

# 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 Government Operations, 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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## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between March 16, 2022, 12:00 a.m., and April 01, 2022, 11:59 p.m. are included in this, the April 15, 2022, 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 May 16, 2022. 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 August 13, 2022, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

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

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R33-1	Filing ID 54463

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-1. Utah Procurement Rules, General Procurement Provisions
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to provide clarity and simplification.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Definitions have been removed or reworded to provide more clarification which created a significant amount of renumbering.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>																
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.																
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>																
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.																
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>																
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.																
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>																
There are no anticipated costs or savings 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.																
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>																
There are no anticipated compliance costs for affected persons.																
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>																
There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director																
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>																
<b>Regulatory Impact Table</b>																
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0
Fiscal Cost	FY2022	FY2023	FY2024													
State Government	\$0	\$0	\$0													
Local Governments	\$0	\$0	\$0													
Small Businesses	\$0	\$0	\$0													



Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Title 63G, Chapter 6a		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, Purchasing and General Services.  
R33-1. Utah Procurement Rules, General Procurement Provisions.**

**R33-1-1. Definitions.**

(1) Terms used in the procurement rules are defined in Section 63G-6a-103.

(2) In addition:

(a) "Bias" means:

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

(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.

(b) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party 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.

(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.

(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.

(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.

(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 catalog number.

(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.

(h) "Cost Analysis" means the evaluation of cost data [for the purpose of] to arrive[ing] at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

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

~~(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.~~

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

(~~h~~k) "Mandatory Requirement" means a condition set out in the specifications or statement of work that must be met without exception.

~~(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.]~~

(~~n~~l) "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:

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

(ii) 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.

(~~o~~m) "Objective Criteria" means the solicitation criteria that will be evaluated and scored based solely on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

~~(p) "Participating Addendum" means an agreement issued in conjunction with a cooperative contract that authorizes a public entity to use the Cooperative Contract.]~~

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

~~(o) "Performance Bond" means a promise to pay the obligee or owner a certain amount if the principal or contractor fails to meet some obligation, such as fulfilling the terms of a contract.~~

(~~r~~p) "Person" means:

(~~i~~q) an individual;

(ii) an association;

(iii) an institution;

(iv) a corporation;

(v) a company;

(vi) a trust;

(vii) a limited liability company;

(viii) a partnership;

(ix) a political subdivision;

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

(xi) any other organization or entity.

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

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

(~~u~~t) "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.

(~~v~~u) "Subjective Criteria" means the solicitation criteria that will be evaluated and scored based on the personal judgment, interpretations, and opinions of the evaluators after reviewing and

analyzing the information provided in each vendor's solicitation response.

~~(w) "Surety bond" or "Performance Bond" means a promise to pay the obligee or owner a certain amount if the principal or contractor fails to meet some obligation, such as fulfilling the terms of a contract.]~~

(~~y~~v) "Steering a Contract to a Favored Vendor" is defined as a person involved in any phase of the procurement process who acts with bias or prejudice in violation of the law to favor one vendor over another vendor(~~s~~) in awarding a government contract. Steering a contract to a favored vendor includes:

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

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

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

(iv) involvement in a bid rigging scheme;

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

(vi) intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in ~~[S]~~Subsection 63G-6a-506(8);

(vii) leaking solicitation or other information to a particular vendor that is prejudicial to other vendors;

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

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

(~~y~~w) "Technology" means any type of technology defined as "Information Technology" in Subsection ~~[63F-1-102(8)]~~~~[63A16-102(8)]~~.

### **R33-1-2. Applicability of Rules.**

(1) Title R33 shall apply to:

(a) a procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under ~~[S]~~Subsection 63G-6a-103(~~77~~)(~~3~~); and

(b) a procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103 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.**

(1) When making a determination and a specific law or rule pertaining to the issue does not exist, the 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 in Section R33-1-1.

### **R33-1-3. Determinations by Procurement Official.**

(1) Unless specifically stated otherwise, determinations under Title 63G, Chapter 6a and Title R33 shall be made by the procurement official.

(2) A determination by the procurement official shall be made:

(a) 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) by applying the reasonable person standard to determine:

(i) if the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of Title 63G, Chapter 6a, or Title R33;

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

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

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

(1) Unless the procurement official issues a written exception in accordance with Title 63G, Chapter 6a, and applicable rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process when[ever]:

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

(b) a procurement unit's property, name, influence, assets, resources, programs, or other things of value are 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 responding to a solicitation and to limit the number of vendors eligible to move forward to subsequent stages in the solicitation or evaluation process.

**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.**

(1) [~~Prior to~~Before 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~~]by 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.**

(1) 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 Last Change: ~~January 22, 2021~~ 2022**

**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 ID 54464

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-964-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-2. Rules of Procedure for Procurement Policy Board
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>

The reason for the amendment is to change the anchor location from Utah State Capitol Hill Complex to Taylorsville State Office Building

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

Change the location of the anchor site for the Utah Procurement Policy Board Meetings.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):**

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
--	------------

<b>10. This rule change MAY become effective on:</b>	05/23/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Administrative Services, Purchasing and General Services.**

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

**R33-2-1. Purpose.**

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

**R33-2-2. Authority.**

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

**R33-2-4. Composition of Board.**

(1) The Board consists of [~~fifteen~~]15 voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.

(2) The [s]Secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.

**R33-2-5. Calling Meetings.**

(1) The Chair or any three voting members may call meetings of the Board.

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

(1) The Chair shall be the Presiding Officer at all Board meetings.

(2) The Chair may designate, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.

(3) The Presiding Officer may make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director or any three voting members may also place items on the Board agenda.

(5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

**R33-2-7. Secretary to the Board.**

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

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

**R33-2-8. Meetings.**

(1) 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.

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

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

**R33-2-10. Notice and Agenda.**

(1) Notice of each meeting 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 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 member of the Board, the Division, governmental agency and the public may submit a request to the Secretary to the Board for 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 ~~[b]~~Board member 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) Any determination of the Board 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 each Board member 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 member must be in attendance, either in person or by electronic means in accordance with this ~~[R]~~rule, ~~[in order]~~ to vote.

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

(1) Any voting member may make or second a motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

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

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

(5) The Board may enact resolutions.

**R33-2-13. Committees and Appeals Panel.**

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

**R33-2-14. Order at Meetings.**

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

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

**R33-2-15. Rules of Order.**

(1) All matters not covered by this ~~[R]~~rule~~[R33-2]~~ shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

**R33-2-16. Electronic Meetings.**

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

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

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

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Act. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room ~~in the Utah State Capitol Hill Complex~~ at the Taylorville State Office Building where the Board would normally meet if the Board was not holding an electronic meeting.

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

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

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

**R33-2-17. Suspension of the Rules.**

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

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

**Date of Last Change: ~~January 22, 2021~~ 2022**

**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 ID 54465

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-4. Supplemental Procurement Procedures
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to provide clarify and uniformity in terms.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The "chief procurement officer or head of a procurement unit with independent procurement authority" was removed and replaced with "procurement official" to match definition change in previous rule update; correct grammatical errors; and to bring Section R33-4-110 into alignment with Sections R33-5-104 and R33-5-107.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>
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** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

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

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

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.



**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, Purchasing and General Services.****R33-4. Supplemental Procurement Procedures.****R33-4-103. Specifications.**

(1) A public entity shall include in solicitation documents specifications for the procurement item sought.

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

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

(3) A person[s] 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 procurement unit may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. The person retained to assist in writing specifications 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(3) does not apply to the following:

(i) a design build construction project; and

(ii) other procurements determined in writing by the procurement official~~[- or as applicable, the head of a procurement unit with independent procurement authority].~~

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

(4) Requirements for brand name and equal specifications are as follows:

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

(i) the phrase "or equivalent" 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 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 brand name may be require~~me~~d if:

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

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

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

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

(a) a solicitation meeting the public notice requirements of Section 63G-6a-112 results in only one vendor submitting a solicitation response;

(b) vendors on a multiple award contract, prequalification, or approved vendor list fail to respond to the procurement unit; or

(c) a procurement unit makes a reasonable effort to invite each vendor known to the procurement unit to submit a solicitation response.

(i) "Reasonable effort" as used in Subsection (c) means:

(A) public notice under Section 63G-6a-112;

(B) an electronic or manual search for vendors within the specific industry;

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

(D) a determination by the procurement official that a reasonable effort has been made.

(2) Before accepting a solicitation response from only one vendor, the procurement official, shall consider:

(a) whether pricing is fair and reasonable;

(b) canceling the procurement; and

(c) a bid security requirement.

(3) The procurement official shall maintain records documenting the circumstances and reasons why fewer than two solicitation responses were obtained.

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

(1) "Quote" means a purchasing process that solicits pricing information from several sources.

(2) "Quotation" means a statement of price, terms of sale, and description of the procurement item offered by a vendor to a procurement unit. A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

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

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

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

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

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

- (i) the name of each vendor supplying a quotation; and
  - (ii) the amount of each vendor's quotation.
- (5) An executive branch procurement unit, subject to this rule:

(a) may obtain electronic, telephone, or written quotations for a procurement item costing less than \$10,000, unless the procurement official determines a lower amount by policy;

(b) shall send a request to obtain quotations for a procurement item costing more than \$10,000, unless the procurement official determines a lower amount by policy, to the [d]Division of Purchasing[~~state purchasing~~] who shall obtain quotations for executive branch procurement units for procurement items costing more than \$[~~10,000~~]; and

(c) 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 Last Change:** ~~January 22, 2021~~ 2022

**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 ID 54466

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-5. Other Standard Procurement Processes

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):

The reason for the amendment is to provide clarity, simplification, and continuity of terms.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

Correct the conflict between Sections R33-5-104 and R33-7-107; remove redundancy in Section R33-5-108; and improve clarity throughout.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, Purchasing and General Services. R33-5. Other Standard Procurement Processes.**

**R33-5-101. Request for Information.**

(1) In addition to the requirements of Title 63G, Chapter 6a, Part 5, Other Standard Procurement Processes, a request for information should ~~indicate~~ show the procedure for business confidentiality claims and other protections provided by Title 63G, Chapter 2, Utah Government Records and Access Management Act.

**R33-5-104. Small Purchases.**

(1) A small purchase shall be conducted in accordance with Section 63G-6a-506 and this administrative rule.

(2) 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.

(3) The ~~Individual~~ ~~Procurement~~ ~~Item~~ threshold is \$5,000 unless the procurement 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.

(4) The Single Procurement Aggregate threshold is \$10,000 for multiple individual procurement items purchased from one source at one time unless the procurement official determines a lower amount; and

~~(a)~~ The Annual Cumulative threshold for purchases made from the same source is \$50,000.

~~(5)~~ When ~~ever~~ practicable, the ~~(d)~~ 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 by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3)(a) ~~In order to~~ To ensure the fair and equitable treatment of each vendor 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 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 procurement official.

(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 ~~(s)~~ 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 each vendor on the approved vendor list has 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 ~~(d)~~ 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, in the procurement of design professional services.

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

(1) The small purchase ~~(s)~~ threshold for an individual construction project ~~[threshold per individual project]~~ is ~~(e)~~ \$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

~~(d)~~ 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 procurement official 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 procurement official 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.

### **R33-5-106.5. Small Purchases Threshold for Construction Projects Using ~~(A)~~ 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) ~~In order to~~ 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 or contractor by direct award using one of the following methods to select the vendor ~~(f)~~ or 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 procurement official;

(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 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 procurement official;

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

(iii) When quotes or bids are obtained under Subsection (2)(b), procurement units shall purchase the procurement item from the vendor ~~(f)~~ or 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 ~~(f)~~ or contractors on the approved vendor list to submit bids in accordance with the provisions set forth in Title 63G, Chapter 6a, Part 6, Bidding, except public notice requirements in Part 6 are waived.

**R33-5-107. Quotes for Small Purchases from \$5,000~~[1,001]~~ to \$50,000.**

(1) For individual procurement item~~(s)~~ where the cost is greater than \$~~[+]2,000~~ but up to a maximum of \$~~[5]10,000~~, unless the procurement official determines a lower amount, 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 aggregate cost is greater than \$~~[5]10,000~~ up to a maximum of \$50,000, unless the procurement official determines a lower amount, a procurement unit with independent procurement authority or the ~~[4]D~~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)~~ with an aggregate cost ~~[costing]~~over \$50,000, a procurement unit with independent procurement authority or the ~~[4]D~~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) The ~~[4]D~~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) ~~[In order to]~~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 procurement official;

(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]6)~~(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) When~~ever~~ 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 per project by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals.

(2) ~~[The]~~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.

~~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.]~~

~~([4]3)~~(a) Approved Vendor List: ~~[In order to]~~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 procurement official;

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (4)(a), the procurement unit shall rank the firms or individuals in order and begin fee negotiations, 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.

(5) 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.

**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) 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:

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

(i) 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

(ii) 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;

(b) 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:

(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 procurement official; and

(c) 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) 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:

(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 procurement official;

(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 procurement official may award a contract [to] 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.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors, provided the performance rating system is described in the solicitation and includes:

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

(b) 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.

(2) A procurement unit that places a vendor on a corrective action plan shall:

(a) make a written finding that:

(i) describes the performance rating system;

(ii) identifies the minimum performance rating threshold;

and

(iii) explains the performance rating achieved by the vendor; and

(b) provide a copy of the written finding to the 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 Last Change:** ~~January 22, 2021~~ 2022

**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 ID 54467

### Agency Information

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R33-6. Bidding

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):  
 The reason for the amendment is to provide clarity.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):  
 Provides clarity to Section R33-6-111 which resolves tie bids.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

### Citation Information

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
--	------------

<b>10. This rule change MAY become effective on:</b>	05/23/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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### R33. Government Operations, Purchasing and General Services.

#### R33-6. Bidding.

##### R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding.

(1) Competitive sealed bidding shall be conducted in accordance with the requirements in Title 63G, Chapter 6a, Part 6, Bidding. Definitions in Title 63G, Chapter 6a, Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This rule provides requirements and procedures and must be used in conjunction with Title 63G, Chapter 6a.

##### R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the procurement official determines that:

- (a) a material change in the scope of work or specifications has occurred;
- (b) procedures outlined in 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.

##### R33-6-110. 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 procurement official will only accept the bidder's 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, and only one of the tie bids was submitted by a Utah resident bidder, 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 procurement official [by] to toss[ing] a coin in the presence of a minimum of three witnesses with the [firm] bidder 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 procurement official.

##### R33-6-112. Publication of Award.

(1) The 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 of the procurement item; and
- (b) the names and the prices of each bidder to which the contract is not awarded.

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

**Date of Last Change:** January 22, 2021 | 2022

**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 ID 54468

### Agency Information

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
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 (Why is the agency submitting this filing?):**  
The reason for the amendment is to provide clarity.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**  
Removed obsolete references; correct grammatical issues; and grant authority to the procurement official.

**Fiscal Information**

**5. Provide an estimate and written explanation of the 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 (How much will it cost an impacted entity to adhere to this rule or its changes?):**

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

#### Citation Information

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
--	------------

<b>10. This rule change MAY become effective on:</b>	05/23/2022
--	------------

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

#### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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### R33. Government Operations, Purchasing and General Services.

#### R33-7. Request for Proposals.

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

(1) The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in<sup>[7]</sup> Utah Procurement Code 63G-6a, Part 7. The request for proposals process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. All definitions in the Utah Procurement Code shall apply to this ~~[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.

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

(1) Offerors requesting exceptions or additions to the standard terms and conditions published in the request for proposal (RFP) must include the exceptions or additions with the proposal response.

(2) Exceptions 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 or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the procurement official 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 or additions:

- (a) that are determined to be excessive;
- (b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, or 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 or additions with offerors, beginning in order with the offeror submitting the fewest exceptions or additions to the offeror submitting the greatest number of exceptions 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<sup>[7]</sup> after a reasonable amount of time<sup>[7]</sup> as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

#### R33-7-105. Protected Records.

(1)~~[(a)]~~ The following are protected records and may be redacted by the vendor subject to the procedures described ~~[below]~~in this section in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2~~[of the Utah Code]~~.

~~\_\_\_\_\_~~ (a) Trade Secrets, as defined in Section 13-24-2~~[of the Utah Code]~~.

(b) Commercial information or non-individual financial information subject to ~~[the provisions of S]~~Subsection 63G-2-305(2).

- (c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected, ~~[including trade secrets or other reasons for non-disclosure under GRAMA[7]]~~; and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected record.

#### R33-7-106. Notification.

(1) A person who complies with Section R33-7-105 shall be notified by the procurement unit ~~[prior to]~~before the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA<sup>[7]</sup> may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records Committee

determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror~~(s)~~ has been made public~~[in compliance with Section 63G-6a-709.5]~~.

**R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.**

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED,"~~[ ]~~ "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

**R33-7-501.5. Minimum Score Thresholds.**

(1) A procurement unit may establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

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

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

(i) Minimum scores for each evaluation category;

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

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

(b) Thresholds may not be based on:

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

(ii) A predetermined number of offerors, unless authorized in writing by the procurement official.

**R33-7-601. Best and Final Offers.**

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

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

(b) The ~~[best and final]~~BAFO offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP request for proposal process.

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

**R33-7-701. Cost-benefit Analysis Exception: CM/GC.**

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager~~[ ]~~ or general contractor and the management fee described in Section 63G-6a-70~~[8]~~ provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide~~[ ]~~, at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

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

(1)(a) ~~[In accordance with Section 63G-6a-704, t]~~The 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 request for proposal.

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

(2) ~~[Prior to]~~Before the evaluation and scoring of proposals, the procurement unit will meet to:

(a) Explain the evaluation and scoring process;

(b) Discuss requirements and prohibitions pertaining to:

(i) socialization with vendors as set forth in Section R33-24-104;

(ii) financial conflicts of interest as set forth in Section R33-24-105;

(iii) personal relationships, favoritism, or bias as set forth in Section R33-24-106;

(iv) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and

(v) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

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

(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.

(3) ~~[Prior to]~~Before 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.

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

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

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

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

(5) Unless an exception is authorized by the head of the 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 procurement unit as set forth in Section 63G-6a-707.

(6)(a) In accordance with Section 63G-6a-707, the 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]~~ Title 63G~~[, Chapter]~~, 6a, using the criteria described in the RFP.

(b) The evaluation committee shall exercise independent judgment 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.

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

(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 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]~~To score proposals fairly, an evaluation committee member must be present at each evaluation committee meeting and must review each proposal, 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.

(e) 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.

(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 procurement unit for review.

(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 procurement unit, unless the procurement unit authorizes that a best and final offer process is to be conducted.

(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;

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

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

(11) The evaluation committee may, with approval from the procurement unit, request BAFQ~~[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.

(12)(a) The procurement official 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 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 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.

**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 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]~~by 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 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]~~themselves from the evaluation process.

**R33-7-802. Publicizing Awards.**

(1) ~~[In addition to the requirements of Section 63G-6a-709.5,]~~The following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract~~(s)~~ entered into as a result of the selection and the successful proposal~~(s)~~, except for those portions that are to be non-disclosed under Section R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any ~~[selection]~~evaluation committee ~~(reviewing authority)~~;

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

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-7-105.

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

(a) the names of individual scorers~~[/]~~ or evaluators in relation to their individual scores or rankings;

(b) any individual scorer's~~[/]~~ or evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

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

**R33-7-900. Public-Private Partnerships.**

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

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

**Date of Last Change: ~~January 22, 2021~~2022**

**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 ID 54469

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-8. Exceptions to Standard Procurement Process
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to provide clarity, uniformity in terms, and remove reserved section titles.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
In Subsection R33-8-101b(3)(b), removes the "(s)" from provider(s).
In Subsection R33-8-101d(1)(c), changes "chief procurement official, or head of a procurement unit with independent procurement authority" to procurement official.
In Section R33-8-102, removes the reserved subsection.
In Section R33-8-301, removes the reserved subsection.
In Subsection R33-8-401(3)(a)(ii), changed "eminent" to "imminent".

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>
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.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
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.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Title 63G, Chapter 6a		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, 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 procurement official 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 Title 63G, Chapter 61, Utah Procurement Code, are to ensure the fair and equitable treatment of each person 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 when[~~ever~~] 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 procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

(b) a component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or

(c) an exclusive maintenance, service, or warranty agreement.

(3) ~~Before~~[~~Prior to~~] awarding a sole source contract, the procurement official shall, when[~~ever~~] 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,"[~~7~~] "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

(i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and

(ii) provides a compelling justification for not conducting a competitive standard procurement process.

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

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

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

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

(a) costs identified in Section 63G-6a-103;

(b) costs offered by a competing provider~~(s)~~ for a competing type of procurement item in a competitive bid or ~~[RFP]~~ request for proposals process conducted within the last 12 months;

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

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

(e) other transitional costs determined to be applicable by the procurement official.

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

(a) costs prohibited in ~~S[ub]~~ section 63G-6a-103;

(b) data provided by the existing provider for ~~[the purpose of]~~ establishing:

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

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

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

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

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

(f) other transitional costs or other information deemed inappropriate by the procurement official.

(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 Subsection 63G-6a-802(1)(c), the procurement official may consider, as applicable, the following circumstances when making a determination as to whether awarding

a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

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

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

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

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

(1)(a) The division shall make available a form titled: "Notice of Intent to Award a Contract without Engaging in a Standard Procurement Process" that requires the 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 procurement unit; and

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

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

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

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

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

(c) The conducting procurement unit shall submit in writing a completed notice of intent to award a contract without engaging in a standard procurement process form to the ~~[chief ]procurement official[; 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 notice of intent to award a contract without engaging in a standard procurement process shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds \$50,000.

(2)(a) When making a determination under Sections R33-8-101a, R33-8-101b, or R33-8-101c, the procurement official 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;
  - (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 procurement official.
- (b) The procurement official may require publication of a notice of intent to award a contract without engaging in a standard procurement process for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

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

(1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process ~~prior to~~ before the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the procurement official:

- (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) 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 procurement official 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 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 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.

