continues to be necessary because it specifies the requirements for district Educator Evaluation Systems Policies; describes the required components of district Educator Evaluation Systems; and establishes requirements for how the Annual Summative Educator Evaluation Rating is reported for districts and charter schools. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Angie Stallings, Deputy Superintendent of Policy	Date:	11/17/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R501-15	Filing No. 51188

Agency Information

1. Department:	Human Services	
Agency:	Administration, Administrative Services, Licensing	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, Utah 84115	
Contact person(s):		
Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Elisabeth Kitchens	385-303-2593	ehkitchens@utah.gov
Janice Weinman	385-321-5586	jweinman@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R501-15. Therapeutic Schools

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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

This rule is authorized under Section 62A-2-106. It establishes the standards and procedures for therapeutic schools to operate.

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

No written comments were received.

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

This rule is authorized by Section 62A-2-106 and establishes basic health and safety standards for therapeutic schools procedures and standards for permitting a therapeutic school to provide services to an adult in the same facility and under the same conditions as a child and minimum administration and financial requirements. This rule is essential for the standards and operating procedures of therapeutic schools and the Office of Licensing. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	11/30/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R510-401	Filing No. 51217

Agency Information

1. Department:	Human Services	
Agency:	Aging and Adult Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Jacob Murakami	801-538-4641	jmurakami@utah.gov
Nels Holmgren	801-538-3921	nholmgren@utah.gov

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

General Information

2. Rule catchline:
R510-401. Utah Caregiver Support Program (UCSP)

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

The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP) and 2006 (PL 109-365) Subpart 1 - Caregiver Support Program. This rule is authorized by Section 62A-3-104, and 42 USC Section 3001.

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

No written comments were received.

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

This rule is for the Utah Caregiver Support Program, the program is a requirement under the federal Older Americans Act of 1965 as amended. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jacob Murakami, Assistant Division Director	Date:	11/24/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R547-11	Filing No. 51327

Agency Information

1. Department:	Human Services	
Agency:	Juvenile Justice Services	
Building:	MASOB	
Street address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Mailing address:	195 N 1950 W	
City, state, zip:	Salt Lake City, UT 84116	
Contact person(s):		

Name:	Phone:	Email:
Jonah Shaw	801-538-4219	jshaw@utah.gov
Nate Winters	801-538-4312	natewinters@utah.gov

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

General Information

2. Rule catchline:
R547-11. Guidelines for the Transfer to the Department of Corrections of a Youthful Prisoner Provisionally Housed in a Juvenile Justice Services Secure Care Facility
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Section 78A-6-705 directs the Division of Juvenile Justice Services to adopt by administrative rule procedures for the transfer of a minor.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
No written comments were received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule establishes essential procedures in accordance with Section 78A-6-705 for the transfer of a minor. It establishes guidelines for the transfer, to the physical custody of the Utah Department of Corrections, of a youthful prisoner who has previously been provisionally housed in a Division of Juvenile Justice Services secure care facility. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Mark Brasher, Deputy Director	Date:	11/19/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R722-390	Filing No. 51936

Agency Information

1. Department:	Public Safety
Agency:	Criminal Investigations and Technical Services, Criminal Identification

Street address:	3888 W 5400 S	
City, state, zip:	Taylorsville, UT 84129	
Contact person(s):		
Name:	Phone:	Email:
Kim Gibb	801-556-8198	kgibb@utah.gov
Greg Willmore	801-965-4533	gwillmor@utah.gov
Nicole Borgeson	801-281-5072	nshepherd@utah.gov

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

General Information

2. Rule catchline:
R722-390. Certificate of Eligibility for Removal from the Utah White Collar Crime Offender Registry
3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
The purpose of this rule is to establish procedures by which a petitioner may seek a certificate of eligibility for removal from The Utah White Collar Crime Offender Registry pursuant to Section 77-42-108 which was enacted upon passage of H.B. 378 during the 2015 General Session. This rule is authorized by Subsection 63G-4-203(1).
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments received during and since the last five-year review of this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is necessary in order to establish procedures for applying for a certificate of eligibility for removal from the Utah White Collar Crime Offender Registry, agency review of a decision to deny an application for a certificate of eligibility for removal, and judicial review. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Jess L. Anderson, Commissioner	Date:	11/23/2020
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R765-649	Filing No. 52011