~~[R33-8-102. Reserved.]~~

~~Reserved.]~~

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

(1) One of the underlying purposes and policies of 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 when~~ever~~ 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 procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the 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 procurement unit determines there is a continuing need for the procurement item, the procurement unit shall when~~ever~~ practicable:

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

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

(b)(i) if the 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~~ before the contract expiration date, initiate a standard procurement process; and

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

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

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

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

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

**R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.**

(1) The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

~~[R33-8-301. Reserved.]~~

~~Reserved.]~~

**R33-8-401. Emergency Procurement.**

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit ~~is authorized to~~ may 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 ~~e~~imminent 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 procurement official, 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." [-]**

(1) Upon a declaration of an "Official State of Emergency" by the authorized state official, the procurement official shall implement the division's Continuity of Operations Plan. 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 Last Change:** ~~January 22, 2021~~ 2022

**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 ID 54470

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R33-9. Cancellations, Rejections, and Debarment
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to correct numeric and grammatical errors.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
In Subsection R33-9-103(1)(j), adds a period at the end of the statement.
In Subsection R33-9-103(3), renumbers it to (2).
In Subsection R33-9-202(2), deletes all of (2).

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
--

<b>A) State budget:</b>
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>B) Local governments:</b>
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.
<b>C) Small businesses</b> ("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.
<b>D) Non-small businesses</b> ("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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
There are no anticipated costs or savings 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.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):
There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director
<b>6. A) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>
Title 63G, Chapter 6a

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
<b>A) Comments will be accepted until:</b> 05/16/2022

<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, 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]~~before the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the 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 procurement official 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 Subsections (a) and (b) require the procurement unit to modify the solicitation documents.

(2) If the 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 procurement official shall:

- (a) require the 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 procurement official 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 ~~[B]~~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]~~show 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 procurement official 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 procurement official.

(2) Notwithstanding~~[the above]~~,R33-9-103(1), 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, Protests and 17, Procurement Appeals Board, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

**R33-9-104. Alternative to Cancellation.**

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

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

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first 12~~[twelve]~~ months of the contract term and the procurement item is still needed by the procurement unit, the procurement official 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 Bidding, and ~~[Administrative Rule]~~Title 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, Requests for Proposals and ~~[Administrative Rule]~~Title 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, Design Professional Services and [Administrative Rule]Title R33; or

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

(2) The procurement official 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 12[~~twelve~~] months of the contract period.

**R33-9-201. Rejection of a Solicitation Response.**

(1) An issuing procurement unit may reject any or all solicitation responses, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

**R33-9-202. Conformity to Solicitation Requirements.**

(1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

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

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

~~(2) A solicitation response shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability for the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to another person. For example, solicitation responses shall be rejected in which the person:~~

~~(a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;~~

~~(b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;~~

~~(c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;~~

~~(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or~~

~~(e) limits rights of the State under any contract clause.]~~

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

(1) The procurement official:

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

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

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

(2) 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[~~/~~] or Debarment.**

(1) 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 Last Change: [January 22, 2021|2022]**

**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 ID 54471

**Agency Information**

<b>1. Department:</b>	Government Operations
<b>Agency:</b>	Purchasing and General Services
<b>Room no.:</b>	Third Floor
<b>Building:</b>	Taylorville State Office Building
<b>Street address:</b>	4315 S 2700 W

<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-12. Terms and Conditions, Contracts, Change Orders and Costs
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to remove obsolete reference and update Division of Technology references.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
In Section R33-12-101, removes a sentence.  In Section R33-12-502, changes "Executive Director of the Department of Technology Services" to "Director of the Division of Technology Services".

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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>B) Local governments:</b>
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.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
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** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			

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

**B) Department head approval of regulatory impact analysis:**  
 The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, Division of Purchasing and General Services.**

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

**R33-12-101. Required Contract Clauses.**

(1) Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. ~~Executive branch procurement units shall also comply with the requirements of Section 63G-6a-110(6).~~ All definitions in the Utah Procurement Code shall apply to this [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.

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

(1) Executive branch procurement units without independent procurement authority shall be required to use the standard terms and conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the 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 procurements;
- (d) the special needs of a 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 procurement official 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.**

(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 R33-12-301b.

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

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

- (a) coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:
  - (i) delivery;
  - (ii) service;

(iii) product availability; or  
(iv) compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Sections 63G-6a-603 and 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

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

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

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

(5) A multiple award contract in an invitation for bids shall be conducted and awarded in accordance with Title 63G, ~~Chapter~~ 6a, Part 6, Other Standard Procurement Processes to the lowest responsive and responsible bidder 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 procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for procurement items being solicited as determined by the following methods:

(i) bids within a specified percentage, not to exceed ~~five percent~~ 5%, of the lowest responsive and responsible bid, unless otherwise approved in writing by the procurement official;

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

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

(b) lowest bid by category provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per category; 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) other specific objective methodology described in the solicitation, such as Section R33-12-302 for primary and secondary contracts, approved by the procurement official.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Title 63G, ~~Chapter~~ 6a, Part 7, Requests for Proposals, 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]~~ request for proposals describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the

decision of whether to award a multiple contract and who should receive a multiple award contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **R33-12-301b. Ordering From ~~[A]~~ Multiple Award Contract.**

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

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

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

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

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



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

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

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

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

### **R33-12-302. Primary and Secondary Contracts.**

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the procurement official 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.

### **R33-12-303. Intent to Use.**

(1) If a multiple award is anticipated before~~[prior to]~~ issuing a solicitation, the method of award shall be stated in the solicitation.

### **R33-12-401. Contracts and Change Orders -- Contract Types.**

(1) A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

### **R33-12-402. Prepayments.**

(1) Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

### **R33-12-403. Leases of Personal Property.**

(1) Leases of personal property are subject to the following:

(a) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(b) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(i) it is in the best interest of the procurement unit;

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

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

(c) Lease contracts shall be conducted with as much competition as practicable.

(d) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(i) investigate alternative means of procuring comparable procurement items; and

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

### **R33-12-404. Multi-Year Contracts.**

(1) Procurement units may issue multi-year contracts for any solicitation process in accordance with Section 63G-6a-1204.

### **R33-12-405. Installment Payments.**

(1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

### **R33-12-501. Change Orders.**

(1) In addition to the requirements 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 procurement official ~~[prior to]~~before the commencement of any work to be performed under a contract change order unless:

(a) the procurement unit has authority 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:

(i) requisite to avert an emergency; or

(ii) required as an emergency.

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

(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 procurement official and included in the division's contract file.

### **R33-12-502. Contract Modifications for New Technology and Technological Upgrades.**

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

(a) The solicitation contains a statement indicating that:

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

(A) systems;

(B) apparatuses;

(C) modules;

(D) components; and

(E) other supplementary items;

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

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

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

(e)3) ~~Prior to~~ Before executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the ~~Executive~~ Director of the ~~Division~~ ~~Department~~ of Technology Services.

(d)4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

#### **R33-12-601. Requirements for Cost or Pricing Data.**

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the procurement official may request additional cost or pricing data; or

(c) the procurement official may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

#### **R33-12-602. Defective Cost or Pricing Data.**

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.

(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

#### **R33-12-603. Price Analysis.**

(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:

(a) there are a limited number of vendors, bidders or offerors;

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

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

(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.

(3) Examples of a price analysis include:

(a) prices submitted by other prospective bidders or offerors;

(b) price quotations;

(c) previous contract prices;

(d) comparisons to the existing contracts of other public entities; and,

(e) prices published in catalogs or price lists.

#### **R33-12-604. Cost Analysis.**

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

(a) specific elements of costs;

(b) total cost of ownership and life-cycle cost;

(c) supplemental cost schedules;

(d) market basket cost of similar items;

(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;

(g) the basis used for allocation of indirect costs; and,

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

#### **R33-12-605. Right to Audit.**

(1) As used in this rule:

(a) "Authorized representative" includes:

(i) a purchasing procurement unit;

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

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

(iv) the State Auditor;

(v) the Legislative Auditor General; or

(vi) federal auditors.

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

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

(ii) pricing data;

(iii) usage reports;

(iv) transaction histories;

(v) delivery logs;

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

(vii) performance evaluations.

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

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

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

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

(i) maintain 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 audits initiated under this section within the six-year period have been completed, whichever is later;

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

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

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

(v) correct errors and repay overcharges to the contracting procurement unit within 30[~~thirty~~] days of receiving written notice of the errors or overcharges documented in an audit finding;

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

(vi) if contract errors or overcharges are in dispute, correct errors and repay overcharges within 30[~~thirty~~] days of receipt of a notice of decision issued by the procurement official after a hearing has been conducted to attempt to resolve the dispute, or a court order;

(e) a statement indicating that:

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

(ii) an audit or other request shall:

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

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

(C) be carried out at a reasonable time and place;

(f) a notice that if a contractor fails to maintain or provide records in accordance with [~~the provisions of~~]the contract, the procurement unit may:

(i) [~~deem~~]consider the contractor to be in breach of its contract with the procurement unit;

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

(iii) cancel the contract;

(g) a notice that the procurement unit may initiate debarment or suspension proceedings against a contractor under Section 63G-6a-904, or pursue other legal action, for any of the following:

(i) failure to respond to an audit;

(ii) failure to correct errors or repay overcharges;

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

(iv) other reasons as determined by the procurement

official.

#### **R33-12-607. Applicable Credits.**

(1) Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

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

(1) In dealing with contractors operating according to federal cost principles, the procurement official 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 procurement official may

explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement official 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, 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.**

(1) If a procurement unit desires to deviate from the cost principles set forth in this rule, a written determination shall be made by the procurement official specifying the reasons for the deviation and the written determination shall be made part of the contract file.

#### **R33-12-701. Inspections.**

(1) Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing[~~]~~or production facility or place of business, or any location where the work is performed:

(a) whether the definition of "responsible<sub>2</sub>"[~~]~~ has been met or is capable of being met; and

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

#### **R33-12-702. Access to Contractor's Manufacturing[~~]~~or Production Facilities.**

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing[~~]~~or production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

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

(1) Contracts may provide that the procurement unit or procurement official 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 procurement official. 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 Last Change:** ~~January 22, 2021~~ 2022  
**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 ID 54472

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Purchasing and General Services	
<b>Room no.:</b>	Third Floor	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 141061	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1061	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Shad Brunson	801-965-4064	sbrunson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R33-24. Unlawful Conduct and Ethical Standards
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The reason for the amendment is to provide clarity in reading and fix numbering.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Updated reference to the Executive Order and removed obsolete hyperlinks. Fixed numbering issues.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
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 (How much will it cost an impacted entity to adhere to this rule or its changes?):**

There are no anticipated compliance costs for affected persons. The changes to this rule provide simplification and clarity in the terms and processes.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

There are no anticipated fiscal impacts that this rule may have on businesses. Jenney Rees, Executive Director

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0

Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Government Operations, Jenney Rees, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Title 63G, Chapter 6a		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022
<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency	

must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Shad Brunson, Procurement Policy Board Chair	<b>Date:</b>	03/31/2022
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**R33. Government Operations, Purchasing and General Services. R33-24. Unlawful Conduct and Ethical Standards.**

**R33-24-101. Unlawful Conduct.**

(1) Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this [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.

**R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.**

- (1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:
  - (a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties[-]."
  - (b) Executive Order EO/00[3]2/201[0]4 issued by the Governor[ (<http://www.rules.utah.gov/excedoes/2010/ExecDoc149415.htm>)];
  - (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
  - (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
  - (e) any other applicable law.

**R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.**

- (1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:
  - (a) Executive Order EO/00[3]2/201[0]4 issued by the Governor[ (<http://www.rules.utah.gov/excedoes/2010/ExecDoc149415.htm>)];
  - ([e]b) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
  - ([d]e) Section 76-8-103, "Bribery or Offering a Bribe;" and
  - ([e]d) any other applicable law.

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

- (1) A procurement professional shall not:
  - (a) participate in social activities with vendors or contractors that 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 a[n] 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 occurs when the potential exists for an 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~~ To preserve the integrity of the 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~~ their 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 Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

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

(1) Employees are prohibited from participating in 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 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 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.

**R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.**

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the

procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Section R33-24-105, Section R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order, ~~(4)~~EO 002 2014, ~~(3)~~ "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

**R33-24-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.**

(1) An employee of a procurement unit involved in the procurement process shall uphold and promote the independence, integrity, and impartiality of the procurement process as required in the Utah Procurement Code and, as applicable, Title R33 and shall avoid impropriety and the appearance of impropriety.

**KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct**  
**Date of Last Change: ~~January 22, 2021~~ 2022**  
**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.):	R51-6	Filing ID 54442

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Administration	
<b>Building:</b>	Utah Department of Agriculture and Food	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R51-6. Agricultural Advisory Board Electronic Meetings

**3. Purpose of the new rule or reason for the change** (Why is the agency submitting this filing?):  
 Changes are needed to reflect changes to Section 52-4-207 made in H.B. 22, Open and Public Meetings Act Modifications, passed during the 2022 General Session, and to make the text consistent with Utah Rulewriting Manual.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):  
 Language has been added to this rule (Section R51-6-4) requiring voting by roll call in all Agricultural Advisory Board electronic meetings except during a unanimous vote. Additional changes have been made to make the text consistent with Utah Rulewriting Manual.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**  
 The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

**B) Local governments:**  
 Local governments do not administer the program and are not regulated under the program and will not be impacted.

**C) Small businesses** ("small business" means a business employing 1-49 persons):  
 There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

**D) Non-small businesses** ("non-small business" means a business employing 50 or more persons):  
 There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

**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 should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):  
 This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**B) Department head approval of regulatory impact analysis:**  
 The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 54-4-207	Section 4-2-108	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/22/2022
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**R51. Agriculture and Food, Administration.**  
**R51-6. Agricultural Advisory Board Electronic Meetings.**  
**R51-6-1. Authority and Purpose.**

(1) ~~[Promulgated under Utah Code]~~Section 52-4-207[ which] requires any public body that convenes or conducts an electronic meeting to have a rule in place governing the use of electronic meetings.~~[establish written procedures for such meetings.]~~ This rule establishes procedures for conducting Agricultural Advisory Board ~~[Board]~~meetings or meetings of the [B]board's subcommittees by electronic means.

(2) This rule is enacted under the authority of Sections 52-4-207, 4-2-108, and Subsection 4-2-103(1)(i).

**R51-6-2. Definitions.**

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Board" means the Agricultural Advisory Board.

(2) "Meeting" means a meeting of the public body that is required to be public by Title 52, Chapter 4, Open and Public Meetings Act.

(3) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

**R51-6-3. Public Notice and Public Participation.**

~~\_\_\_\_\_~~(3) The following provisions govern any meeting at which a voting majority of Board members appear at the anchor location, by telephone, or electronically pursuant to Section 52-4-207: ]

~~\_\_\_\_\_~~(1) If ~~[enough B]~~board members ~~[which]~~ constitute a voting majority intend to participate in a meeting

electronically or by telephone, public notice[s] of the electronic meeting shall be posted.

~~\_\_\_\_\_~~(2) ~~[In addition, t]~~The notice shall specify the anchor location where the members of the [B]board not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

~~\_\_\_\_\_~~(3) ~~Public [N]~~notice of the meeting and the agenda shall be posted at the anchor location at least 24 hours before the meeting.

~~\_\_\_\_\_~~(4) Written or electronic notice shall ~~[also]~~be posted on the Public Notice Website at least 24 hours before the meeting.~~[These notices shall be provided at least 24 hours before the meetings.]~~

**R51-6-4. Quorum, Member Participation.**

~~\_\_\_\_\_~~(1) Notice of the possibility of an electronic meeting shall be given to the [B]board members at least 24 hours before the meeting.

~~\_\_\_\_\_~~(2) ~~[In addition, t]~~The notice shall describe how a [B]board member may participate in the meeting electronically or by telephone.

~~\_\_\_\_\_~~(3) When notice is given of the possibility of a member ~~[appearing]~~participating electronically or by telephone, any [B]board member may ~~[do so]~~participate electronically.

~~\_\_\_\_\_~~(4) ~~[and]~~A board member participating electronically shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the [B]board.

~~\_\_\_\_\_~~(5) At the commencement of the meeting, or ~~[at such time as]~~when any [B]board member initially appears electronically or by telephone, the chair shall identify for the record ~~[all those]~~any board members who are ~~[appearing]~~participating by telephone or electronically.~~[Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the chair.]~~

~~\_\_\_\_\_~~(6) Votes by members of the board who are not at the physical location of the meeting shall be confirmed by the chair.

~~\_\_\_\_\_~~(7) Except for a unanimous vote, the board shall take each vote by roll call.

**R51-6-5. Anchor Location.**

~~\_\_\_\_\_~~(1) The anchor location, unless otherwise designated in the notice, ~~[shall be at the offices of]~~is the Department of Agriculture and Food,~~[350 N Redwood Road, Salt Lake City, Utah]~~ located at 4315 South 2700 West TSOB South Bldg, Floor 2 Taylorsville, UT 84129-2128.~~[The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.]~~

~~\_\_\_\_\_~~(2) ~~[In addition, t]~~The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: electronic meetings**  
**Date of Last Change: [March 23, 2018]2022**  
**Authorizing, and Implemented or Interpreted Law: 4-2-108; 4-2-103(i); 52-4-207**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R51-7	Filing ID 54443



**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Administration	
<b>Building:</b>	Utah Department of Agriculture and Food	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R51-7. Open and Public Meetings Act Electronic Meetings
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Changes are needed to reflect changes made in H.B. 22, Open and Public Meetings Act Amendments, passed during the 2022 General Session, and to make the text consistent with Utah Rulewriting Manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Section 54-4-207 now requires provisions for voting by roll call in all cases except during a unanimous vote. Additional changes have been made to make the text consistent with Utah Rulewriting Manual.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

<b>B) Local governments:</b>			
Local governments do not administer the program and are not regulated under the program and will not be impacted.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>			
There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.			
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>			
There should be no change in compliance costs for affected persons because compliance requirements are not changing.			
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>			
This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner			
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, has reviewed and approved this fiscal analysis.			

#### Citation Information

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>
Section 54-4-207

#### Public Notice Information

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)
<b>A) Comments will be accepted until:</b> 05/16/2022

<b>10. This rule change MAY become effective on:</b> 05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

#### Agency Authorization Information

<b>Agency head or designee, and title:</b> Craig W. Butters, Commissioner	<b>Date:</b> 03/21/2022
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#### R51. Agriculture and Food, Administration.

##### R51-7. Open and Public Meetings Act Electronic Meetings.

##### R51-7-1. Authority and Purpose.

(1) Section 52-4-207 requires a state public body that holds electronic meetings to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by each public body created by statute within Title 4, Utah Agricultural Code or by [D] department rule, except for any public body under the department that has adopted its own rule.

(2) A public body under the department with rule making authority may adopt a separate rule governing its electronic meetings.

(3) This rule is authorized by Sections 52-4-207, 63G-3-201, and 4-2-103.

##### R51-7-2. Definitions.

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Meeting" means a meeting of the public body that is required to be public by [the provisions of] Title 52, Chapter 4, Open and Public Meetings Act.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Presiding officer" means the member of the public body designated by statute, rule, or vote of the public body to preside at a meeting of the public body.

(4) "Business day" means a day that the [D] department is open to the public for the conduct of business, exclusive of weekends and state holidays.

##### R51-7-3. Designation of Electronic Meetings.

(1) The presiding officer may schedule any meeting as an electronic meeting upon the presiding officer's discretion or upon request of any member of the public body.

(a) A member of the public body may request that the member's participation in the meeting be allowed electronically up to 48 hours, but no less than two business days, [prior to] before the commencement of the meeting. The presiding officer may refuse a member's request to hold a meeting electronically.

(b) If the [D] department cannot technically arrange for the meeting to be held electronically, the department may deny the presiding officer's decision to allow electronic participation [~~the Department may deny the request~~].

(c) The presiding officer or the [D] department may restrict the number of connections for members to participate in the meeting based on available equipment capability.

(2) No vote of the public body is necessary to include other members of the public body to join the meeting through an electronic connection.

##### R51-7-4. Anchor Location.

(1) Unless otherwise designated in the posted public notice of the meeting, the anchor location for an electronic meeting held by the public body is the Utah Department of Agriculture and Food located at [350 North Redwood Road, Salt Lake City, Utah]4315 South 2700 West TSOB South Bldg, Floor 2 Taylorsville, UT 84129-2128.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability.

(3) The [D]department shall provide a meeting room for an anchor location for any meeting that is held electronically.

**R51-7-5. Quorum, Member Participation.**

(1) A quorum is not required to be present at the anchor location.

(2) A member of the public body who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

**R51-7-6. Public Participation.**

Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

**R51-7-7. Voting.**

Except for in the case of unanimous vote, a public body that is conducting an electronic meeting shall take each vote by roll call.

**KEY: electronic meetings, Open and Public Meetings Act**  
**Date of Last Change: ~~August 10, 2020~~ 2022**  
**Authorizing, and Implemented or Interpreted Law: 52-4-207; 63G-3-201; 4-2-103**

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

**General Information**

**2. Rule or section catchline:**

R64-2. Conservation Commission Electronic Meetings

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

Changes are needed to reflect changes to Section 52-4-207 made in H.B. 22, Open and Public Meetings Act Modifications, passed during the 2022 General Session, and to make the text consistent with Utah Rulewriting Manual.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

Language has been added to this rule (Section R64-2-4) requiring voting by roll call in all Conservation Commission electronic meetings except during a unanimous vote. Additional changes have been made to make the text consistent with Utah Rulewriting Manual.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

**B) Local governments:**

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

**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*):**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R64-2	Filing ID 54444

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Conservation Commission	
<b>Building:</b>	Utah Department of Agriculture and Food	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Jim Bowcutt	385-524-4916	jdbowcutt@utah.gov

There should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 54-4-207	Section 4-18-105	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/21/2022
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**R64. Agriculture and Food, Conservation Commission.**

**R64-2. Conservation Commission Electronic Meetings.**

**R64-2-1. Authority and Purpose.**

(1) ~~[Purpose. Utah Code]~~Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to ~~[establish written procedures for such]~~have a rule in place governing the use of electronic meetings. This rule establishes procedures for conducting Conservation [e]Commission meetings by electronic means.

(2) ~~[Authority.]~~This rule is enacted under the authority of Sections 52-4-207, and 4-18-105.

**R64-2-2. Definitions.**

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Commission" means the Utah Conservation Commission.

(2) "Electronic meeting" includes any meeting where at least one member of the public body participates in the public meeting by telephonic or other electronic means.

(3) "Meeting" means a meeting of the public body that is required to be public by Title 52, Chapter 4, Open and Public Meetings Act.

**R64-2-3. Public Notice and Public Participation.**

~~[(3) Procedure. The following provisions govern any meeting at which a voting majority of commissioners appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:]~~

~~[(a)(1) If ~~enough~~ commission members ~~which~~ constitute a voting majority intend to participate in a meeting electronically or by telephone, public notice[s] of the electronic meeting shall be posted.~~

~~(2) ~~In addition, t~~The public notice shall specify the anchor location where the members of the commission not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.~~

~~[(b)(3) Public ~~N~~notice of the meeting and the agenda shall be posted at the anchor location at least 24 hours before the meeting.~~

~~(4) Written or electronic notice shall ~~also~~ be posted on the Public Notice Website at least 24 hours before the meeting. ~~These notices shall be provided at least 24 hours before the meetings.~~~~

**R63-2-4. Quorum, Member Participation.**

~~[(e)(1) Notice of the possibility of an electronic meeting shall be given to the commission members at least 24 hours before the meeting.~~

~~(2) ~~In addition, t~~The notice shall describe how a commission member may participate in the meeting electronically or by telephone.~~

~~[(d)(3) When notice is given of the possibility of a member ~~appearing~~ participating electronically or by telephone, any commission member may ~~do so~~ participate electronically.~~

~~(4) ~~and~~A commission member participating electronically shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission.~~

~~(5) At the commencement of the meeting, or at ~~such time as~~ the time that any commission member initially appears electronically or by telephone, the chair shall identify for the record ~~all those~~ any commission members who are ~~appearing~~ participating by telephone or electronically. ~~Notes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.~~~~

~~(6) Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.~~

~~(7) Except for a unanimous vote, the commission shall take each vote by roll call.~~

**R64-2-5. Anchor Location.**

~~[(e)(1) The anchor location, unless otherwise designated in the notice, ~~shall be at the offices of~~ is the Department of Agriculture and Food, ~~350 N Redwood Road, Salt Lake City, Utah~~ located at 4315 South 2700 West TSOB South Bldg, Floor 2 Taylorsville, UT 84129-2128. ~~The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.~~~~

~~(2) ~~In addition, t~~The anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.~~

**KEY: electronic meetings**

**Date of Last Change: 2022~~August 21, 2013~~**

**Notice of Continuation: June 1, 2018**

**Authorizing, and Implemented or Interpreted Law: 52-4-207**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R70-520	Filing ID 54446

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R70-520. Standard of Identity and Labeling Requirements for Honey
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Changes are needed to reflect numbering changes to Sections 4-2-103, 4-5-104, and 4-5-502, and to make the text consistent with the Utah Rulewriting Manual.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Language has been updated in this rule addressing numbering changes in Sections 4-2-103, 4-5-104, and 4-5-502. Additional changes have been made to make the text consistent with the Utah Rulewriting Manual.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The changes are clarifying only and will not impact the operation of the program and therefore, will not have a fiscal impact on the state.

**B) Local governments:**

Local governments do not administer the program and are not regulated under the program and will not be impacted.

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

There should be no fiscal impact to small businesses because the changes are clarifying existing practice and the operation of the program will not change.

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

There should be no fiscal impact to non-small businesses because the changes are clarifying existing practice and the operation of the program will not change.

**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 should be no fiscal impact to other persons because the changes are clarifying existing practice and the operation of the program will not change.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There should be no change in compliance costs for affected persons because compliance requirements are not changing.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

This rule change will not have a fiscal impact on businesses. Craig W. Buttars, Commissioner

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0

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

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

The Commissioner of the Utah Department of Agriculture and Food, Craig W. Buttars, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 4-2-103	Section 4-5-104	Section 4-5-502
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of

Administrative Rules on or before the date designated in Box 10.

### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/23/2022
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### R70. Agriculture and Food, Regulatory Services.

#### R70-520. Standard of Identity and Labeling Requirements for Honey.

##### R70-520-1. Authority and Purpose.

(1) Sections 4-2-103, 4-5-104, and 4-5-502 authorize the department to adopt rules to enforce Title 4, Chapter 5, Utah Wholesome Food Act and establish labeling requirements for food designated as raw honey.

(2) ~~[The purpose of this rule is to establish]~~ This rule establishes a standard of identity and labeling requirements for honey that is produced, packed, repacked, distributed, and sold in Utah. Codification of this standard is meant to reduce economic fraud by controlling the pervasive, illegal practices of blending or diluting pure honey with low-cost syrups such as sugar, cane, and corn, and representing highly processed honey as raw honey.

##### [R70-520-2. Authority.

~~This rule is promulgated under the authority of Subsections 4-2-2(1)(g), 4-5-8(5), 4-5-6(1)(b), 4-5-15(1) and Sections 4-5-16 and 4-5-20 of the UCA.~~

##### R70-520-32. Definitions.

(1) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants ~~[which]~~ that the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate, store, and leave in the honeycomb to ripen and mature.

(2) "Blossom Honey" or "Nectar Honey" means honey that comes from the nectar of plants.

(3) "Comb" or "Comb honey" means honey stored by bees in the cells of freshly built broodless combs and sold in sealed whole combs or sections of ~~[such]~~ combs.

(4) "Raw honey" means honey:

(a) as it exists in the beehive or as obtained by extraction, settling, or straining;

(b) that is minimally processed; and

(c) that is not pasteurized.

(5) "Straining" means the process of removing particulate matter from honey by passing it through a metal or fabric screen or cloth with mesh large enough to pass pollen grains, enzymes and minerals.

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

##### R70-520-43. Standard of Identification for Honey.

(1) Honey shall meet the following standards:

(a) honey may not be heated or processed to ~~[such]~~ an extent that its essential composition is changed or its quality is impaired;

(b) chemical or biochemical treatments may not be used to influence honey crystallizations;

(c) honey may not contain more than ~~[t]n 20~~ ~~[-percent]~~% moisture content and for heather honey not more than ~~[t]n 23~~ ~~[-percent]~~%;

(d) honey may ~~[be not]~~ not be less than ~~[t]n 60~~ ~~[-percent]~~% fructose and glucose, combined ~~[;]~~ and the ratio of fructose to glucose shall not be greater than 0.9;

(e) honey may not contain oligosaccharides indicative of invert syrup; ~~and~~

(f) honey, except for honeycomb and cut comb style honey, may not contain more than 0.5g/1000g water insoluble solids.

##### R70-520-54. Standard of Identification for Blossom Honey.

(1) Blossom honey shall meet the standards for honey in Section R70-520-43;

(2) Blossom honey shall not contain more than ~~5~~ ~~[-percent]~~% sucrose, except for the following:

(a) ~~[a]~~ Alfalfa (*Medicago sativa*) ~~[;]~~;

(b) ~~[e]~~ Citrus spp ~~[;]~~;

(c) ~~[f]~~ False ~~[a]~~ Acacia (*Robinia pseudoacacia*) ~~[;]~~;

(d) French Honeysuckle (*Hedysarum coronarium*) ~~[;]~~;

(e) Menzies ~~[b]~~ Banksias (*Banksia menziesii*) ~~[;]~~;

(f) ~~[r]~~ Red ~~[g]~~ Gum (*Eucalyptus camaldulensis*) ~~[;]~~;

(g) ~~[h]~~ Leatherwood (*Eucalyptus lucida*) ~~[;]~~ ~~and~~

(h) *Eucryphia milligani*, which may contain up to 10 ~~[-percent]~~% sucrose ~~[;]~~; ~~and~~

(~~[b]~~ ~~[i]~~ ~~[l]~~) Lavender (*Lavandula* spp) and (~~[b]~~ ~~[o]~~) Borage (*Borago officinalis*), which may contain up to 15 ~~[-percent]~~% sucrose.

##### R70-520-65. Food Labeled as Honey or Raw Honey.

(1) Food meeting the standards set forth in Sections R70-520-43 and R70-520-54 may be designated "honey." ~~[;]~~

(~~[a]~~ ~~[2]~~) The food may be labeled as "raw honey" if it additionally meets the requirements of Section R70-520-342.

(~~[2]~~ ~~[3]~~) Food containing honey plus flavoring, spice, or food additive shall be distinguished in the food name from honey by declaration of ~~[a]~~ ~~[h]~~ each of the added ingredients.

(~~[3]~~ ~~[4]~~) Food containing honey may be designated according to floral or plant source if the honey comes predominately from that particular source and has the organoleptic, physicochemical and microscopic properties corresponding with that origin.

(a) Food designated according to the honey's floral source plant shall have the common name or the botanical name of the floral source in ~~[close]~~ proximity on the label to the word "honey." ~~[;]~~

(~~[4]~~ ~~[5]~~) Honey may be designated according to the following styles:

(a) honey in liquid or crystalline state or a mixture of the two may be designated as "liquid" or "crystalline;" ~~[;]~~

(b) honey meeting the definition of "comb" or "comb honey;" ~~[;]~~ or

(c) honey containing one or more pieces of comb honey, which may be designated as "honey with comb" or "chunk honey." ~~[;]~~

(~~[5]~~ ~~[6]~~) Labels shall meet the requirements of ~~[Chapter 4-5-15 UCU]~~ Section 4-5-201.

##### R70-520-76. Misbranded Food.

Food labeled as a honey or raw honey, but not meeting the standard of identification or a labeling requirement in ~~[Sections four through six of this rule]~~ Sections R70-520-3 through R70-520-5 ~~[shall be deemed]~~ is considered ~~[to be]~~ misbranded.

**R70-520-[8]7. False Food Advertisement.**

Food advertised as honey or raw honey shall be considered falsely advertised if it does not meet the standard of identification or a labeling requirement in [Sections four through six of this rule]Sections R70-520-3 through R70-520-5.

**R70-520-[9]8. Embargo and Destruction of Misbranded Food.**

When an authorized agent of the department finds or has cause to believe a honey product is misbranded, the agent may follow the tagging, embargo, and destruction procedures found in [Title 4-5-5 UCA]Section 4-5-202.

**KEY:** food safety, honey

**Date of Last Change:** ~~July 10, 2012~~ 2022

**Notice of Continuation:** June 29, 2017

**Authorizing, and Implemented or Interpreted Law:** ~~4-2-2(1)(g); 4-5-8(5); 4-5-6(1)(b); 4-5-16; 4-5-15(1); 4-5-20~~4-2-103, 4-5-104, 4-5-502

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R162-2f	Filing ID 54391

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Real Estate	
<b>Room no.:</b>	2nd Floor	
<b>Building:</b>	Heber M Wells	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 146711	
<b>City, state and zip:</b>	Salt Lake City, UT 84114	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Justin Barney	801-530-6603	justinbarney@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R162-2f. Real Estate Licensing and Practices Rules
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
One purpose of the proposed rule amendment is to implement the Governor's policy to reduce barriers to obtain a license to practice as a real estate sales agent or broker and to reduce unnecessary regulation. Another purpose is to make corrections and changes to the

language of the rule including technical and stylistic changes as described in the Rulewriting Manual as published by the Utah Office of Administrative Rules.

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The proposed rule amendment:

- 1) streamlines the procedure for division approval of required preclicensing education hours for an applicant actively licensed in another state;
- 2) increases the lookback time for the accumulation of required continuing education hours for activation of a license from one year to two years;
- 3) deletes outdated references to a property management principal broker;
- 4) deletes outdated references to paper forms no longer used by the Division of Real Estate (Division);
- 5) eliminates certain fees;
- 6) deletes Section R162-2f-402 on investigations as investigations are covered in statute; and
- 7) makes corrections specified in the Rulewriting Manual.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The Division has the staff and budget in place to administer this proposed rule amendment. Most of the proposed changes are technical or stylistic in nature will not impact the state's budget.

The proposed amendment to Section R162-2f-202a would save time for existing employees and therefore, allow them to focus more time on other job duties and responsibilities. This would allow them to better serve the licensees. However, the small overall percentage of time savings cannot be calculated and is not expected to result in a fiscal savings to the state budget.

The elimination of stated fees in Section R162-2f-202d that the Division might charge will likewise have no impact on the state's budget as the Division has not charged these fees for a number of years, according to the memory of Division employees. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in any cost or savings to the state budget.



<b>B) Local governments:</b>
Local governments are not required to comply with or enforce the Real Estate Licensing and Practices Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.
<b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):
The proposed amendments do not create new obligations for small businesses, nor do they increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to small businesses. There is no practical way to determine with precision the amount of savings that will result from these amendments.
<b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):
After conducting a thorough analysis, it was determined that the proposed rule amendments will not result in a fiscal impact to non-small businesses. There is no practical way to determine with precision the amount of savings that will result from these amendments.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b> ):
After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, state, or local government entities.
<b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):
In Section R162-2f-203, expanding the time for completion of continuing education (CE) from one year to two years for individuals activating their license is not expected to have a fiscal impact on affected persons or such impact cannot be determined. The proposed rule amendment does not require a person activating their license to obtain more hours of CE or fewer hours of CE, but it would provide a two-year lookback period for accumulation of those hours. It is not possible to determine how many persons activating their license might benefit from the longer lookback period, or, if there are those who will benefit, what the cost savings would be. Sometimes a licensee incurs a cost to attend a CE class. Other times they are able to obtain CE at no cost to them. It is not possible to determine how many persons might have to obtain a fewer number of CE hours to activate their license, and, if so, what the cost savings would be. After conducting a thorough analysis, it was determined that the proposed rule amendment will result in a negligible fiscal

benefit to affected persons or the fiscal benefit cannot be calculated.

Other proposed amendments are technical or stylistic in nature will not result in a fiscal impact to affected persons.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

I have reviewed the proposed filing for the above-referenced rule and considered the fiscal impact on businesses be inserted at the appropriate place on the notice form to be filed with the Office of Administrative Rules for publication of this rulemaking action. Margaret Busse, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Commerce Department, Margaret Busse, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 61-2f-103	Section 61-2f-203	Section 61-2f-204
Section 61-2f-401		

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Jonathan Stewart, Director	<b>Date:</b>	03/01/2022
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**R162. Commerce, Real Estate.**

**R162-2f. Real Estate Licensing and Practices Rules.**

**R162-2f-101. Title and Authority.**

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

**R162-2f-102. Definitions.**

(1) "Active license" means a license granted to an applicant who:

- (a) qualifies for licensure under Section 61-2f-203 and this rule;
  - (b) pays applicable nonrefundable license fees; and
  - (c) affiliates with a principal brokerage.
- (2) "Advertising" means a commercial message through:
- (a) newspaper;
  - (b) magazine;
  - (c) Internet;

- (d) email[~~e-mail~~];
  - (e) radio;
  - (f) television;
  - (g) direct mail promotions;
  - (h) business cards;
  - (i) door hangers;
  - (j) signs;
  - (k) other electronic communication; or
  - (l) any other medium.
- (3) "Affiliate:"

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and this rule; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

- (a) record of an offer to purchase real estate;
- (b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

- (d) banking and other financial records;
- (e) independent contractor agreements;

- (f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

- (g) records of the brokerage's contractual obligations.

- (8) "Business day" is defined in Section 61-2f-102.
- (9) "Certification" means authorization from the division

to:

- (a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or
- (b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be:

- (a) core topics identified in Subsection R162-2f-206c(6)(c);
- (b) elective topics identified in Subsection R162-2f-206c(6)(e); or
- (c) mandatory courses identified in Subsection R162-2f-206c(6)(f).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance ~~and~~ or is irregular.

(14) "Day" means calendar day unless specified as business day.

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(19) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(20) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "Limited agency" means the representation of each of the principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of each principal to the transaction.

(24) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(26) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and this rule for licensure as a principal broker, associate broker, or sales agent.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, manager, or employee of the entity that is the buyer, seller, lessor, or lessee.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Section 61-2f-102.

(31) "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(32) "Reinstatement" is defined in Section 61-2f-102.

(33) "Reissuance" is defined in Section 61-2f-102.

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Section 61-2f-102.

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(38) "Sponsor" means:

(a) a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(39) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

- (a) mortgage brokers;
- (b) mortgage lenders;
- (c) loan originators;
- (d) title service providers;
- (e) attorneys;
- (f) appraisers;
- (g) providers of document preparation services;
- (h) providers of credit reports;
- (i) property condition inspectors;
- (j) settlement agents;
- (k) real estate brokers;
- (l) marketing agents;
- (m) insurance providers; and
- (n) providers of any other services for which a principal or investor will be charged.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where both the instructor and students are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Section 57-29-102.

(42) "Virtual-live continuing education" means continuing education that is presented in a live, video conferencing format, using interactive instructional methods where teacher and student may be separated by distance but not by time. The teacher can [is able to] interact, and does interact in real time with the students.

**~~R162-2f-105. Fees.~~**

~~Any fee collected by the division is nonrefundable.~~

**R162-2f-200. Owner.**

(1) For purposes of ~~Subsection~~[Section] 61-2f-202(1):

- (a) "owner" means a person who has:
  - (i) a sole ownership interest in real estate, or
  - (ii) an ownership interest in real estate as a joint tenant or a tenant in common;
- (b) "owner or lessor" does not include:
  - (i) a person who holds an option to purchase real property;
  - (ii) a mortgagee;
  - (iii) a beneficiary under a deed of trust;
  - (iv) a trustee under a deed of trust; or
  - (v) a person who owns or holds a claim that encumbers any real property or an improvement to the real property.

(2) For purposes of Subsection 61-2f-202(1)(a)(i):

- (a) any person performing an act described in Subsection 61-2f-102(20) on behalf of an entity must be:
  - (i) if the entity is a corporation, an officer or director of the corporation;
  - (ii) if the entity is a limited liability company,
    - (A) a member of a member-managed limited liability company, or
    - (B) a manager of a manager-managed limited liability company;
  - (iii) if the entity is a partnership, a partner of the partnership;

(iv) if the entity is a limited partnership, a general partner of the limited partnership;

(v) if the entity is a trust, a trustee of the trust;

(vi) if the entity is an estate of a deceased individual, a court-appointed personal representative of the estate; or

(vii) if the entity is the estate of an individual subject to a conservatorship, a court-appointed conservator of the estate.

(b) A person who is an entity or organization not described in Subsections ~~2(a)(1)(e)~~(i) through (vii) [above] is not exempt from licensure under Subsection 61-2f-202(1)(a)(i).

**R162-2f-201. Qualification for Licensure.**

(1) Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions with particular consideration given to any such acts involving:

(A) a felony conviction occurring within the five years preceding the date of application;

(B) a jail or prison term resulting from a felony conviction with a release date falling within the five years preceding the date of application;

(C) a conviction of a class A or class B misdemeanor, or similar offense, involving fraud, misrepresentation, theft, or dishonesty occurring within the three years preceding the date of application; or

(D) a jail term resulting from a conviction of a class B or class A misdemeanor, or similar offense, involving fraud, misrepresentation, theft, or dishonesty with a release date falling within the three years preceding the date of application;

(ii) plea agreements;

(iii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iv) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(v) court findings of fraudulent or deceitful activity;

(vi) evidence of non-compliance with court orders or conditions of sentencing; and

(vii) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or

(C) a plea in abeyance.

(b)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, [in order] to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include the following:

(A) assault, including domestic violence;

(B) rape;

- (C) sex abuse of a child;
- (D) sodomy on a child;
- (E) battery;
- (F) interruption of a communication device;
- (G) vandalism;
- (H) robbery;
- (I) criminal trespass;
- (J) breaking and entering;
- (K) kidnapping;
- (L) sexual solicitation or enticement;
- (M) manslaughter; and
- (N) homicide.

(iii) Information and documents submitted in compliance with this Subsection (1) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.

(2) In evaluating an applicant for competency, the division and commission may consider evidence including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
  - (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
  - (c) suspension or revocation of a professional license;
  - (d) sanctions placed on a professional license; and
  - (e) investigations conducted by regulatory agencies.
- (3) ~~[Age-]~~An applicant shall be at least 18 years of age.
- (4) ~~[Minimum education. An applicant shall have:]~~The minimum education required for an applicant for licensure is:
- (a) a high school diploma;
  - (b) a GED; or
  - (c) equivalent education as approved by the commission.

#### **R162-2f-202a. Sales Agent Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
  - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
  - (B) completing other equivalent real estate education within the 12-month period ~~before~~prior to the date of application;
  - (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
  - (ii) pay a nonrefundable examination fee to the testing center;
  - (e) pursuant to Subsection (3)(a), take and pass both the state and national components of the licensing examination;
  - (f) pursuant to Subsection (3)(b), submit to the division an application for licensure including:
    - (i) documentation indicating successful completion of the required prelicensing education;
    - (ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and ~~email~~e-mail addresses;

(g) if applying for an active license, affiliate with a principal broker; and

(h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete ~~division~~120 hours of approved prelicensing education relating to Utah law and administrative rules;

(ii) evidence current membership in the Utah State Bar; or

(iii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;

(B) completing other equivalent real estate education within the 12-month period ~~before~~prior to the date of application; or

(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e)(i) pursuant to Subsection (3)(a), take and pass both the state and national components of the licensing examination; or

(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:

(A) take and pass the state component of the licensing examination; and

(B) apply to the division for a waiver of the national component of the licensing examination;

(f) pursuant to Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the required prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and ~~email~~e-mail addresses;

(g) provide from any state where licensed:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(h) if applying for an active license, affiliate with a principal broker; and

(i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(3) The deadlines for sales agent licensing are as follows:

(a) An individual shall pass both the state and national components of the licensing examination within 12 months of the date on which the individual completes the prelicensing education.

(b) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the preclicensing education.

(c) An application for licensure shall be submitted within 90 days of the date on which the individual achieves passing scores on both examination components.