Agency Information

1. Department:	Regents (Board of)	
Agency:	Administration	
Building:	Board of Regents Building, The Gateway	
Street address:	60 S 400 W	
City, state, zip:	Salt Lake City, UT 84101	
Contact person(s):		
Name:	Phone:	Email:
Kevin V. Olsen	801-556-3461	kvolsen@agutah.gov
Geoffrey T. Landward	801-321-7136	glandward@ushe.edu
Ashley Reyes	801-321-7211	areyes@utahsbr.edu
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule catchline:
R765-649. Utah Higher Education Assistance Authority (UHEAA) Privacy Policy

3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:
Utah Higher Education Assistance Authority is authorized by Subsection 53B-12-101(6) to adopt rules to govern its activities.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
There have been no written comments received from interested persons supporting or opposing this rule.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is needed because Utah Higher Education Assistance Authority continues to be subject to the privacy requirements of the federal and state student loan programs that it administers. Therefore, this rule should be continued.

Agency Authorization Information

Agency head or designee, and title:	Kevin V. Olsen, Assistant Attorney General	Date:	12/01/2020
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

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

Agencies have notified the 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.

Administrative Services

Finance

No. 53094 (Amendment) R25-22: Financial Institution Validation for Access to Medical Inventory Control System
Published: 10/15/2020
Effective: 11/23/2020

No. 53083 (Amendment) R414-307: Eligibility for Home and Community-Based Services Waivers
Published: 10/15/2020
Effective: 11/24/2020

Agriculture and Food

Plant Industry

No. 53057 (Amendment) R68-3: Utah Fertilizer Act Governing Fertilizers and Soil Amendments
Published: 10/01/2020
Effective: 11/16/2020

No. 53086 (Amendment) R414-512: Use of Extrapolation Limited
Published: 10/15/2020
Effective: 11/23/2020

Environmental Quality

Air Quality

No. 53056 (Amendment) R307-110-17: Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits
Published: 10/01/2020
Effective: 12/03/2020

Human Services

Services for People with Disabilities

No. 53010 (Amendment) R539-5: Self-Administered Services
Published: 10/15/2020
Effective: 11/23/2020

Water Quality

No. 53043 (Amendment) R317-2: Standards of Quality for Waters of the State
Published: 09/15/2020
Effective: 12/03/2020

Insurance

Administration

No. 53097 (Amendment) R590-258: Email Address Requirement
Published: 10/15/2020
Effective: 11/23/2020

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 53090 (Amendment) R414-60: Program Coverage
Published: 10/15/2020
Effective: 11/23/2020

Lieutenant Governor

Elections

No. 52996 (Amendment) R623-4: Processing Partisan Candidate Nomination Petitions
Published: 10/15/2020
Effective: 12/08/2020

No. 53053 (Amendment) R414-60: Medicaid Policy for Pharmacy Program
Published: 10/01/2020
Effective: 11/19/2020

Navajo Trust Fund

Trustees

No. 53000 (New Rule) R661-21: Electronic Meetings
Published: 08/15/2020
Effective: 12/08/2020

NOTICES OF RULE EFFECTIVE DATES

No. 53001 (New Rule) R661-23: Adult Education Program
GED Financial Aid
Published: 08/15/2020
Effective: 12/08/2020

Public Service Commission

Administration
No. 53096 (Amendment) R746-8: Calculation and
Application of UUSF Surcharge
Published: 10/15/2020
Effective: 11/23/2020

No. 53104 (New Rule) R746-315: Wildland Fire Protection
Plans
Published: 11/01/2020
Effective: 12/09/2020

System of Technical Colleges (Utah)

Southwest Technical College
No. 52994 (Amendment) R957-1: Student Due Process
Published: 08/15/2020
Effective: 12/09/2020

Tax Commission

Auditing
No. 53093 (Amendment) R865-19S-12: Filing of Returns
Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-
118
Published: 10/15/2020
Effective: 11/30/2020

Motor Vehicle
No. 53062 (Amendment) R873-22M-34: Rule for Denial of
Personalized Plate Requests Pursuant to Utah Code Ann.
Sections 41-1a-104 and 41-1a-411
Published: 10/15/2020
Effective: 11/30/2020

Property Tax
No. 53092 (Amendment) R884-24P-53: 2020 Valuation
Guides for Valuation of Land Subject to the Farmland
Assessment Act
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Transportation

Administration
No. 53088 (Amendment) R907-80: Disposition of Surplus
Land
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End of the Notices of Rule Effective Dates Section