(d) If any deadline in this section falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-202b. Broker Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved preclicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period ~~before~~~~[prior to]~~ the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application either:

(A) three years full-time, licensed, active real estate experience; or

(B) two years full-time, licensed, active, real estate experience and one year full-time professional real estate experience from the optional experience table in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 documented experience points complying with Section R162-2f-401a, as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2, of which a maximum of 25 points may have been accumulated from the "~~All other~~Other property management" subsections of Appendix 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(iii) a minimum of one-half of the experience points from Tables 1 and 2 must derive from transactions of properties located in ~~the state of~~ Utah;

(iv) evidence of qualifying experience which the individual shall submit to the division by:

(A) selecting from the individual's total qualifying experience documented experience points for which the experience complies with the requirements in Section R162-2f-401a; and

(B) submitting for review and approval by the division documentation of at least 60 documented experience points and no more than 80 documented experience points of the individual's qualifying experience; and

(v) if an individual submits evidence of experience points for transactions involving a team or group, experience points are limited to those transactions for which the individual is named in any written agency agreements and purchase and lease contracts and the applicable experience points will be divided proportionally among the licensees identified in the agency agreements and lease contracts;

(g) pursuant to Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker preclicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and ~~email~~~~[e-mail]~~ addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund;

(k) if applying for licensure as a principal broker, establish real estate and property management trust accounts, as applicable pursuant to Sections R162-2f-403a and R162-2f-403b that:

(i) for a real estate trust account contains either the term "real estate trust account" or "real estate escrow account" in the account name;

(ii) for a property management trust account contains either the term "property management trust account" or "property management escrow account" in the account name; and

(iii) are separate from any operating accounts of the registered entity for which the individual will serve as principal broker; and

(l) if applying for licensure as a principal broker, identify the locations where brokerage records will be kept.

(2)(a) If an individual applies under this section within two years of allowing a broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under Subsection (1)(f) may bring the application before the commission.

(3) Deadlines for passing tests and submitting an application are as follows:

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the preclicensing education.

- (b) An application for licensure shall be submitted:
  - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
  - (ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this section falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) A broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

~~(5) [Dual broker licenses. ————]~~(a)(i) A person who holds or obtains a dual broker license may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Sections R162-2f-401j, R162-2f-403a, and R162-2f-403b.

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

~~(c) As of May 8, 2013:~~

~~(i) the Division shall:~~

~~(A) cease issuing property management principal broker (PMPB) licenses;~~

~~(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;~~

~~(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and~~

~~(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and~~

~~(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to Subsection (5)(c)(i)(C).]~~

**R162-2f-202c. Associate Broker Licensing Fees and Procedures.**

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

**R162-2f-202d. Property Management Sales Agent Licensing Fees and Procedures.**

(1) A sales agent affiliated with a dual broker through a property management company may act as a property management sales agent if:

(a) the dual broker designates the sales agent as a property management sales agent, and

(b) the sales agent pays to the division the property management sales agent designation fee.

(2) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of the dual broker if the property management sales agent:

(a) provides property management services only through the property management company overseen by the dual broker, and

(b) provides real estate sales services only through the real estate brokerage overseen by the dual broker.

~~[(3) Before a property management sales agent may affiliate with another principal broker who is not a dual broker or with a dual broker who does not approve of the property management sales agent designation, the property management sales agent shall pay the additional fee to remove the property management sales agent designation.]~~

**R162-2f-203. Inactivation and Activation.**

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) ~~before~~~~[prior to]~~ inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) ~~before~~~~[prior to]~~ the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the ~~two~~~~one~~-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics of which three hours shall include the Mandatory 3-Hour CE course; or

(C) having passed the licensing examination within the six-month period ~~before~~~~prior to~~ the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non[-]refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

#### **R162-2f-204. License Renewal or Reinstatement.**

(1) (a) A license issued under this rule is valid for a period of two years from the date of licensure.

(b) To renew on time without incurring a late fee, an applicant for renewal shall, by the 15th day of the month of expiration, have completed ~~all~~ each of the continuing education credits required under Subsection (2)(b) to ensure continuing education providers have time to bank continuing education hours ~~before~~~~prior to~~ license expiration.

(c) An individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, in the licensee's individual password protected RELMS account, by the license expiration date.

(d) An individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal application:

(i) by the license expiration date, if that date falls on a day when the division is open for business; or

(ii) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal or reinstatement.

(a) Character and competency.

(i) An individual applying for a renewed license or for reinstatement of a license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed or reinstated license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency

since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an actively licensed individual shall complete:

(A) the 12-hour new sales agent course certified by the division;

(B) the Mandatory 3-Hour CE course; and

(C) an additional three non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle ~~after~~~~subsequent to~~ the first renewal, an actively licensed individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum, three hours of which are for completion of the Mandatory 3-Hour CE Course, a required continuing education course approved by the division; and

(III) taken during the previous license period; or

(B) apply to the division by the 15th day of the month of expiration for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii) If when renewing at the end of a renewal cycle ~~after~~~~subsequent to~~ the first renewal, an actively licensed individual did not previously complete the 12-hour new sales agent course when qualifying for the individual's current license, the individual shall complete the 12-hour new sales agent course certified by the Division plus an additional six hours of non-duplicative core topic or elective continuing education hours.

(iv) The Division has certified the mandatory 3-Hour course and the 12-hour new sales agent course as core hours for continuing education purposes.

(v)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(j).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(j), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) ~~[Principal broker.]~~In addition to meeting the requirements of Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Sections R162-2f-403a and R162-2f-403b.

(3) Renewal and reinstatement procedures.



(a) To renew a license, an applicant shall, ~~before~~~~[prior to]~~ the expiration of the license:

(i) complete the online renewal of the license in the applicant's password protected RELMS account; and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) through 61-2f-204(2)(d):

(i) submit any forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2), including the Mandatory 3-Hour CE course; and

(ii) pay a nonrefundable reinstatement fee.

(4) ~~[Transition to online renewal.]~~ An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

#### **R162-2f-205. Registration Required.**

(1) A principal broker may not engage in any activity described in Section 61-2f-201 through:

(a) an entity as defined in Section 61-2f-102;

(b) a branch office;

(c) an assumed name; or

(d) a separate property management company;

without first registering the entity, branch office, assumed name, or separate property management company with the division.

(2) The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for ~~12~~~~[twelve]~~ months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register with the division, a principal broker shall:

(a) evidence that the name of the registrant is registered with the Division of Corporations;

(b) certify that the registrant is affiliated with a principal broker who:

(i) is authorized to use the name of the registrant; and

(ii) will actively supervise the activities of each sales agent, associate broker, branch broker, and unlicensed staff member;

(c) if registering a branch office, submit an application that identifies:

(i) the branch broker who will actively supervise each licensee and unlicensed staff working from the branch office;

(ii) the physical address of the branch office;

(iii) the name and license number of the branch broker;

(iv) the names of associate brokers and sales agents assigned to the branch office; and

(v) the location and account number of each real estate and property management trust account in which funds received at the registered location will be deposited;

(d) if the applicant is not a branch office, submit an application that identifies:

(i) the location and account number of each operating account used by the registrant; and

(ii) the location where brokerage records will be kept; and

(e) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division may not register a registrant proposing to use a business name that:

(A) is likely to mislead the public into thinking that the registrant is not a real estate brokerage or property management company;

(B) closely resembles the name of another registrant of the division; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of a registrant's business name does not ensure or grant to the registrant a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) A registrant may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) Each trust account and operating account used by a registrant shall be maintained in a bank or credit union located in the state.

(5) Registration not transferable.

(a) A registrant may ~~[may]~~ not transfer the registration to any other person.

(b) A registrant may not allow an unlicensed person to use the registrant's registration to perform work for which licensure is required.

(c) If a change in structure of a registrant creates a separate and unique legal entity, branch office, assumed name, or separate property management company, the principal broker shall obtain a unique registration, and may not operate under an existing registration.

(d) The dissolution or termination of an entity, branch office, assumed name, or separate property management company registered with the division terminates the registration.

(6) The division may not bring an action for enforcement of this ~~[S]~~ section after the expiration of four years following the occurrence of the violation.

#### **R162-2f-206a. Certification of Real Estate School.**

(1) ~~Before~~~~[Prior to]~~ offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to ~~[this]~~ Subsection (2).

(2) To certify, a school applicant shall, at least 90 days ~~before~~~~[prior to]~~ teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an ~~email~~~~[e-mail]~~ address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to ~~[this]~~ Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

- (i) type of school; and
- (ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

- (i) a statement of whether each course is a prelicensing or continuing education course; and
- (ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructors~~[(s)]~~, including any guest lecturers~~[(s)]~~, who will be teaching each course;

(g) proof that each instructor is:

- (i) certified by the division;
- (ii) qualified as a guest lecturer by having:
  - (A) requisite expertise in the field; and
  - (B) approval from the division; or
- (iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

- (i) statement of attendance requirements as provided to students;
- (j) refund policy as provided to students;
- (k) disclaimer as provided to students and as specified in Subsection (3)(c);
- (l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);
- (m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;
- (n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and
- (o) any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

- (i) be typed in ~~[all]~~ capital letters at least 1/4 inch high; and
- (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

- (i) be provided to each student ~~before[prior to]~~ the school accepting payment; and
- (ii) clearly inform the student that upon application with the division, the student will be required to:
  - (A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;
  - (B) submit fingerprint cards to the division and consent to a criminal background check; and
  - (C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;
- (iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and
- (iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

- (i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;
- (ii) be typed in ~~[all]~~ capital letters at least 1/4 inch high;
- (iii) inform the students that the division grants education waivers for qualified individuals; and
- (iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date ~~[in order]~~ to remain active.

- (b) To renew a school certification, an applicant shall:
  - (i) complete a renewal application as provided by the division; and
  - (ii) pay a nonrefundable renewal fee.
- (c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:
  - (i) comply with ~~the [all]~~ requirements for a timely renewal; and
  - (ii) pay a nonrefundable late fee.
- (d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:
  - (i) comply with ~~the [all]~~ requirements for a timely renewal; and
  - (ii) pay a non[-]refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this ~~subsection~~ ~~Subsection (4)]~~ falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206b. Certification Prelicensing Course.**

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days ~~before~~ ~~prior to~~ the date on which the course is proposed to begin, provide the following to the division:

- (a) a comprehensive course outline including:
  - (i) a description of the course, including a statement of whether the course is designed for:
    - (A) sales agents; or
    - (B) brokers;
  - (ii) ~~the~~ number of class periods spent on each subject area;
  - (iii) ~~a~~ minimum of three to five learning objectives for every three hours of class time; and
  - (iv) ~~a~~ reference to the course outline approved by the commission for each topic;
- (b) ~~the~~ number of quizzes and examinations;
- (c) ~~the~~ grading system, including methods of testing and standards of grading;
- (d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key~~(s)~~ used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of each required textbook~~[all required textbooks]~~.

(2) To certify a preclicensing course for distance education, a person shall, no later than 60 days before~~[prior to]~~ the date on which the course is proposed to begin, provide the following to the division:

(a) each item ~~[all items]~~ listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified preclicensing instructors will be available to answer student questions;

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and

(i) a description of the complaint process to resolve student grievances.

(3) As a minimum standard each ~~[Minimum standards. A ]~~ preclicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and this rule~~[these rules]~~;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination;

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and

(g) reflect the current statutes and rules of the division.

(4) A preclicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

#### **R162-2f-206c. Certification of Continuing Education Course.**

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified before~~[prior to]~~ its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days before~~[prior to]~~ the date on which the course is proposed to begin, provide the following to the division:

(a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of materials to be distributed to participants;

(k) signed statement in which the course provider and each instructor:

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) ~~[date or]~~ dates the course was taught;

(D) number of credit hours; and

(E) names and license numbers of each student receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with Subsection (2);

(b) submit to the division a complete description of the course delivery methods and the media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) To certify a continuing education course for virtual-live continuing education, a person shall:

(a) comply with Subsection (2);

(b) submit to the division a complete description of the course delivery methods and the media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific, frequent, and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(5)(a) Traditional continuing education courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) Except for a division approved virtual-live single session convention continuing education course as provided for in Subsection (5)(c), virtual-live continuing education courses are restricted as follows:

(i) each course with a class size of one to 50 students shall have at least one non-instructor monitoring assistant;

(ii) each course with a class size of between 51 and 100 students shall have at least two non-instructor monitoring assistants;

(iii) the division may not approve a virtual-live continuing education course for more than 100 students, regardless of the number of non-instructor monitoring assistants;

(iv) each student shall participate in the course with an adequately functioning microphone and live camera that is monitored by a non-instructor monitoring assistant; and

(v) the course instructor shall instruct using an adequately functioning microphone and live camera such that the instructor may be heard and seen during instruction by student participants.

(c) The division may approve a virtual-live single session convention continuing education course on a per course basis that is designed to meet the needs of students without limitation of the number of participating students.

(d) The minimum length of a course shall be one credit hour.

(e) The procedure for taking attendance shall be more extensive than having the student sign a class roll.

(f) The completion certificate shall include the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(6) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) ~~state-approved~~~~[state approved]~~ forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) fair housing;

(xi) division administrative rules;

(xii) broker trust accounts; and

(xiii) water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use each form or contract taught in the course;

(ii) obtain permission for licensees to subsequently use each form or contract taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and sub\_agency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) ~~landlord-tenant~~~~[landlord/tenant]~~ relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) affirmative marketing;

(xxxii) commercial real estate;

(xxxiii) tenancy in common;

(xxxiv) professional development;

(xxxv) business success;

(xxxvi) customer relation skills;

(xxxvii) sales promotion, including:

(A) salesmanship;  
 (B) negotiation;  
 (C) sales psychology;  
 (D) marketing techniques related to real estate knowledge;  
 (E) servicing clients; and  
 (F) communication skills;  
 (xxxviii) personal and property protection for licensees and their clients;

(xxxix) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;

(xl) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xli) technology courses that utilize the majority of the time instructing students how the technology:

(A) directly benefits the consumer; or  
 (B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Mandatory Courses include the following:

(i) the Mandatory Residential Course;  
 (ii) the Mandatory Property Management Course; or  
 (iii) the Mandatory Commercial Course.

(g) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;  
 (B) speed reading;  
 (C) memory improvement;  
 (D) language report writing;  
 (E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;  
 (B) stress management; and  
 (C) dress-for-success;

(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:

(A) sales meetings;  
 (B) in-house staff meetings or training meetings; and  
 (C) member orientations for professional organizations;  
 (iv) courses in wealth creation or retirement planning for licensees; and

(v) courses that are specifically designed for exam preparation.

(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.

(7)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date ~~[in order]~~ to remain active.

(b) To renew a continuing education course certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:

(i) comply with the requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with the requirements for a timely renewal; and

(ii) pay a non[-]refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this subsection ~~[Subsection (7)]~~ falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-206d. Certification of Prelicensing Course Instructor.**

(1) An instructor shall certify with the division ~~before~~~~[prior to]~~ teaching a prelicensing course.

(2) To certify, an applicant shall provide, within the 30-day period ~~before~~~~[prior to]~~ the date on which the applicant proposes to begin instruction:

(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(b) evidence of having graduated from high school or achieved an equivalent education;

(c) evidence that the applicant understands the real estate industry through:

(i) a minimum of five years of full-time experience as a real estate licensee;

(ii) post[-]graduate education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(d) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(e) evidence of having passed an examination:

(i) designed to test the knowledge of the subject matter proposed to be taught;

(ii) with a score of 80% or more correct responses, and;

(iii) within the six-month period preceding the date of application;

(f) name and certification number of the certified prelicensing school for which the applicant will work;

(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(h) a signed statement agreeing not to market personal sales products;

(i) any other information the division requires;

(j) an application fee; and

(k) course-specific requirements as follows:

(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and

(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.

(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:

(a) Brokerage Management. An applicant shall:

- (i) hold a current real estate broker license;
- (ii) ~~have~~~~possess~~ at least two years practical experience as an active real estate principal broker; and
- (iii)(A) have experience managing a real estate office; or

(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.

(b) Advanced Real Estate Law. An applicant shall:

- (i) hold a current real estate broker license;
- (ii) evidence current membership in the Utah State Bar; or
- (iii)(A) have graduated from an American Bar Association accredited law school; and

(B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:

- (i) a current real estate broker license, or
- (ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

- (i) evidence at least two years practical experience in real estate finance; and
- (ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

- (i) evidence at least two years full-time experience as a property manager; or
- (ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A precicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date ~~in order~~ to remain active.

(b) To renew a precicensing course instructor certification, an individual shall:

- (i) submit each form ~~[all forms]~~ required by the division;
- (ii) evidence having taught, within the two-year period ~~before~~~~prior to~~ the date of application, a certified real estate course;
- (iii) evidence having attended, within the two-year period ~~before~~~~prior to~~ the date of application, an instructor development workshop sponsored by the division; and
- (iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired precicensing course instructor certification within 30 days following the expiration date, a person shall:

- (i) comply with each requirement ~~[all requirements]~~ for a timely renewal; and
- (ii) pay a nonrefundable late fee.

(d) To reinstate an expired precicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

- (i) comply with each requirement ~~[all requirements]~~ for a timely renewal; and
- (ii) pay a non~~-~~refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this subsection ~~[Subsection (5)]~~ falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206e. Certification of Continuing Education Course Instructor.**

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify as an instructor for any continuing education course other than the Mandatory 3-Hour CE course, an applicant shall, within the 30-day period ~~before~~~~prior to~~ the date on which the applicant proposes to begin instruction, provide the following:

- (a) name and contact information of the applicant;
- (b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

- (c) evidence of having graduated from high school or achieved an equivalent education;

- (d) evidence that the applicant understands the subject matter to be taught through:

- (i) a minimum of two years of full-time experience as a real estate licensee;

- (ii) college-level education related to the course subject; or

- (iii) demonstrated expertise on the subject proposed to be taught;

- (e) evidence of ability to teach through:

- (i) a minimum of 12 months of full-time teaching experience; or

- (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;

- (f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

- (g) a signed statement agreeing not to market personal sales products;

- (h) any other information the division requires; and

- (i) a nonrefundable application fee.

(3) To certify as an instructor of the Mandatory 3-Hour CE course, an applicant shall:

- (a) attend the instructor development workshop at least once every two years or, if the division approves an alternative training session, attend the alternative training session at the time and location designated by the division; and

- (b) comply with the requirements described in Subsection (2).

(4)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date ~~in order~~ to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

- (i) submit each form ~~[all forms]~~ required by the division;
- (ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

- (B) submit written explanation outlining:

- (I) the reason for not having taught a minimum of 12 continuing education credit hours; and

- (II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

- (iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with each requirement [~~all requirements~~] for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non[-]refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this subsection [~~Subsection (4)~~] falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **RI62-2f-207. Reporting a Change of Information.**

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) a change in licensee's name; and

(ii) a change in licensee's business, home, email [~~e-mail~~], or mailing address.

(b) In addition to complying with Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) the termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to Subsection (1)(b)(i);

(B) a change in assignment of branch broker; and

(C) the termination of the principal broker's affiliation with an entity.

(2) [~~Entity notification requirements.~~] A registered entity shall report the following to the division:

(a) a change in entity's name;

(b) a change in entity's affiliation with a principal broker;

(c) a change in corporate structure;

(d) the dissolution of incorporation; and

(e) a change of location where brokerage records are kept.

(3) Notification procedures.

(a) [~~Name.~~] To report a change in name, a person shall submit to the division a [~~paper~~] change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) [~~Address.~~] To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a [~~paper~~] change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a [~~paper company/~~] company or branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until each party to every transaction agrees in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) [~~Branch broker.~~] To change an assignment of branch broker, a principal broker shall submit a [~~paper~~] change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with Subsection (3)(c)(ii)(B).

(e) [~~Brokerage records.~~] To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) [~~Unavailability of individual.~~] If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change and, as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt; or

(b) sending an email to notify the individual.

The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(5) The termination of affiliation by sending an email is effective 10 days after the date that the email was sent.

(6) ~~[Fees.]~~The division may require a notification submitted pursuant to this section to be accompanied by a nonrefundable change fee.

(7) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division ~~when~~~~[at the time]~~ the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(8) ~~[Effective date.]~~A change reported in compliance with this ~~section~~~~[Section R162-2f-207]~~ becomes effective with the division the day on which the properly executed change form is received by the division.

#### **R162-2f-307. Undivided Fractionalized Long-Term Estate.**

A person who sells or offers to sell an undivided fractionalized long-term estate shall disclose to each prospective purchaser certain information related to the real property in which the undivided fractionalized long-term estate is offered, as described in this rule. A real estate licensee who markets an undivided fractionalized long-term estate shall obtain from the sponsor or seller and provide to each prospective purchaser the required information related to the real property in which the undivided fractionalized long-term estate is offered. The information required to be disclosed hereunder shall be in written or documented form, which shall be provided to the purchaser ~~before~~~~[prior to]~~ purchasing, and shall include the following:

(1) for ~~each~~ ~~[all]~~ undivided fractionalized long-term estate[s]:

(a) a brief account describing the professional qualifications, background, and experience of the sponsor;

(b) any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;

(c) the tenant in common agreement or other agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;

(d) description of any improvements to the real property in which the undivided fractionalized long-term estate is offered;

(e) any defects in the property known by the sponsor that may materially affect the value of the property;

(f) material information known by the sponsor concerning any environmental issues affecting the real property; and,

(g) a preliminary title report on the real property;

(2) in addition to the disclosures required by ~~§~~~~[s]~~ subsection (1), if the undivided fractionalized long-term estate includes:

(a) management of the real property by the sponsor or an affiliate of the sponsor in accordance with ~~Subsections~~~~[UCA Section]~~

61-1-13(1)(ee)(ii)(C)(II) and (III), the information required to be disclosed shall include:

(i) the sponsor's continuing interest, if any, in the real property;

(ii) any bankruptcies or civil lawsuits involving the sponsor and each affiliate of the sponsor;

(iii) whether any affiliate of the sponsor is or is expected to become a ~~third party~~~~[third party]~~ service provider to the real property;

(iv) any relationship between the property managers and the sponsor; and,

(v) any property management agreements that would continue after the sale;

(b) multiple tenants, the information required to be disclosed shall include:

(i) any rent rolls and payment history for the property which the sponsor has in their possession, custody, or control; and

(ii) any tenant financial records the sponsor has in their possession, custody, or control;

(c) debt on the real property, the information required to be disclosed shall include:

(i) each of the loan documents; and

(ii) a current loan statement;

(d) a master lease agreement, the information required to be disclosed shall include:

(i) the master lease agreement;

(ii) disclosure of the sponsor's relationship with the master tenant, if any;

(iii) if the master lease tenant is an affiliate of the sponsor, or the sponsor participated in establishing the master lease:

(A) audited financial statements of the master lease tenant;

and

(B) ~~each bankruptcy or civil lawsuit~~ ~~[all bankruptcies or civil lawsuits]~~ involving the sponsor, an affiliate of the sponsor, or the master lease tenant.

#### **R162-2f-401a. Affirmative Duties Required of Licensed Individuals.**

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above any other interest, including the agent's own;

(b) obedience, which obligates the agent to obey any lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for any money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;



(2) ~~[for the purpose of defining the scope of the individual's agency, execute]~~ define the scope of the individual's agency by executing a written agency agreement between the individual and the individual's principal, including:

(a) sellers~~[(s)]~~ the individual represents;

(b) buyers~~[(s)]~~ the individual represents;

(c) buyers~~[(s)]~~ and sellers~~[(s)]~~ the individual represents as a limited agent in the same transaction pursuant to Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) ~~[in order to represent]~~ if representing both principals in a transaction as a limited agent, obtain prior informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each may ~~[is entitled to]~~ be represented by a separate agent;

(ii) the type~~[(s)]~~ of information that will be held confidential;

(iii) the type~~[(s)]~~ of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey any lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe any money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;

(6) ~~before [prior to]~~ the execution of a binding purchase or lease agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationships~~[(s)]~~; and

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(7) ~~before offering [in order to offer]~~ any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(8) ~~before offering [in order to offer]~~ a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(9) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(10) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(11) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(12) if the licensee desires to act as a sub-agent for ~~[the purpose of]~~ showing property owned by a seller who is under contract with another brokerage, ~~before [prior to]~~ showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage any available information about the property; and

(d) uphold the same fiduciary duties outlined in Subsection (1);

(13) provide copies of a lease or purchase agreement, properly signed by each party, to the party for whom the licensee acts as an agent;

(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16)(a) disclose in writing to each party to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17)(a) in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) ~~before signing or initialing~~~~[in order to sign or initial]~~ a document on behalf of a principal in a sales transaction:

(a) obtain prior written authorization in the form of a power of attorney ~~[duly]~~executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) ~~before signing or initialing~~~~[in order to sign or initial]~~ a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's initials), on behalf of Owner;"

(21) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to~~[the provisions of]~~ Section R162-2f-401g;

(22) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(23) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(24) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(25) as contemplated by Subsection ~~61-2f-401(18)~~~~[61-2f-401(20)]~~, when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

#### **R162-2f-401b. Prohibited Conduct As Applicable to Licensed Individuals.**

(1) An individual licensee may not:

(a) engage in any of the practices described in Section 61-2f-401 and the following sections, whether acting as agent or on the licensee's own account, in a manner that:

(i) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(ii) could jeopardize the public health, safety, or welfare;

or

(iii) violates any provision of Title 61, Chapter 2f or the rules of this chapter;

(b) require parties to acknowledge receipt of a final copy of any document prepared by the licensee ~~before each party has signed~~~~[prior to all parties signing]~~ a contract evidencing agreement to the ~~contract~~ terms~~[thereof]~~;

(c) make a misrepresentation to the division:

(i) in an application for license renewal; or

(ii) in an investigation.

(d)(i) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(ii) knowingly participate in a transaction in which such a false device is used;

(e) participate in a transaction in which a buyer enters into an agreement that:

(i) is not disclosed to the lender; and

(ii) if disclosed, might have a material effect on the terms or the granting of the loan;

(f) use or propose the use of a double contract;

(g) place a sign on real property without the written consent of the property owner;

(h) take a net listing;

(j) sell listed properties other than through the listing broker;

(j) subject a principal to paying a double commission without the principal's informed consent;

(k) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(l) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(i) a licensee may give a gift valued at \$250 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(ii) as to a property management transaction, a licensee may compensate an unlicensed employee or previous or current tenant up to \$250 per lease for assistance in retaining an existing tenant or securing a new tenant;

(m) accept a referral fee from:

(i) a lender; or

(ii) a mortgage broker;

(n) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(i) mortgage loan originator, associate lending manager, or principal lending manager;

(ii) appraiser or appraiser trainee;

(iii) escrow agent; or

(iv) provider of title services;

(o) act or attempt to act as a limited agent in any transaction in which:

(i) the licensee is a principal in the transaction; or

(ii) any entity in which the licensee is an officer, director, partner, member, manager, employee, or stockholder is a principal in the transaction;

(p) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(i) the boilerplate provisions of the Real Estate Purchase Contract; or

(ii) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(q) advertise or offer to sell or lease property without the written consent of:

(i) the owners~~[(\*)]~~ of the property; and

(ii) if the property is currently listed, the listing broker;

(r) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(s) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(24);

(t) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(u) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(v) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(w) charge any fee that represents the difference between:

(i) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(ii) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

(2) The division may not bring an action for enforcement of either Subsection (1)(g) or Subsection (1)(q) after the expiration of four years following the occurrence of the violation.

#### **R162-2f-401c. Additional Provisions Applicable to Brokers.**

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Section R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of each document executed in the transaction closing;

(d) ~~before assigning~~~~[in order to assign]~~ all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) strictly adhere to the rule governing real estate auctions, as outlined in Section R162-2f-401i;

(g) strictly adhere to the rule governing property management, as outlined in Section R162-2f-401j;

(h)(i) except as provided in Subsection (1)(h)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with Subsection (1)(h)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(i)(i) maintain at the principal business location a complete record of any consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible for deposits held in the principal broker's trust account;

(j)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iv) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding any such offer; and

(k) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in Subsection (1):

(i) actively supervise any such associate broker or branch broker;

(ii) remain personally responsible and accountable for adequate supervision of each licensee and unlicensed staff affiliated with the principal broker; and

(l) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active and reasonable supervision over the conduct of each licensee and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for any other responsibility and duty assigned to the branch broker by the principal broker and accepted by the branch broker.

(3) Active and reasonable supervision includes:

(a) the establishment of:

(i) written policies, rules, and procedures; and

(ii) systems that allow the broker to review, oversee, inspect, and manage:

(A) real estate transactions performed by a licensee affiliated with the broker at either the main office or a branch supervised by the broker;

(B) documents that may have a material effect upon the rights or obligations of a party to such real estate transaction;

(C) the filing, storage, and maintenance of such documents;

(D) the handling of trust funds;

(E) advertising of any service for which a real estate license is required;

(F) familiarizing licensees with the requirements of federal and state law governing real estate transactions including prohibitions against discrimination;

(G) to ensure that each person conducting licensed activity on behalf of the broker holds an active license;

(H) to ensure that each affiliated licensee ~~can~~<sup>is able to</sup> maintain reasonable and timely communication with the supervising broker or a competent designee to assist the licensee with real estate transactions handled by the brokerage; and

(I) to maintain adequate, reasonable, and regular contact with each affiliated licensee engaged in real estate transactions so as to prevent or curtail practices by a licensee that would violate the provisions of this chapter;

(b) being reasonably available to the public ~~[in order]~~<sup>to</sup> discuss or resolve complaints and disputes that may arise during ~~[the course of]~~ a real estate transaction in which the broker or affiliated licensee is involved;

(c) providing guidance to, and instruction and oversight of, each licensee and unlicensed staff member regarding the policies, rules, procedures, and systems of the brokerage;

(d) documenting the instruction and oversight provided pursuant to Subsection (3)(b); and

(e) establishing a system for monitoring compliance with the policies, rules, and procedures, and systems of the brokerage by licensees and unlicensed staff members.

(4) A principal broker or branch broker may use a licensee or unlicensed staff member to assist in administering ~~[the provisions of]~~ Subsection (3), except that the broker may not relinquish overall responsibility for active and reasonable supervision of the acts of licensees and unlicensed staff members affiliated or associated with the broker.

(5) In establishing such policies, rules, procedures, and systems, the broker shall consider the number of sales agents and associate brokers and the number and location of branch offices supervised by the broker.

(6) A principal broker and a branch broker are responsible for violations of Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and the rules promulgated thereunder by licensees and unlicensed staff members they supervise, except that neither a principal broker nor a branch broker shall be deemed in violation of failing to exercise active and reasonable supervision where:

(a) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(b) reasonable procedures were established by the broker to ensure that licensees receive active and reasonable supervision and the broker has followed those procedures;

(c) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(d) the broker did not participate in the violation;

(e) the broker did not ratify the violation; and

(f) the broker did not attempt to avoid learning of the violation.

#### **R162-2f-401d. School and Provider Conduct.**

(1) Affirmative duties. A school's owners ~~[(\*)]~~ and directors ~~[(\*)]~~ shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that each instructor complies ~~[all instructors comply]~~ with Section R162-2f-401e.

(d) ~~before~~<sup>prior to</sup> accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) ~~before~~~~[prior to]~~ using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing education course certification number issued by the division.

(2) Prohibited conduct. A provider may not:

(a) award continuing education credit for a course that has not been certified by the division ~~before~~~~[prior to]~~ its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation about a competing school or continuing education provider including a misrepresentation regarding personnel, a course of instruction, or a business practice;

(g) disseminate advertisements or public notices that are false or disparage the dignity and integrity of the real estate profession;

(h) make false or disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(p) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

#### **R162-2f-401e. Instructor Conduct.**

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in each interaction ~~[all interactions-]~~with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

#### **R162-2f-401f. Approved Forms.**

(1) The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(a) September 1, 2017, Real Estate Purchase Contract;

(b) January 1, 1987, Uniform Real Estate Contract;

(c) October 1, 1983, All Inclusive Trust Deed;

(d) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(e) January 1, 2020,~~[August 5, 2003,]~~ Addendum to Real Estate Purchase Contract;

(f) October 20, 2021,~~[August 27, 2008,]~~ Seller Financing Addendum to Real Estate Purchase Contract;

(g) January 1, 1999, Buyer Financial Information Sheet;

(h) January 1, 2021,~~[August 27, 2008,]~~ FHA/VA Loan Addendum to Real Estate Purchase Contract;

(i) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(j) August 1, 2018, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(k) August 1, 2018, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards; and

(l) January 1, 2018, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.

#### **R162-2f-401g. Use of Personal Assistants.**

~~[In order to]~~To employ an unlicensed individual to provide assistance in connection with a real estate transaction[s], an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in ~~[this]~~ Subsection (2)(a).

#### **R162-2f-401h. Requirements and Restrictions in Advertising.**

(1) Except as provided for in ~~S[s]~~ subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated. The division may not bring an action for enforcement of this subsection after the expiration of four years following the occurrence of the violation.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(23).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

#### **R162-2f-401i. Standards for Real Estate Auctions.**

For auctions of real property in this state:

(1) the auctioneer or auction company shall:

(a) be licensed as a principal broker under the Real Estate Licensing and Practices Act; ~~Utah Code Title 61, Chapter 2f;~~ or

(b) affiliate with a licensed principal broker for purposes of advertising and conducting each aspect ~~[all aspects]~~ of the auction;

(2) the auctioneer or auction company shall not advertise the services of the auctioneer or auction company directly to an owner of real property who is already subject to an agency agreement;

(3) if an auctioneer or auction company affiliates with a principal broker as provided in ~~Utah Administrative Code~~ R162-2f-401i(1)(b), the principal broker shall:

(a) ensure that each aspect of the auction complies ~~[all aspects of the auction comply]~~ with the requirements of this section and any other law ~~[all other laws otherwise]~~ applicable to real estate licensees in real estate transactions;

(b) ensure that advertising and promotional materials associated with an auction name the principal broker;

(c) attend and supervise the auction;

(d) ensure that any purchase agreement used at the auction is completed by an individual holding an active Utah real estate license and is filled out in compliance with Section 61-2f-306;

(e) ensure that any money deposited at the auction is placed in trust pursuant to Utah Administrative Code R162-2f-401c(1)(i); and

(f) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

#### **R162-2f-401k. Recordkeeping Requirements.**

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) trust account records, including the monthly reconciliation of the trust account;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection ~~R162-2f-401c(1)(c)~~ ~~[R162-2f-401e(1)(f)]~~;

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected;

(ii) the transaction either closes or fails; or

(iii) in a lease transaction, the termination of the lease agreement;

(3) upon request of the division, make any record identified in Subsection (1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

- (a) the filing; and
- (b) the current location of brokerage records.

**R162-2f-401. Gifts and Inducements.**

(1) An inducement gift is permissible and is not an illegal sharing of commission if the principal broker or affiliated licensee offering the inducement gift to a buyer or a seller complies with the underwriting guidelines that apply to any loan in the transaction for which the inducement has been offered.

(2) A closing gift is permissible and is not an illegal sharing of commissions.

~~**R162-2f-402. Investigations.**~~

~~The investigative and enforcement activities of the division shall include the following:~~

- ~~(1) verifying information provided on new license applications and applications for license renewal;~~
- ~~(2) evaluation and investigation of complaints;~~
- ~~(3) auditing licensees' business records, including trust account records;~~
- ~~(4) meeting with complainants, respondents, witnesses and attorneys;~~
- ~~(5) making recommendations for dismissal or prosecution;~~
- ~~(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;~~
- ~~(7) working with the assistant attorney general and representatives of other state and federal agencies; and~~
- ~~(8) entering into proposed stipulations for presentation to the commission and the director.]~~

**R162-2f-407. Administrative Proceedings.**

(1) An adjudicative proceeding conducted ~~after~~~~[subsequent to]~~ the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Other adjudicative proceedings.

(a) ~~[All adjudicative proceedings as to]~~~~Each adjudicative proceeding~~ for any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as either formal or informal in the division's notice of agency action or notice of proceeding, as applicable.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) ~~[Hearings required.]~~A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2);

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing;

(c) appealing a division order denying or restricting a license; and

(d) when an application presents unusual circumstances, such that the division determines that the application should be heard by the commission.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) ~~Each~~~~[All]~~informal adjudicative proceeding[s] shall adhere to procedures as outlined in:

(i) Title 63G, Chapter 4, Utah Administrative Procedures Act Title~~[63G, Chapter 4];~~

(ii) Title R151, Rule 4, Utah Administrative Code~~[Rule R151-4 et seq.];~~ and

(iii) the rules promulgated by the division.

(c) Except as provided in ~~[this]~~Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this ~~section~~~~[Subsection 407]~~, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. ~~Each~~~~[Any]~~delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days ~~before~~~~[prior to]~~ the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to ~~each party~~~~[all parties]~~unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, ~~[the]~~Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, ~~[the]~~Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Subsection R151-4-110(1)(a), ~~[Utah Administrative Code Section R151-4-110(1)(a)]~~, an attorney may represent a party.

(5) Additional procedures for informal disciplinary proceedings.

(a) The division shall ~~begin~~~~[commence]~~ a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

- (iii) a witness list, if applicable; and
- (iv) an exhibit list, if applicable.

(b) Answer.

(i) ~~When~~~~[At the time]~~ the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within ~~[thirty]~~30 days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent ~~when~~~~[at the time]~~ it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than ~~[thirty]~~30 days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

(6) Formal adjudicative proceedings shall be conducted pursuant to the Administrative Procedures Act and the rules promulgated by the Department of Commerce.

**R162-2f-501. Appendices.**

(1) When submitting evidence of qualifying experience which experience complies with the requirements in ~~S[ection]~~ R162-2f-401a as part of an application for licensure as a broker, an applicant shall select from the applicant's total qualifying experience at least 60 documented experience points and no more than 80 documented experience points for review and approval by the division.

(2) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in ~~[Utah Code]~~ Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(3) When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in ~~[the state of]~~Utah.

TABLE 1 APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS EXPERIENCE TABLE	
<u>RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate sales transaction:</u>	<u>Points that may be earned</u>
<u>(a) One-unit dwelling</u>	<u>2.5 points</u>
<u>(b) Two- to four-unit dwellings</u>	<u>5 points</u>
<u>(c) Apartments, 5 units or over</u>	<u>10 points</u>
<u>(d) Improved lot</u>	<u>2 points</u>
<u>(e) Vacant land or subdivision</u>	<u>10 points</u>
<u>COMMERCIAL</u>	<u>Points that may be earned</u>
<u>(f) Hotel or motel</u>	<u>10 points</u>
<u>(g) Industrial or warehouse</u>	<u>10 points</u>
<u>(h) Office building</u>	<u>10 points</u>
<u>(i) Retail building</u>	<u>10 points</u>

TABLE 2 APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT EXPERIENCE TABLE	
<u>RESIDENTIAL</u>	<u>Points that may be earned</u>
<u>(a) Each property management agreement</u>	<u>1 point per unit up to 5 points</u>
<u>(b) Each unit leased</u>	<u>1.25 points per unit</u>
<u>(c) Other property management</u>	<u>0.25 points per month*</u>
<u>COMMERCIAL -- hotel, motel, industrial, warehouse, office, or retail building</u>	<u>Points that may be earned</u>
<u>(a)(ii) Each property management agreement</u>	<u>1 point per unit up to 5 points</u>



(ii) Each unit leased	1.25 points per unit
(b) Each Owner Agreement of 5 units+	5 points
(ii) Each unit leased	1.25 pts < 2,000 sf 3 pts 2,001 -- 5,000 sf 5 pts > 5,000 sf
(e) Property management	1 pt/100,000 sf/month
(f) Other property management	1 pt/100,000 sf/month*
* When calculating experience points from Table 2, the total combined monthly experience credit claimed for "Other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.	

TABLE 3 APPENDIX 3 - OPTIONAL EXPERIENCE TABLE	
	Points that may be earned
Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month

TABLE 1  
APPENDIX 1 — REAL ESTATE SALES TRANSACTIONS  
EXPERIENCE TABLE

RESIDENTIAL — points can be accumulated from either the selling or the listing side of a real estate closing.

(a) One unit dwelling	2.5 points
(b) Two to four unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points

COMMERCIAL

(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points

TABLE 2  
APPENDIX 2 — LEASING TRANSACTIONS AND PROPERTY MANAGEMENT  
EXPERIENCE TABLE

RESIDENTIAL

(a) Each property management agreement	1 point per unit up to 5 points
(b) Each unit leased	1.25 points per unit
(c) All other property management	0.25 pt/month

COMMERCIAL — hotel/motel, industrial/warehouse, office, or retail building

(a) Each property management agreement	1 point per unit up to 5 points
(b) Each unit leased	1.25 points per unit
(c) All other property management	1 pt/month

\*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3  
APPENDIX 3 — OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

**KEY: real estate business, operational requirements, trust account records, notification requirements**  
**Date of Last Change: 2022[June 8, 2021]**  
**Notice of Continuation: March 26, 2020**  
**Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-479	Filing ID 54475

**Agency Information**

<b>1. Department:</b>	Education
<b>Agency:</b>	Administration
<b>Building:</b>	Board of Education
<b>Street address:</b>	250 E 500 S
<b>City, state and zip:</b>	Salt Lake City, UT84111
<b>Mailing address:</b>	PO Box 144200
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4200

<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Angie Stallings	801-538-7830	angie.stallings@schools.utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R277-479. Funding for Charter School Students With Disabilities on an IEP
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule is being updated in order to make this rule consistent with the Utah State Board of Education (USBE) practice.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The proposed amendment updates definitions and clarifies procedures for distribution of the charter school special education add-on.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures. It simply clarifies the formula for new charter schools so that they are funded at ten percent of estimated enrollment. These funds are already appropriated by the legislature each year.
<b>B) Local governments:</b>
This rule change is not expected to have any increased fiscal impact on local governments' revenues or expenditures. This will apply to new charter schools only who do not have historical data to base the calculations off for the special education add-on funding. This will not affect any existing Local Education Agencies (LEAs) and follows current practice.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures. This only applies to new charter schools.

<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>												
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.												
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>												
This rule change is not expected to have any fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only applies to new charter schools.												
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>												
There are no compliance costs for affected persons. This amendment requires no changes in practice for USBE or LEAs and has no compliance costs associated with it.												
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>												
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. In addition, this rule change is not expected to have any direct fiscal impact on small businesses. Sydnee Dickson, Superintendent												
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>												
<b>Regulatory Impact Table</b>												
<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</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> </tbody> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0
Fiscal Cost	FY2022	FY2023	FY2024									
State Government	\$0	\$0	\$0									
Local Governments	\$0	\$0	\$0									

Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Article X, Section 3	Section 53E-7-202	Subsection 53E-3-501(1)(c)(vi)(A)
Subsection 53E-3-401(4)		

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022
<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the	

effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/01/2022
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**R277. Education, Administration.**

**R277-479. Funding for Charter School Students With Disabilities on an IEP.**

**R277-479-1. 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 Constitution and state law;
  - (c) Subsection 53E-3-501(1)(c)(vi)(A), which directs the Board to adopt rules regarding services for persons with disabilities; and
  - (d) Section 53E-7-202, which directs the Board to set standards for state funds appropriated for students with disabilities.
- (2) The purpose of this rule is to specify standards and procedures for funding of charter school students with disabilities on an IEP.

**R277-479-2. Definitions.**

- (1) "Base" means prior year special education add-on WPU.
- (2) "Charter school" means a school authorized by a charter school authorizer under:
  - (a) Section 53G-5-305;
  - (b) Section 53G-5-306; or
  - (c) Section 53G-5-304.
- (3) "Charter school authorizer" or "authorizer" has the same meaning as that term is defined in Subsection 53G-5-102([4]3).
- (4) "Common Data Committee" or "CDC" means a group comprised of representatives of Board staff, the Legislative Fiscal Analyst's Office, the Governor's Office of Management and Budget, and the Utah State Tax Commission, that reports to the legislature with:
  - (a) estimates of the growth of students in Utah schools and how much it will cost to fund those students; and
  - (b) estimates of the tax dollars the state will receive for education.
- ([4]5) "Estimated enrollment" means [a charter school's projected student enrollment in the school's first year of operation as approved by the Superintendent]the enrollment projections done by the CDC as approved by the Superintendent and used for legislative projections.
- ([5]6) "Foundation" means the average of self-contained and resource special education students average daily membership over the previous five years.
- ([6]7) "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.
- ([7]8) "New charter school" means a charter school with less than five years of operation.

(8) "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.

(9) "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

(10) "Previous five years" means the five year span between the seventh and second prior fiscal year.

(11) "Significant expansion" means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.

(12) "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability in accordance with R277-750.

~~(13) "State Charter School Board" or "SCSB" means the charter school authorizer created in accordance with Section 53G-5-201.~~

(14) "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, and determined to be eligible for special education and related services.

(15) "Total enrollment" means the total number of all students enrolled in all campuses of a school as of the October 1 UTREx update.

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

(a) individual detailed student records to be exchanged electronically among public education LEAs and the Superintendent; and

(b) electronic transcripts to be sent to any post-secondary institution that participates in the e-transcript service.

### **R277-479-3. Charter School Special Education Add-On Funding.**

(1) For existing charter schools, the Superintendent shall calculate the foundation based on the average ADM of students with disabilities for the previous five years.

(2)(a) For new charter schools, the Superintendent shall calculate the foundation based on the average special education ADM for the number of years the new charter school has been in operation beyond the first year, until the charter school completes its fifth year of operation.

(b) In its first operational year, a new charter school shall receive special education funding based on estimated enrollment projections made by the CDC and approved by the Superintendent for legislative projections.

(c) ~~[Unless a new charter school identifies a purpose and target population in its application focusing on students with disabilities]~~ For a new charter school, the estimate of students with disabilities ~~[for a new charter school]~~ shall be 10 percent of the estimated enrollment.

(3) The foundation is the minimum amount a charter school may receive for special education-add on funding.

(4)(a) The Superintendent shall apply a positive growth adjustment to a charter school's foundation for weighted growth.

(b) Weighted growth is determined by comparing special education ADM and total ADM from the third and second prior fiscal years.

(c) The rate of growth in special education ADM may not exceed the rate of growth in total ADM.

(d) The Superintendent shall multiply positive weighted growth by a factor of 1.53 and add the result to a charter school's foundation.

(e) The Superintendent may not impose a funding cap based on the charter prevalence rate because a charter school is designed and authorized specifically to serve students with disabilities.

(f) When there is no growth, either because a charter school is new or because the same number of students are enrolled, the Superintendent may not apply a positive growth adjustment.

(5)(a) The Superintendent shall apply a negative growth adjustment to a charter school's base for decline in special education ADM.

(b) The negative growth adjustment is the base multiplied by the percentage of enrollment decline.

(c) The Superintendent shall subtract the result calculated under Subsection (5)(b) -from the base to determine WPU.

(d) When there is no decline in a charter school's enrollment of students with disabilities, either because the charter school is new or because the same number of students are enrolled, the Superintendent may not apply a negative growth adjustment to the charter school's allotment.

(e) If a negative growth adjustment brings the WPU below the foundation, the charter school shall receive the foundation WPU.

(6)(a) If an authorizer approves a significant expansion for a charter school, during the first and second years of expansion, the Superintendent shall ~~[apply an additional funding adjustment after the entire add-on WPU formula is calculated.]~~ multiply the projected increase in enrollment by the most recent prevalence rate to arrive at the WPU supplement for the charter school.

(b) After the first and second years of a charter school's expansion, the special education formula provided in this Section R277-479-3 shall account for the expansion.

(c) If an authorizer approves a significant expansion for a charter school during the third year of operation and beyond, ~~[The]~~ the Superintendent shall calculate a significant expansion adjustment by estimating the number of students with disabilities ~~[who will enroll as part of the expansion, and providing funding for these anticipated students]~~ to be ten percent of the projected enrollment, and provide funding for these anticipated students.

(d)(i) The Superintendent shall base the estimate under Subsection (6)(c) on a projected expansion adjustment calculated by the Superintendent accounting for expansion information provided by a charter school's authorizer.

(ii) The Superintendent shall multiply the projection by the prevalence rate of students with disabilities for the charter school for the most recent year calculated in the add-on formula.

(iii) The Superintendent shall allocate the resulting significant expansion adjustment WPU as an expansion supplement to the charter school's add-on WPU.

(7) Notwithstanding this Section R277-479-3, if a new charter school or significant expansion identifies a purpose and target population in its application focusing on students with disabilities, the Superintendent shall estimate the number of students with disabilities expected to enroll in consultation with the authorizer and the school.

**KEY: charter schools, students with disabilities**

**Date of Last Change: 2022[August 7, 2017]**

**Notice of Continuation: March 15, 2017**

**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53E-3-501(1)(c)(vi)(A); 53E-7-202; 53E-3-401(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-613	Filing ID 54476

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-613. LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Bullying and related issues are matters of heightened concerns for the Utah State Board of Education (USBE) and all Local Education Agencies (LEAs). The USBE reviewed this rule and felt updates were necessary to make on-going improvements in responding to bullying and related issues in the schools.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
Rule R277-613 modifies technical definitions, updates terminology used throughout the rules, and provides updated requirements for investigating and responding to bullying and related issues in the schools.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on USBE, because it pertains only to LEA policies.

<b>B) Local governments:</b>
This rule change is not expected to have any major fiscal impact on LEAs. Some staff time will be focused on updating policies more frequently, but it will not add FTEs or other costs. LEAs are directed to designate an existing individual to provide training and designate an individual to administer the grievance process. These directives do not add FTEs. Further, LEAs may reduce potential liability costs by maintaining and updating their policies and training more frequently.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures. It applies only to LEAs.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>
This rule change is not expected to have any fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. This rule only applies to LEAs.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no compliance costs for affected persons. This rule only applies to LEA policies.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
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. In addition, this rule change is not expected to have any direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Section 53E-3-501	Section 53G, Chapter 9
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Subsection 53E-3-401(4)	Section 53G-8-209	Section 53G-9-607
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/01/2022
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**R277. Education, Administration.**

**R277-613. LEA Policies and Training Regarding Bullying, Cyber-bullying, Hazing, Retaliation, and Abusive Conduct.**

**R277-613-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Section 53G-9-606, which directs the board to monitor LEA development and implementation of bullying and hazing policies;
  - (b) Section 53G-9-607, which directs the board to make rules that establish standards for high quality training related to bullying, cyber-bullying, hazing, and abusive conduct, and retaliation;
  - (c) Section 53E-3-501, which directs the Board to establish rules and minimum standards for the public schools governing discipline and control;
  - (d) Section 53G-8-209, which requires the Board, when making rules regarding student participation in cocurricular or extracurricular activities, to include:
    - (i) prohibitions against the use of foul, abusive, or profane language while in the classroom, on school property, or during a school sponsored activity; and
    - (ii) prohibitions against hazing, demeaning, or assaultive behavior, whether consensual or not;
  - (e) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
  - (f) Subsection 53E-3-401(4)(a), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of the rule is to:

(a) require LEAs to develop, update, and implement bullying, cyber-bullying, hazing, retaliation, and abusive conduct policies at the school district and school level;

(b) provide for regular and meaningful training of school employees and students;

(c) provide for enforcement of the policies in schools, at the state level and in public school athletic programs; and

(d) require an LEA to review allegations of bullying, cyber-bullying, hazing, retaliation, and abusive conduct.

**R277-613-2. Definitions.**

(1) "Abusive conduct" means the same as that term is defined in Subsection 53G-9-601(1).

(2)(a) "Bullying" means the same as that term is defined in Subsection 53G-9-601(2).

(b) The conduct described in Subsection 53G-9-601(2) constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

(3) "Civil rights violation" means bullying, cyber-bullying, harassment, or hazing that is targeted at a student based upon the students' or employees' identification as part of any group protected from discrimination under the following federal laws:

(a) Title VI of the Civil Rights Act of 1964;

(b) Title IX of the Education Amendments of 1972;

(c) Section 504 of the Rehabilitation Act of 1973; or

(d) Title II of the Americans with Disabilities Act of 1990.

(4) "Cyber-bullying" means the same as that term is defined in Subsection 53G-9-601(4).

(5) "Disruptive student behavior" means the same as that term is defined in Subsection 53G-8-210(1)(a).

(6) "Hazing" means the same as that term is defined in Subsection 53G-9-601(5).

(7)(a) "Incident" means one or more infractions committed by a student or group of students acting in concert, at the same time and place.

(b) A single incident may involve one or more victims and one or more offenders.

(8) "Infraction" means an act of prohibited behavior.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Participant" means any student, employee or volunteer coach participating in a public school sponsored athletic program or activity, including a curricular, co-curricular, or extracurricular club or activity.

(11) "Policy" means standards and procedures that:

(a) are required in Section 53G-9-605;

(b) include the provisions of Section 53G-8-202; and

(c) provide additional standards, procedures, and training adopted in an open meeting by an LEA board that:

(i) define bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(ii) prohibit bullying, cyber-bullying, hazing, retaliation, and abusive conduct;

(iii) require regular annual discussion and training designed to prevent bullying, cyber-bullying, hazing, and retaliation among school employees and students; and

(iv) provide for enforcement through employment action or student discipline.

(12) "Restorative justice practice" means a discipline practice that brings together students, school personnel, families, and

community members to resolve conflicts, address disruptive behaviors, promote positive relationships, and healing.

(13) "Retaliate" or "retaliation" means the same as that term is defined in Subsection 53G-9-601(7).

(14) "School employee" means the same as that term is defined in Subsection 53G-9-601(10).

(15) "Trauma-Informed Care" means a strengths-based service delivery approach that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for both the alleged victim and the individual who is alleged to have engaged in prohibited conduct, and that creates opportunities for targets to rebuild a sense of control and empowerment.

(16) "Volunteer" means a non-employee with significant, unsupervised access to students in connection with a school assignment.

**R277-613-3. Superintendent Responsibilities.**

(1) The Superintendent shall provide:

(a) a model policy on bullying, cyber-bullying, hazing, and retaliation as required in Section 53G-9-606;

(b) subject to availability of funds, model training and training opportunities on:

(i) the prevention and identification of bullying, cyber-bullying, hazing, and retaliation, that an LEA may use to train the LEA's employees, contract employees, and volunteers, including coaches; and

(ii) the reporting and review requirements in Section R277-613-5;

(c) subject to availability of funds, evidence based practices and policies related to the prevention of bullying, cyber-bullying, hazing, and retaliation.

(2) Although an LEA is required to have a policy on bullying, cyber-bullying, hazing, retaliation and abusive conduct as described in Section 53G-9-605 and this rule and provide training as described in Section 53G-9-607 and this rule, the LEA is not required to use the model policy or model training developed by the Superintendent described in Subsection (1).

(3) The Board may interrupt disbursements of funds consistent with Subsection 53E-3-401(8) and Rule R277-114 for failure of an LEA to comply with:

(a) Title 53G, Chapter 9, Bullying and Hazing; and

(b) this rule.

(4) In addition to the requirements of Title 53G, Chapter 9, Bullying and Hazing and this R277-613, LEAs are required to comply with applicable federal requirements.

**R277-613-4. LEA Responsibility to Create or Update Bullying Policies.**

(1) In addition to the requirements of Subsection 53G-9-605(3), an LEA shall:

(a) develop, update, and implement policies as required by Section 53G-9-605 and this rule, which shall include a prohibition on:

(i) bullying;

(ii) cyber-bullying;

(iii) hazing;

(iv) retaliation; ~~and~~

(v) abusive conduct; and

(vi) making a false report.

(b) post a copy of the LEA's policy on the LEA website;

(c) develop an action plan to address a reported incident of bullying, cyber-bullying, hazing, or retaliation; ~~and~~

(d) provide a requirement for a signed statement that meets the requirements of Subsection 53G-9-605(3)(h) annually ~~;~~ and

(e) review the policies required by this Subsection (1) regularly with input from stakeholders, as described in Subsection 53G-9-605(2)(a).

(2) A signed statement under Subsection (1)(d) may not be used as a substitute for other training requirements as set forth in this rule.

(~~2~~3)(a) As required by Section 53G-9-605, an LEA shall notify a parent of:

(i) a parent's student's threat to commit suicide; or

(ii) an incident of bullying, cyber-bullying, hazing, or retaliation involving the parent's student as a victim or an individual who is alleged to have engaged in prohibited conduct.

(b) An LEA shall:

(i) notify a parent described in Subsection (~~2~~3)(a) in a timely manner;

(ii) designate the appropriate school employee to provide parental notification; and

(iii) designate the format in which notification is provided to parents and maintained by the LEA.

(~~3~~4) Subject to the parental consent requirements of Section 53E-9-203, if applicable, an LEA shall assess students about the prevalence of bullying, cyber-bullying, hazing, and retaliation in LEAs and schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas.

(~~4~~5) An LEA shall take strong responsive action against retaliation, including assistance to victims and their parents in reporting subsequent problems and new incidents.

(~~5~~6)(a) An LEA shall provide that students, school employees, coaches, and volunteers receive training on bullying, cyber-bullying, hazing, ~~and~~ retaliation, and abusive conduct from individuals qualified to provide such training.

(b) The training described in Subsection (5)(a) shall

(i) include information on:

(A) bullying, cyber-bullying, hazing ~~and~~ retaliation, and abusive conduct;

(B) Discrimination under the following federal laws:

(I) Title VI of the Civil Rights Act of 1964;

(II) Title IX of the Education Amendments of 1972;

(III) Section 504 of the Rehabilitation Act of 1973; and

(IV) Title II of the Americans with Disabilities Act of 1990;

(C) how bullying, cyber-bullying, hazing ~~and~~ retaliation, and abusive conduct are different from discrimination and may occur separately from each other or in combination;

(D) how bullying, cyber-bullying, hazing, ~~and~~ retaliation, and abusive conduct are prohibited based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes; and

(E) the right of free speech and how it differs for students, employees, and parents;

(ii) complement the suicide prevention program required for students under Rule R277-620 and the suicide prevention training required for licensed educators consistent with Subsection 53G-9-704(1); and

(iii) include information on when issues relating to this rule may lead to student or employee discipline.

(~~6~~7) The training described in Subsection (~~5~~6) shall be offered to:

(a) new school employees, coaches, and volunteers within the first year of employment or service; and

(b) all school employees, coaches, and volunteers at least once every three years after the initial training.

(~~7~~8)(a) An LEA's policies developed under this section shall complement existing school policies and research based school discipline plans.

(b) Consistent with Rule R277-609, the discipline plan shall provide direction for dealing with bullying, cyber-bullying, hazing, retaliation, abusive conduct, and disruptive students.

(c) An LEA shall ensure that a discipline plan required by Rule R277-609:

(i) directs schools to determine the range of behaviors and establish the continuum of administrative procedures to be used by school personnel to address the behavior of students;

(ii) provides for identification, by position, of individuals designated to issue notices of disruptive student behavior, bullying, cyber-bullying, hazing, ~~and~~ retaliation, and abusive conduct;

(iii) designates to whom notices shall be provided;

(iv) provides for documentation of disruptive student behavior in the LEA's student information system;

(v) includes strategies to provide for necessary adult supervision;

(vi) is clearly written and consistently enforced; and

(vii) includes administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

#### **R277-613-5. Reporting and Incident Investigations of Allegations of Bullying, Cyber-bullying, Hazing, ~~and~~ Retaliation and Abusive Conduct.**

(1) In accordance with an action plan adopted in accordance with Subsection R277-613-4(1)(c), an LEA shall:

(a) investigate allegations of incidents of bullying, cyber-bullying, hazing, ~~and~~ retaliation, and abusive conduct in accordance with this section; ~~and~~

(b) provide an individual who investigates allegations of incidents of bullying, cyber-bullying, hazing, ~~and~~ retaliation, and abusive conduct with adequate training on conducting an investigation ~~;~~ and

(c) identify an LEA employee to be the point person with training and expertise to assist, direct, and supervise training of other employees in the responsibilities established in Subsections R277-613-5(1)(a) and (b).

(2)(a) An LEA shall investigate allegations of incidents described in Subsection (1)(a) by interviewing: ~~at least~~

(i) the alleged victim ~~and~~

(ii) the individual who is alleged to have engaged in prohibited conduct ~~;~~

~~;~~ (b) An LEA may also interview the following as part of an investigation:

(iii) parents of the alleged victim and the individual who is alleged to have engaged in prohibited conduct;

(~~iv~~iv) any witnesses;



~~(v)~~ school staff familiar with the alleged victim;~~and~~  
 (vi) school staff familiar with the individual who is alleged to have engaged in prohibited conduct; or

~~(vii)~~ other individuals who may provide additional relevant information.

(c) An individual who investigates an allegation of an incident shall inform an individual being interviewed that:

(i) to the extent allowed by law, the individual is required to keep all details of the interview confidential; and

(ii) further reports of bullying will become part of the review.

(3) The confidentiality requirement in Subsection (2)(c) does not apply to:

(a) conversations with law enforcement professionals;

(b) requests for information pursuant to a warrant or subpoena;

(c) a state or federal reporting requirement; or

(d) other reporting required by this rule.

(4) In conducting an investigation under this section, an LEA may:

(a) review disciplinary reports of involved students; and

(b) review physical evidence, consistent with search and seizure law in schools, which may include:

(i) video or audio;

(ii) notes;

(iii) email;

(iv) text messages;

(v) social media; or

(vi) graffiti.

(5) An LEA shall adopt a policy outlining under what circumstances the LEA will report incidents of bullying, cyber-bullying, harassment, and retaliation to law enforcement.

(6) An LEA shall adopt a policy outlining under what circumstances the LEA will investigate and report incidents of bullying, cyber-bullying,~~and~~ retaliation, and abusive conduct as civil rights violations.

(7) Following an investigation of a confirmed allegation of an incident of bullying, cyber-bullying, hazing,~~or~~ retaliation, or abusive conduct, if appropriate, an LEA may:

(a) in accordance with the requirements in Subsection (6), take positive restorative justice practice action, in accordance with policies established by the LEA; and

(b) support involved students through trauma-informed practices, if appropriate.

(8)(a) An alleged victim is not required to participate in a restorative justice practice as described in Subsection (7)(a) with an individual who is alleged to have engaged in prohibited conduct.

(b) If an LEA would like~~an alleged victim who is~~ a student to participate in a restorative justice practice, the LEA shall notify the~~alleged victim's~~ student's parent of the restorative justice practice and obtain consent from the ~~alleged victim's~~ student's parent before including the ~~alleged victim~~ student in the process.

(9) A grievance process required under Subsection 53G-9-605(3)(f) shall be consistent with the LEA's established grievance process.

(10) An LEA shall follow up with the parents of all parties to:

(a) inform parents when an investigation is concluded;

(b) inform parents what safety measures will be in place for their child, as determined by the investigation;

(c) provide additional information about the investigation or the resolution consistent with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g; and

(d) inform parents of appeal options, if available, if the parents disagree with resolution of the investigation.

~~(11)~~ An LEA shall, as required by Subsection 53G-9-606(2), report the following annually, on or before June 30, to the Superintendent in accordance with the Superintendent's submission requirements:

(a) a copy of the LEA's policy required in Section R277-613-4;

(b) implementation of the signed statement requirement described in Subsection 53G-9-605(3)(h);

(c) verification of the LEA's training of school employees relating to bullying, cyber-bullying, hazing,~~and~~ retaliation, and abusive conduct described in Section 53G-9-607;

(d) verified and alleged incidents of bullying, cyber-bullying, hazing,~~and~~ retaliation, and abusive conduct;

(e) the number and type of incidents described in Subsection (~~11~~)(d) required to be reported separately under federal law, including the reporting requirements in:

(i) Title VI of the Civil Rights Act of 1964;

(ii) Title IX of the Education Amendments of 1972;

(iii) Section 504 of the Rehabilitation Act of 1973; and

(iv) Title II of the Americans with Disabilities Act of 1990;

and

(f) the number and type of incidents described in Subsection (~~11~~)(d) that include a student or LEA employee who was bullied, cyber-bullied, hazed, or retaliated against based on the student's or LEA employee's actual or perceived characteristics, including disability, race, national origin, religion, sex, gender identity, or sexual orientation.

~~(12)~~ The requirements of this Rule R277-613 are in addition to any federal requirements, including reporting civil rights violations to the appropriate entities and taking other appropriate action.

**R277-613-6. Training by LEAs Specific to Participants in Public School Athletic Programs and School Clubs.**

(1)(a) Prior to any student, employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, the student, employee or coach shall participate in bullying, cyber-bullying, hazing,~~and~~ retaliation, and abusive conduct prevention training.

(b) A training described in Subsection (1)(a) shall be offered to new participants on an annual basis and to all participants at least once every three years.

(2) An LEA shall inform student athletes and extracurricular club members of prohibited activities under this rule and potential consequences for violation of the law and the rule.

(3) An LEA shall maintain training participant lists or signatures, to be provided to the Board upon request.

**R277-613-7. Abusive Conduct.**

(1) An LEA shall prohibit abusive conduct.

(2) An LEA's bullying, cyber-bullying, hazing, abusive conduct, and retaliation policy, required in Section 53G-9-605 and this rule, shall include a grievance process for a school employee who has experienced abusive conduct as described in Subsection 53G-9-605(3)(f).

**KEY:** abusive conduct, bullying, harassment, hazing, training  
**Date of Last Change:** 2022~~May 26, 2020~~  
**Notice of Continuation:** August 2, 2018  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53E-3-401(4); 53G-9-607; 53E-3-501; 53G-8-209; 53G-9

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R277-628	Filing ID 54477

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-628. School Libraries
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This new rule is created in accordance with Section 53E-3-501, which requires the Utah State Board of Education (USBE) to establish rules and minimum standards for public schools that are consistent with this public education code, including rules and minimum standards governing school libraries.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This new rule provides the minimum standards for a Local Education Agency's (LEA) library policies and accompanying procedures for library material selection and reconsideration.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any fiscal impact on state government revenues or expenditures. It only applies to LEAs and not USBE.
<b>B) Local governments:</b>
This rule change is not expected to have any increased fiscal impact on local governments' revenues or expenditures. LEAs are required to establish or amend existing library policies to meet minimum standards and provide annual training. Most LEAs already have policies and procedures. This rule establishes the minimum standards for those policies. This will not cause LEAs additional fiscal impact outside already established procedures for creating or updating policies. LEAs already have budgets for these processes.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures. It only applies to LEAs.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
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.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency):</b>
This rule change is not expected to have any fiscal impacts on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only applies to LEAs.
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>
There are no compliance costs for affected persons. This rule only applies to LEAs and their library policies.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have any direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
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
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Subsection 53E-3-501(1)(c)(v)
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/01/2022
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**R277. Education, Administration.**

**R277-628. School Libraries.**

**R277-628-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53E-3-501(1)(c)(v), which requires the Board to establish rules and minimum standards for public schools including school libraries; and
  - (c) Section 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

- (2) The purpose of this rule is to provide the minimum standards for an LEA's library policies and accompanying procedures for library material selection and reconsideration.

**R277-628-2. Definitions.**

- (1) "Library material" means any digital, including audio or visual media, or physical text contained within a school library's collection.
- (2) "School library" means the location, both physical and virtual, where library materials are housed and administered by professional staff hired to oversee the selection, maintenance, and access to school library materials.

**R277-628-3. Policy and Accompanying Procedures for School Library Material Selection and Reconsideration.**

(1) On or before September 1, 2022 each LEA shall:

(a) establish a policy and accompanying procedures for the selection and reconsideration of library materials selected for a school's library that is consistent with current state and federal law; and

(b) ensure each school within the LEA complies with the LEA's policy and accompanying procedures for the selection and reconsideration of library materials selected for a school's library described in Subsection (1)(a).

(2) The Superintendent shall provide a model policy for use by an LEA in developing an LEA's policy and accompanying procedures described in Subsection (1).

**KEY: school library, material selection, policy and procedures**  
**Date of Last Change: 2022**  
**Authorizing, and Implemented, or Interpreted Law: Art X Sec 3; 53E-3-501(1)(c)(v); 53E-3-401(4)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-801	Filing ID 54478

**Agency Information**

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-801. Services for Students who are Deaf, Hard of Hearing, Blind, Visually Impaired, and Deaf-Blind
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of the amendments are to update technical edits related to operations of the Utah Schools for the Deaf and the Blind (USDB).

**4. Summary of the new rule or change** (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The changes to this rule are technical edits related to statutory referenced, formatting, and correlation of responsibilities.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is not expected to have any fiscal impact on state government revenues or expenditures. There is no impact to the Utah State Board of Education (USBE) staff or operations. This amendment changes the threshold for Local Education Agencies (LEAs) to provide services for qualifying students to 5%, up from 3%. The fiscal impact will be minimal to LEAs and USDB as this amendment adds future deaf or blind students from 2 to 3 additional districts to the majority of districts and all charter schools already served by USDB. The services for these students are funded through legislative appropriation and these appropriations and services will not change.

**B) Local governments:**

This rule change is not expected to have any increased fiscal impact on local governments' revenues or expenditures. This change may only impact the service provider between a school district or charter school and USDB. It will not impact LEA revenue or expenditures.

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures. It only applies to LEAs and USDB.

**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 any fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only applies to USDB and LEAs.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons. This only affects USDB and LEAs and they will not have any compliance costs.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

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. In addition, this rule change is not expected to have any direct fiscal impact on small businesses. Sydnee Dickson, Superintendent

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

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

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

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

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53E-8-201
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**Public Notice Information**

**9. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/01/2022
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**R277. Education, Administration.**

**R277-801. Services for Students who are Deaf, Hard of Hearing, Blind, Visually Impaired, and Deaf-Blind.**

**R277-801-1. 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 53E-8-201, which creates USDB, and authorizes USDB to provide services to qualifying students.

(2) The purpose of this rule is to establish rules for LEAs and USDB to provide services to students who are deaf, hard of hearing, blind, visually impaired, and deaf-blind.

#### **R277-801-2. Definitions.**

(1) "504 plan" means a plan required by Section 504, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(2)(a) "Intensive services" means services requiring vision, deaf-blind, or hearing services:

(i) in excess of 180 minutes per day for k-12 or post-high school students; or

(ii) in excess of 90 minutes per day for pre-school students.

(b) "Intensive services" does not include services that are not vision, deaf-blind, or hearing specific.

(3) "Intervener" means a specially trained paraprofessional who provides access to information and communication and facilitates the development of social and emotional well-being for children who are deaf-blind.

(4) "Medicaid time study" means the primary mechanism for identifying and categorizing Medicaid administrative activities performed by an LEA's staff, which serves as the basis for developing claims for the costs of administrative activities that may be properly reimbursed under Medicaid.

(5) "Minimum school program" or "MSP" means the same as that term is defined in Section 53F-2-102.

(6) "Qualifying student" means a student who is deaf, hard of hearing, blind, visually impaired, or deaf-blind who qualifies for services in accordance with Subsection 53E-8-401(1).

(7) "Section 504" means Section 504 of the Rehabilitation Act of 1973, codified at 29 USC 701, et seq.

(8) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically among LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(9) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

#### **R277-801-3. Responsibilities of LEAs.**

(1)(a) An LEA is the single point of entry for USDB services for qualifying students.

(b) A qualifying student may not enroll in a USDB program without a referral from an LEA.

(c) When evaluating services for a qualifying student, an LEA and the USDB shall consider:

(i) primary disabilities;

(ii) secondary disabilities; and

(iii) other factors, including:

(A) transportation needs; and

(B) length of time the student would spend in transport daily.

(2) Notwithstanding Subsection (1), a qualifying student may enroll directly in USDB if:

(a) the student's previous primary instruction was in American [s]ign [h]language; and

(b) USDB's program most closely matches the qualifying student's prior program of instruction.

(3) A qualifying student may receive services under:

(a) IDEA;

(b) Section 504; or

(c) a USDB [P]reschool [S]ervices [P]lan.

(4) An LEA shall annually provide to the Superintendent the name and contact information for any student with vision loss or hearing loss, even if it isn't the student's primary disability.

(5)(a) An LEA has the responsibility for the design and implementation of an IEP or Section 504 plan for qualifying students.

(b) Specific details of required intensive services for a student shall be defined within the student's IEP.

(c) A qualifying student who enrolls in a Utah school district or charter school may be eligible to receive intensive services from sensory specialists employed by USDB, if appropriately designated as specialized instruction or a related services as part of an IEP or Section 504 plan.

(6)(a) An LEA with greater than 3% of the student population statewide may elect to contract with USDB to provide outreach services.

(b) An LEA may employ their own sensory specialists to meet the IEP or 504 plan needs of qualifying students.

(7)(a) An LEA is responsible for the development of a qualifying student's IEP, including any assessments necessary for initial placement.

(b) Notwithstanding Subsection (7)(a), an LEA may not commit USDB to provide services to qualifying students unless USDB has participated in the IEP.

(c)(i) An LEA and USDB shall consider least restrictive environment, as well as intensive services needs of a qualifying student in determining an appropriate placement.

(ii) In the case of deaf or hard of hearing students, an IEP team should consider the opportunity for a student to have direct communication with teachers and peers.

(8) Notwithstanding Subsection (7), if a qualifying student enrolls directly with USDB in accordance with Subsection (2), USDB shall develop the student's IEP, including any assessments necessary for initial placement.

(9) If an LEA is working with USDB staff:

(a) the LEA shall provide internet access and technical support to permit USDB staff to access the internet through technology and hardware;

(b) the LEA and USDB technology staff will jointly determine procedures to ensure access to LEA technology systems; and

(c) USDB shall provide and maintain all needed hardware and software provided to USDB staff.

(10) An LEA shall provide an assistive technology device a student if the assistive technology device is required for the implementation of the student's IEP.

#### **R277-801-4. Designation of USDB as an LEA.**

(1)(a) In order to meet the educational needs of qualifying students, an IEP team may enroll a qualifying student in a USDB program and may designate USDB as the LEA for the qualifying student.

(b) If USDB is designated as the LEA under Subsection (1)(a), the USDB program shall be treated as a placement option within the LEA continuum, and the referring LEA staff shall continue to attend IEP meetings.

(2)(a) If USDB is designated as a qualifying student's LEA, USDB is responsible from that point on for the design and implementation of the student's IEP, 504 Plan, or USDB [P]preschool [S]service [P]plan.

(b) USDB shall provide all special education and related services and costs documented in an IEP for a qualifying student described in Subsection (2)(a).

(c) USDB may request consultation from the referring LEA for the design of services that are required by the student beyond the student's sensory needs.

#### **R277-801-5. Correlation of Responsibilities.**

(1) For qualifying students currently enrolled with an LEA and receiving services through USDB outreach programs, an LEA will provide a list of students and their IEP due dates for the upcoming school year to ~~the~~ USDB ~~[Assistant Superintendent]~~ no later than June 30 annually.

(2) An LEA shall invite USDB staff to attend IEP or 504 plan meetings for qualifying students, including meetings for:

- (a) students transitioning from Part C to Part B;
- (b) students moving from out of state; and
- (c) students transferring between LEAs.

(3)(a) For qualifying students enrolled in an LEA and receiving no services from USDB, an LEA shall invite USDB to attend any meeting where USDB services may be considered for that student.

(b) If a change of placement is considered ~~[-]~~, ~~[(i)]~~ both the referring LEA and USDB will participate and establish a timeline to ensure a successful transition for the student.

~~[(ii)] both the referring LEA and USDB will participate in the IEP or 504 meeting.~~

(4) IEP or 504 plan meetings shall be ~~held~~ at a mutually agreed upon time and location, with appropriate notification to all parties.

(5)(a) The Board and USDB shall provide ongoing interpreter training toward certification and mentoring for all interpreters, as requested by individual LEAs.

(b) Training provided under Subsection (~~[7]~~5)(a) shall provide certified interpreters with the opportunity to improve skills and move up to a higher level of certification.

(c) An LEA may contract with USDB to provide interpreter services for students attending the LEA or an LEA school where a USDB extension classroom is located.

(6)(a) Each LEA, including USDB as the designated LEA, is responsible for ensuring the timely provision of textbooks and material as required by the IDEA.

(b) The Board shall ~~[-]~~ ~~[(i)]~~ annually provide information to LEAs regarding the costs of accessible materials in the state ~~[- and~~ ~~[(ii)] determine an equitable cost sharing plan~~.

#### **R277-801-6. Services for Qualifying Students.**

(1) If a qualifying student is enrolled with USDB as the designated LEA:

(a) USDB shall include the qualifying student in all Board-required enrollment reports including:

- (i) fall enrollment counts;
- (ii) the child count of students with disabilities; and
- (iii) the end-of-year enrollment report;

(b) Any agreements between the referring LEA and USDB shall be documented as part of a written agreement, which shall be reviewed at least annually;

(c)(i) A qualifying student's IEP team shall determine the student's transportation needs;

(ii) USDB shall provide transportation as a related service in an IEP or if required to implement a 504 plan; and

(iii) A referring LEA shall combine resources with USDB, whenever possible, to provide within-LEA transportation;

(d)(i) USDB shall annually administer all Board-required assessments.

(ii) USDB may provide alternate tests in accordance with a student's IEP and state law; and

(e) USDB shall develop and implement all programs, policies, and procedures required of an LEA by the Board and state law.

(2) If a qualifying student attends USDB extension classrooms located within an LEA:

(a) the student shall be enrolled in the general education program of the LEA school the student is attending;

(b) the LEA school shall be designated as the "school of record" for the student;

(c) the student shall be included by the LEA school or district in all required reports and uploads to UTREx;

(d) the student shall be counted in the LEA school or district total enrollment, and will be included in the calculation of all funding formulas, including Weighted Pupil Units and Minimum School Program;

(e) the student shall receive access to LEA programs and services consistent with their IEP or 504 plan, consistent with services available to other students enrolled in the student's school;

(f) the student may not be enrolled in the special education program of the LEA school the student is attending;

(g) USDB shall ensure the student receives a free appropriate public education;

(h) USDB shall ensure the student receives all special education and related services, including interpreting services, as required on the student's IEP or 504 plan;

(i) the LEA school shall generate general education funding or WPU for the student;

(j) USDB shall receive federal IDEA funding in accordance with USDB's legislative line item funding;

(k) the LEA school shall receive no state or federal special education funding for the student;

(l)(i) USDB shall provide transportation for the student as a related service when it is included in an IEP.

(ii) an LEA school shall combine resources with USDB, whenever possible, to provide within-LEA transportation; and

(m) an LEA school and USDB shall jointly ensure that any portable classrooms have access to intercom and phone service.

(3) If a qualifying student receives USDB outreach or consulting services:

(a) the student shall be enrolled in the general and special education programs of the LEA school the student attends;

(b) the LEA shall include ~~[d]~~ the student in the calculation of state special education and IDEA funds for the school district or charter school; and

(c) USDB may not submit the students to UTREx and may not receive state or federal special education funding.

(4) USDB shall provide the following services free of charge to every LEA, regardless of size, exclusive of additional related services:

(a) Educational Resource Center resources, including loaner equipment;

(b) USIMAC materials;

- (c) [F]interpreter training;
- (d) [P]professional development;
- (e) [E]expanded core curriculum;
- (f) [E]enrichment programs and activities;
- (g) [C]consultations;
- (h) [P]psychological assessments for the [D]deaf and the [B]blind;
- (i) [S]speech assessments for [D]deaf students;
- (j) [B]behavioral intervention and supports;
- (k) [D]deaf-[B]blind [S]specialists; and
- (l) [D]deaf-[B]blind [F]interveners.

(5) USDB may offer to provide the following other services to LEAs for ~~[Deaf, Blind, and Deaf-Blind]~~ deaf, blind, and deaf-blind qualifying students, exclusive of additional related services:

- (a) Teachers of the Blind and Visually Impaired or "TVI;"
- (b) Orientation and Mobility or "O & M;"
- (c) [E]educational and [A]assistive [T]technology;
- (d) [V]vision [S]screenings;
- (e) [L]low vision support and evaluations;
- (f) [E]extended [S]school [Y]year services in accordance with R277-751;
- (g) [T]teachers for the [D]deaf and [H]hard of [H]hearing;
- (h) [A]audiological services; and
- (i) American Sign Language[~~E~~]English interpreters.

(6) USDB shall provide all funded outreach services at no cost for qualifying students within an LEA with less than 3% of the student population statewide.

(7) An LEA with greater than 3% of the student population statewide shall provide services for qualifying students.

(a) An LEA may contract with USDB to provide services for students if an LEA has greater than 3% of the student population statewide.

(i) An LEA and USDB shall sign contracts prior to initiation of services.

(ii) An LEA shall make payments in two installments, in January and June.

(iii) The Board may assist USDB in collection of outstanding balances upon request.

(b) An LEA with greater than 3% of the student population statewide may opt out and transfer responsibilities for providing services to USDB subject to legislative appropriation of funds.

(8) The Superintendent shall provide a list of LEAs that exceed the 3% threshold by December 15 for the upcoming school year.

(9) An LEA and USDB may contract for services beyond those specified in this Rule R277-801.

(10) Notwithstanding this Section R277-801-6, USDB shall maintain all funded outreach services offered to each LEA, as of the 2017-18 school year.

(11)(a) USDB may participate in Medicaid time studies for services provided directly by USDB.

(b) An LEA may not include services provided directly by USDB in the LEA's Medicaid time studies.

(c) If an LEA contracts with USDB for payable services, an LEA shall include those services in the LEA's Medicaid time study.

**KEY: deaf, blind, students, services**  
**Date of Last Change: 2022[June 7, 2018]**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401(4); 53E-8-401**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R277-915	Filing ID 54479

**Agency Information**

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

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

**General Information**

<b>2. Rule or section catchline:</b>
R277-915. Work-based Learning Programs
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of the change is to update recent changes made to the program to ensure work-based learning experiences keep pace with current practices and demands. The changes also streamline the funding model that has been in need of updating.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
These changes and amendments include, adopting a funding model in an already existing rule (Rule R277-911) which will be updated by spring 2022, changes to language to match current lexicons including "apprenticeship and internship," clarifying eligibility requirements for the program, and incorporating language changes created by updates to the state code.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
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<p><b>A) State budget:</b></p> <p>This rule change is not expected to have any fiscal impact on state government revenues or expenditures. It simply clarifies Local Education Agency (LEA) responsibilities associated with the program.</p>
<p><b>B) Local governments:</b></p> <p>This rule change is not expected to have any increased fiscal impact on local governments' revenues or expenditures. It adds an application for LEAs and mandates certain policy language. LEAs participating in the program have staff available to make changes as needed and will not have increased expenditures.</p>
<p><b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):</p> <p>This rule change is not expected to have fiscal impacts on small business revenues or expenditures. This only applies to LEAs.</p>
<p><b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):</p> <p>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.</p>
<p><b>E) Persons other than small businesses, non-small businesses, state, or local government entities</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b>):</p> <p>This rule change is not expected to have any fiscal impact on revenues or expenditures for persons other than small businesses, businesses, or local government entities. It only applies to LEAs.</p>
<p><b>F) Compliance costs for affected persons</b> (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no compliance costs for affected persons. This change does require an LEA's work-based learning coordinator to submit an application each year, but does not add any costs outside the simple application to demonstrate compliance. Each LEA participating in the program already has a work-based learning coordinator.</p>

<p><b>G) Comments by the department head on the fiscal impact this rule may have on businesses</b> (Include the name and title of the department head):</p> <p>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. In addition, this rule change is not expected to have any direct fiscal impact on small businesses. Sydnee Dickson, Superintendent</p>																																																												
<p><b>6. A) Regulatory Impact Summary Table</b> (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</p>																																																												
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<p><b>B) Department head approval of regulatory impact analysis:</b></p> <p>The State Superintendent of the Utah State Board of Education, Sydnee Dickson, has reviewed and approved this fiscal analysis.</p>																																																												

## Citation Information

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Article X, Section 3	Subsection 53E-3-401(4)	Section 53G-7-902
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

## Agency Authorization Information

<b>Agency head or designee, and title:</b>	Angie Stallings, Deputy Superintendent of Policy	<b>Date:</b>	04/01/2022
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### R277. Education, Administration.

#### R277-915. Work-based Learning Programs.

##### R277-915-1. 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 53G-7-902, which allows schools to offer Work Based Learning programs in accordance with Board rules.

(2) The purpose of this rule is to provide [~~standards~~] expectations for K-12 WBL programs.

##### R277-915-2. Definitions.

(1) "Apprenticeship" means the same as the term is defined in Subsection 35A-6-102.

(2) "Career Pathway" means a coordinated, nonduplicative sequence of academic and technical content at the secondary and postsecondary level that incorporates challenging state academic standards including:

- (a) academic and technical knowledge and skills;
- (b) standards aligned with the needs of industries in the economy of the state, region, Tribal community, or local area;
- (c) progresses in specificity beginning with all aspects of an industry or career cluster and leading to more occupation-specific instruction;

(d) standards that have multiple entry and exit points that incorporate credentialing; and

(e) standards that culminate in the attainment of a recognized postsecondary credential.

(3) "College and Career Awareness" means the same as the term is defined in Subsection R277-916-2.

(4) "Field study" means a planned group activity that provides opportunities for a student to observe skills and jobs in a variety of settings at an actual workplace.

(5) "High quality experience" means an internship that:

- (a) links to a related course;
- (b) is paid or unpaid;
- (c) implements learning intentions developed by an LEA and employer to guide student learning;

(d) adheres to state, Board, and local safety and supervision requirements;

(e) includes practical application of concurrently or previously studied theory or related curriculum;

(f) connects to career goals, career pathway, and the plan for College and Career Readiness (CCR);

(g) includes opportunities for a student to explore career options in a particular field of work; and

(h) results in the completion of a digital career portfolio which outlines the student's experience and prepares them for the next steps in their career development.

(6) "Internship" means a high quality experience where students are mentored by an employer for approximately 40 hours on site during one course to learn about a particular industry or occupation.

(7) "Job shadow" means a structured career activity in which students follow an industry professional for a short time period to learn about a particular occupation or industry.

([1]8) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

([2]9)(a) "Participant" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53G-7-902 involving both classroom instruction and work experience with a cooperating employer, for which the student may or may not receive compensation.

- (b) Participant may include:
  - (i) a student completing an apprenticeship[-];
  - (ii) one internship experience in either grade 11 or grade 12, or both;

(c) Participant does not include a student on work release.

([3]10) "School-based enterprise" means a business set up and run by supervised students learning to apply practical skills in the production of goods or services for sale or use by others.

([4]11) "Work site" or "workplace" means the actual location where employment occurs for a particular occupation, or an environment that simulates all aspects or elements of that employment, including school-based enterprises.

([5]12) "Work-based learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combines structured learning and authentic work experiences implemented through industry and education partnerships including:

- (a) a job shadow;
- (b) a field study; or
- (c) attending a lecture from a professional guest speaker.

**R277-915-3. Mandatory LEA Policy.**

An LEA that has WBL programs that include assigning students ~~to act~~ as participants at off-campus sites, ~~or~~ in on-campus simulations, or in virtual or remote WBL experiences, shall establish a policy which includes the following:

- (1) training for student participants, student participant supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;
- (2) standards and procedures for approval of off-campus work sites, job shadows, field studies, and other WBL experiences;
- (3) transportation options for students to and from the work site, job shadows, field studies, and other WBL experiences;
- (4) appropriate supervision by employers at the internship or apprenticeship work site;
- (5) adequate insurance coverage provided and identified either by the student, the program, or the LEA;
- (6) appropriate supervision and assessment of the student by the LEA;
- (7) appropriate involvement and approval by the student's parents in the WBL program;
- (8) provision for risk or liability inherent in the WBL program developed in consultation with State Risk Management or the LEA's insurance provider; and
- (9) a requirement that any WBL internship or apprenticeship credit awarded maintains the integrity and rigor expected for high school graduation and career pathway alignment, as determined by the Board.

**R277-915-4. Disbursement of Funds.**

~~(1) The Superintendent shall align public elementary, secondary, and postsecondary or adult schools by LEA.~~

(1) An LEA shall meet all requirements of this rule to be eligible for WBL funding.

(2) The proportion of total WBL funding allocated for a participating LEA shall ~~remain the same as the previous year unless~~ be determined by the formula described in Subsection (3).

- ~~(a) the LEA discontinues the program;~~
- ~~(b) the LEA does not meet program standards; or~~
- ~~(c) LEA proportions are adjusted by the Board.~~

(3) WBL funds are restricted and shall be allocated to an LEA for an approved program as follows:

- (a) a base amount per LEA as established by the Superintendent; and
- (b) an additional allocation that is proportional to the LEA's prior school year's October 1 headcount in comparison to all other LEAs with an approved program;

(4) An LEA shall annually complete a funding application with assurances that the LEA meets the WBL standards as described in Subsection R277-915-5.

(5) An LEA shall utilize the restricted indirect cost rate for WBL program expenditures.

(6) A participating LEA shall provide an equal match in funds to state appropriated WBL funds.

**R277-915-5. Standards.**

~~(1) WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the LEA and among regions.~~

(2) To be eligible for WBL funds, an LEA shall:

- (a) have the program approved by the LEA board;
- ~~(b) employ licensed WBL coordination personnel with salaries and benefits matched by the local recipient of funds;~~

~~(e)b~~ document that a WBL committee representing all schools within the LEA:

(i) has been created and includes a variety of stakeholders from the different areas described in subsection R277-915-5(1)(c);

(ii) is actively functioning [effectively] evidenced by planning and implementing WBL activities described in subsection R277-915-5(1)(d); and

(iii) regularly addresses WBL issues;

~~(e)c~~ conduct WBL activities utilizing information from:

- (i) business and industry;
- (ii) administrators;
- (iii) teachers;
- (iv) counselors;
- (v) parents; and
- (vi) students;

~~(e)d~~ develop work-based preparation, participation, and assessment activities for students and teachers involved in all WBL LEA activities;

~~(f)e~~ maintain evidence that WBL components have been integrated and coordinated with:

- (i) elementary career awareness;
- (ii) secondary career exploration;
- (iii) integrated core activities;
- (iv) College and Career Awareness; and
- (v) ~~comprehensive guidance and~~ school counseling;

~~(g)f~~ maintain evidence of WBL activities and assurances in each LEA developed in coordination with a student's:

- (i) IEP;
- (ii) Plan for College and Career Readiness; and
- (iii) 504 requirements;

~~(h)g~~ require the inclusion of all student groups within the LEA in career development and preparation;

~~(i)h~~ demonstrate WBL coordination with employers and with other school and community development activities;[-]

~~(j) verify that sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available;~~

~~(k)j~~ participate in initial ongoing state-sponsored WBL coordinated professional development ~~and in periodic ongoing coordination and professional development activities~~;

~~(l) require that the WBL team utilize a database system developed by the LEA for the LEA's specific needs; and~~

~~(m)j~~ participate in the CTE Program Approval evaluation ~~every three years~~;[-] and

(k) ensure all program requirements are in accordance with section R277-114-5.

**R277-915-6. Consistency with Law and State and LEA Board Rules and Policies.**

(1) A WBL workplace experience shall be consistent with the provisions of the Fair Labor Standards Act, 29 U.S.C. Sec. 201, et seq.

(2) An LEA internship program shall have internship safety agreements in accordance with 53G-7-904 or meet the requirements of 53G-11-402.

~~(2)3~~ WBL programs shall operate consistently with Board rules and LEA policies, including:

- (a) student transportation;
- (b) credit toward graduation;
- (c) attendance; ~~and~~
- (d) fee waivers; and[-]
- (e) standards and training for non-licensed employees and volunteers.

**KEY:** public schools, work-based learning  
**Date of Last Change:** ~~February 7, 2017~~ 2022  
**Notice of Continuation:** December 2, 2021  
**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53G-7-902; 53E-3-401(4)

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R311-402	Filing ID 54457

**Agency Information**

<b>1. Department:</b>	Environmental Quality	
<b>Agency:</b>	Environmental Response and Remediation	
<b>Building:</b>	Multi Agency State Office Building	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 144840	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4840	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Katie Crane	385-391-8148	kcrane@utah.gov
Hans Millican	385-391-8137	hmillican@utah.gov
Brent Everett	801-536-4171	beverett@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R311-402. Utah Hazardous Substances Priority List
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Section 19-6-311 requires the Executive Director to establish a hazardous substances priority list through rulemaking. The previous rule was repealed for failure to file the required five-year review. Therefore, this rule is being re-filed with one additional national priorities list site added to the list. The previous rule was Rule R311-401 but because rule numbers cannot be reused, the rule number is now R311-402.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the</b>

substantive differences between the repealed rule and the reenacted rule):

This rule creates the hazardous substances priority list as required by Section 19-6-311, so that the state may cost share for CERCLA sites. This rule is the original rule (R311-401, which expired recently) with one additional site added to the list (site #21 on the list).

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

This rule change is expected to have fiscal impact on state government revenues or expenditures because the statute and this implementing rule authorize the Executive Director of the Department of Environmental Quality (DEQ) to spend money from the Hazardous Substances Mitigation Fund on national priorities list facilities that are listed in this rule. The estimates for each fiscal year (\$170,916 for FY22, \$568,159.00 for FY 23, and \$442,062.00 for FY24) were derived based on current contracts and estimated state cost share obligations for Bountiful/Woods Cross 5th South PCE Plume, Five Points PCE Plume, and Jacob's Smelter.

**B) Local governments:**

This rule change is not expected to have any fiscal impact on local governments' revenues or expenditures because the statute authorizing this rule authorizes the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund).

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

This rule change is not expected to have any fiscal impact on small businesses' revenues or expenditures because the statute authorizing this rule authorizes the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund). There are no penalties or other charges authorized against any small businesses. When DEQ hires consultants and environmental contractors to work on the sites listed in the rule, small and non-small businesses may receive money for work performed at approximately \$201,500.00 per fiscal year. This estimate was derived based on current contracts and estimated state cost share obligations for Bountiful/Woods Cross 5th South PCE Plume, Five Points PCE Plume, and Jacob's Smelter. Currently there are no contracts in place with any small businesses and it is impossible to predict how many will be awarded contracts for the estimated future work.

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

This rule change is not expected to have any fiscal impact on non-small businesses' revenues or expenditures

because the statute authorizing this rule authorizes the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund). There are no penalties or other charges authorized against any non-small businesses. When DEQ hires consultants and environmental contractors to work on the sites listed in this rule, small and non-small businesses may receive money for work performed at approximately \$201,500.00 per fiscal year. This estimate was derived based on current contracts and estimated state cost share obligations for Bountiful/Woods Cross 5th South PCE Plume, Five Points PCE Plume, and Jacob's Smelter. Currently, there is one contract in place with a non-small business and it is impossible to predict how many will be awarded contracts for the estimated future work.

**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 any fiscal impact on other persons revenues or expenditures because the statute authorizing this rule authorizes the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund). There are no penalties or other charges authorized against any person.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

No compliance costs are anticipated to affected persons because all proposed changes are to authorize the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund). There are no penalties or other charges authorized against any person and, therefore, there are no affected persons under this rule.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The changes would not have a fiscal impact on businesses. All proposed changes to this rule are to authorize the Executive Director of DEQ to spend money only from a state fund (i.e., the Hazardous Substances Mitigation Fund). There are no penalties or other charges authorized against any person and, therefore, there are no affected persons or businesses under this rule, although it is possible that money from the Hazardous Substances Mitigation Fund may be paid to environmental remediation businesses to address contamination at the listed sites, which may include small businesses and non-small businesses. Kim Shelley, Executive Director

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

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$131,097	\$568,159	\$442,062
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$131,097</b>	<b>\$568,159</b>	<b>\$442,062</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$201,500	\$201,500	\$201,500
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$201,500</b>	<b>\$201,500</b>	<b>\$201,500</b>
<b>Net Fiscal Benefits</b>	<b>\$70,403</b>	<b>\$(366,659)</b>	<b>\$(240,562)</b>

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

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 19-6-311

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until: (30 days)** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brent Everett, Director	<b>Date:</b>	04/01/2022
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**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-402. Utah Hazardous Substances Priority List.**

**R311-402-1. Definitions.**

The definitions in Section 19-6-302 are adopted and incorporated by reference as part of this rule.

**R311-402-2. Hazardous Substances Priority List.**

Pursuant to Section 19-6-311 of the Utah Hazardous Substances Mitigation Fund Act, the hazardous substances priority list is established as presented in Table 1. The listed sites are eligible to be addressed under the authority of Section 19-6-311.

(1) National Priority List Sites. The Federal Register publication dates are indicated in Table 1.

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
<u>1</u>	Hill Air Force Base	July 22, 1987
<u>2</u>	Monticello Vicinity Properties	June 10, 1986
<u>3</u>	Ogden Defense Depot	July 22, 1987
<u>4</u>	Portland Cement Sites 2 and 3	June 10, 1986
<u>5</u>	Rose Park Sludge Pit	September 8, 1983
<u>6</u>	Utah Power and Light, American Barrel	October 4, 1989
<u>7</u>	Sharon Steel	August 30, 1990
<u>8</u>	Tooele Army Depot, North	August 30, 1990
<u>9</u>	Monticello Mill Site	November 21, 1989
<u>10</u>	Midvale Slag	February 11, 1991
<u>11</u>	Wasatch Chemical, Lot 6	February 11, 1991
<u>12</u>	Petrochem Recycling Corp./Ekotek Plant	October 14, 1992
<u>13</u>	Jacob's Smelter	February 4, 2000
<u>14</u>	Intermountain Waste Oil Refinery	May 11, 2000
<u>15</u>	International Smelting and Refining	July 27, 2000

<u>16</u>	Bountiful/Woods Cross 5th South PCE Plume	September 13, 2001
<u>17</u>	Davenport and Flagstaff Smelters	April 30, 2003
<u>18</u>	Eureka Mills	September 5, 2002
<u>19</u>	Five Points PCE Plume	September 19, 2007
<u>20</u>	U.S. Magnesium	November 4, 2009
<u>21</u>	700 South 1600 East PCE Plume	September 18, 2012

(2) Proposed National Priority List Sites. The Federal Register publication dates are indicated in Table 2.

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
<u>1</u>	Richardson Flat Tailings	February 7, 1992
<u>2</u>	Murray Smelter	January 18, 1994

(3) Scored Sites.

Reserved.

**KEY: hazardous substances, hazardous substances priority list**  
**Date of Last Change: 2022**  
**Authorizing, and Implemented or Interpreted Law: 19-6-311**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R392-110	Filing ID 54455

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Disease Control and Prevention, Environmental Services	
<b>Room no.:</b>	Second Floor	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 142102	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-2102	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Karl Hartman	801-538-6191	khartman@utah.gov

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

**General Information**

**2. Rule or section catchline:**

R392-110. Food Service Sanitation in Residential Care Facilities

**3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):**

Executive Order No. 2021-12 requires state agencies to amend rules that are inconsistent with the current edition of the Administrative Rules' Rulewriting Manual for Utah. As required, the amendments to Rule R392-110 simplify this rule, remove outdated language and redundancies, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):**

The amendments to Rule R392-110 provide technical and conforming changes throughout this rule and remove unnecessary and repetitive language.

In Section R392-110-3, added definitions for Residential Care Facility.

In Sections R392-110-4 through R392-110-5, the Department of Health (Department) has made nonsubstantive revisions including the rewording and restructuring of these sections to simplify the language and to clarify the intent to align more closely with the authorizing statute and the Rulewriting Manual for Utah.

The Department made the following substantive amendment:

In the new Section R392-110-6, the severability clause was moved from Section R392-110-4 to match the clause in most other rules promulgated under Title R392.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

No anticipated cost or savings because the changes do not affect existing operations.

**B) Local governments:**

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

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

No anticipated cost or savings because the changes do not affect existing operations.

**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 anticipated cost or savings because the changes do not affect existing operations.

**F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

No anticipated cost or savings because the changes do not affect existing operations.

**G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

There is no fiscal impact on businesses because the amendment does not affect existing operations. Nathan Checketts, Executive Director

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Health, Nathan Checketts, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 26-15-2	Subsection 26-1-30(9)	Subsection 26-1-30(23)
Section 26-1-5	Section 26-7-1	Subsection 26-39-301(1)

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Executive Director	<b>Date:</b>	03/31/2022
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**R392. Health, Disease Control and Prevention, Environmental Services.**

**R392-110. Food Service Sanitation in Residential Care Facilities.**

**R392-110-1. Authority and Purpose.**

(1) This rule is authorized by Sections ~~[26-15-2, 26-1-30(9), 26-1-30(23), 26-1-5, 26-7-1, and 26-39-301(1)]~~ 26-15-2, 26-1-5, 26-7-1, and Subsections 26-1-30(9), 26-1-30(23), and 26-39-301(1).

(2) This rule establishes uniform food service inspection standards for residence-based group care facilities.

**R392-110-2. Applicability.**

(1)(a) This rule applies to food service provided in a certified or licensed child care facility~~[ies]~~, including a residence~~[s]~~, that provides care for 16 or fewer children~~[, notwithstanding the provisions of R392-100].~~

(b) Rule R392-100, Food Service Sanitation, governs food service provided in a facility~~[ies]~~ that cares for more than 16 children.

(2)(a) This rule applies to food service provided in facilities with a 24-hour group living environment for between four and 12 individuals unrelated to the owner, or provider, ~~[such as the following]~~ including any:

- (i) residential treatment program~~[s]~~;
- (ii) residential support program~~[s]~~; and
- ~~(i+iii)~~ (iii) recovery residence~~[s]~~.

(b) Rule R392-100, Food Service Sanitation, governs food service in a facility as described in ~~[R392-110-2]~~ Subsection (2)(a) that provides care for more than 12 individuals.

**R392-110-3. Definitions.**

For the purposes of this rule~~[, the following terms, phrases, and words shall have the meanings herein expressed]:~~

- (1) "Department" means the Utah Department of Health.
- (2) "FDA Food Code"~~[or "Food Code"]~~ means the most recent FDA Model Food Code as adopted by reference with amendments in Rule R392-100, Food Service Sanitation.
- (3) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment as defined in FDA Food Code.
- (4) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.
- (5) "Food processing facility" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, but does not provide food directly to a consumer, including any establishment that cans food, or packages food in packaging with a modified atmosphere, and is inspected by the local, state, or federal food regulatory agency having jurisdiction.
- (6) "Local health department" has the same meaning as provided in ~~[S]~~ Subsection 26A-1-102(5).
- (7) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.
- (8) "Nuisance" means a condition or hazard, or the source thereof, ~~[which] that~~ may be deleterious or detrimental to the health, safety, or welfare of the public.
- (9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a residential care facility.
- (10) "Plumbing Code" means International Plumbing Code as incorporated and amended in Title 15A, State Construction and Fire Codes Act.
- ~~(11)~~ (11) "Provider" means a person with ownership or overall responsibility for managing or operating a residential care facility~~[in Utah]~~.
- ~~(12)~~ (12) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).
- (13) "Residential care facility" means:

(a) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children; or

~~(b) a certified or licensed child care facility, including a residence, that provides care for 16 or fewer children; or~~



(b) a facility with a 24-hour group living environment for between four and 12 individuals unrelated to the owner or provider such as:

- (i) a residential treatment program;
- (ii) a residential support program; or
- (iii) a recovery residence.

(14)14 "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).

(13)15 "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).

(14)16 "Service animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(15)17 "Time~~[/]~~ and temperature control for safety food~~[(TCS)]~~" or "TCS" means a food that requires time~~[/]~~ and temperature control for safety ~~[(TCS)]~~ to limit pathogenic microorganism growth or toxin formation, ~~[along with all]~~ including any inclusion~~[s and]~~ or exclusion~~[s]~~ defined in FDA Food Code.

#### **R392-110-4. Facility Inspection and General Requirements.**

(1) Except as stated in this rule, a residential care facility is exempt from the requirements of Rule R392-100, Food Service Sanitation.

(1)2 After a provider requests an inspection and pays the inspection fee, a local health officer shall inspect a residential care facility based on the food safety standards established in Section R392-110-5.

(2)3 A local health officer shall use an inspection form approved by the Department.

(3)4 Upon satisfactory completion of the inspection, the local health officer shall issue a written report to the provider stating that the facility food services comply with ~~[Rule R392-110]~~ this rule.

(4)5(a) [4] Except as in Subsection (5)(b), this rule does not require a construction change in any portion of a residential care facility if the facility was in compliance with the law in effect ~~[at the time] when~~ the facility was constructed, ~~except as in R392-110-4(4)(a)].~~

(a) b The local health officer may require a construction change~~[s]~~ if it is determined the residential care facility, or portion thereof, is dangerous, unsafe, unsanitary, or a nuisance.

(5)6 The operator shall ~~[carry out the provisions]~~ ensure the residential care facility meets the requirements of this rule.

~~[(6) Severability. If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.]~~

(7)7 The operator shall comply with ~~[all]~~ applicable building, zoning, electrical, health, fire codes and ~~[all]~~ any local ordinances.

#### **R392-110-5. Food Safety Standards.**

(1) When conducting an inspection, a local health officer shall verify that the provider is maintaining a residential care facility according to the following standards:

(a) ~~[P]~~ The potable water supply system[s for use by group home facility caregivers and clients are] is designed, installed, and operated according to the requirements set forth by:

- (i) Plumbing Code;
- (ii) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309, Environmental Quality, Drinking Water; and
- (iii) Local health department regulations.

(b) Food is obtained from a:

- (i) grocery store[-];
- (ii) permitted food establishment[- or];
- (iii) food processing facility[- Whole produce may be obtained from a farmer's market]; or
- (iv) farmer's market only if whole produce is being obtained.

(c) Food has not been adulterated, as defined in Section 402 of the Federal Food, Drug, and Cosmetic Act, 21 ~~[U.S.C.]~~ USC 342.

(d) Food is protected from contamination by storing the food;

(i) in a clean, dry location where it is not exposed to splash, dust, or other contamination[-]; and

(ii) [is stored-] at least six inches above the floor.

(e) Food is not stored;

(i) in a toilet room[s or];

(ii) in a mechanical room[s-];

(iii) under any sewer line[s-];

(iv) under any leaking water line[s-]; or

(v) under any source of contamination.

(f) Food brought in by friends or relatives to serve to other individuals in the facility is obtained from an approved source[s] that compl~~[y]~~ies with Rule R392-100, Food Service Sanitation.

(g) Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the child.

(h) Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.

(i) [Time/temperature control for safety (TCS)]Any TCS food product[s] stored inside a refrigerator, including any canned or bottled opened baby food container[s], [are]is stored at 41 degrees F or below.

(j) [Canned or bottled baby food, e]Except for a dry product[s], canned or bottled baby food is discarded if not used within 24 hours of opening.

(k) Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.

(l) A refrigerator used to store food for children or residents is maintained and cleaned to prevent contamination of stored food.

(m)(i) A calibrated thermometer is conspicuously placed in the refrigerator[-]; and

(ii) [In addition,] a calibrated metal stem food temperature measuring device is provided and readily accessible.

(n) [Time/temperature control for safety (TCS)]TCS food prepared at [the]a residential care facility meets the critical cooking, reheating, hot holding, cold holding, and cooling temperatures as required in Rule R392-100, Food Service Sanitation.

(o) Each caregiver or client who works as a food handler:

(i) has a copy of a current food handler permit on file at the facility; and

(ii) abides by the employee health requirements described in [Section]Part 2-2 of FDA Food Code.

(p) Food is served on;

(i) clean and sanitized [plates,-]dishware;

(ii) a single[-]service [plates-]item designed to hold food[-]; or

(iii) a clean and sanitized high chair tray.

(q) [Properly laundered, or single service napkins are used-]Any napkin used is:

(i) single-service; or

(ii) properly laundered.

(r) ~~Clean and sanitized cups or single service cups are provided at each beverage service. Any cup used for beverage service is:~~

- (i) single-service; or
- (ii) clean and sanitized before use.

(s) Before each use, any reusable food holder[s], utensil[s], and preparation surface[s] ~~are~~ is cleaned and sanitized as required in ~~Sections~~ Parts 4-5 and 4-6 of FDA Food Code.

(t) Food handlers clean their hands and exposed portions of their arms:

- (i) immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils, ~~and~~ or unpackaged single[-]-service and single[-]-use articles;
- (ii) after touching a bare human body part[s] other than clean hands and clean exposed portions of arms;
- (iii) after using the toilet room;
- (iv) after caring for or handling any animal, including a service animal[s];
- (v) when switching between working with raw food and ready to eat food; and
- (vi) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(u) Hand washing facilities are located to allow convenient use by food handlers in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.

(v) When preparing food, food handlers wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep ~~their~~ hair from contacting exposed food[s], clean equipment, utensils, and linens, and unwrapped single[-]-service and single[-]-use articles.

(w) Food handlers wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single[-]-service and single[-]-use articles.

- (x) Poisonous or toxic chemicals are:
  - (i) properly identified;
  - (ii) safely stored to prevent access by children, or at-risk youth or adults; and

(iii) stored so they cannot contaminate food, equipment, utensils, linens, ~~and~~ or single[-]-service and single[-]-use articles.

(y) Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are in the food storage, preparation, and service areas.

(2) The provider may elect to allow an animal[s] in a residential care facility ~~when the following conditions are met~~ if:

(a) ~~[Only service animals assisting persons with disabilities are permitted in food storage and food preparation areas. Pets, emotional support animals, comfort animals, and therapy animals are not permitted in these areas.]~~ an animal in a food storage or food preparation area is a service animal assisting a person with a disability;

(b) ~~[Except]~~ except for a service animal[s], an animal[s] are only is allowed in a dining area[s] only if: ~~when-~~

- (i) food is not served, ~~and only if~~; and
- (ii) surfaces are cleaned before the next food service[-];

(c) ~~[The provider removes]~~ animal hair, fur, feathers, feces, and soiled bedding is removed as often as necessary to prevent unsanitary conditions or objectionable odors[-]; and

(~~b~~) d ~~[Animal]~~ any animal allergen[s], odor[s], noise, filth, ~~and~~ or other nuisance[s] ~~do-~~ does not cause a disturbance to residents.

**R392-110-6. Severability.**

If a provision of this rule, or its application to any person or circumstance is declared invalid, the application of such provisions to other persons or circumstances, and the remainder of this rule shall be given effect without the invalidated provision or application.

**KEY: child care providers, food service, residential support, residential treatment**

**Date of Last Change: 2022**~~[July 16, 2019]~~

**Notice of Continuation: March 11, 2021**

**Authorizing, and Implemented or Interpreted Law: 26-15-2; 26-1-30(9); 26-1-30(23); 26-1-5; 26-7-1; 26-39-301(1)**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-170	Filing ID 54481

**Agency Information**

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901
Contact person(s):	
Name:	Phone: Email:
Steve Gooch	801-957-9322 sgooch@utah.gov

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

**General Information**

2. Rule or section catchline:
R590-170. Fiduciary and Trust Account Obligations
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):

The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, and update Section R590-170-6 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

**B) Local governments:**

There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.

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

There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.

**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 are largely clerical in nature, and will not 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 **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 31A-2-201

**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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

#### Agency Authorization Information

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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#### R590. Insurance, Administration.

##### R590-170. Fiduciary and Trust Account Obligations.

###### R590-170-1. Authority.

This rule is promulgated by the ~~insurance commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code under Sections 31A-23a-406, 31A-23a-409, 31A-23a-410, 31A-23a-411.1, 31A-23a-412 and 31A-25-305 authorizing the commissioner to establish by rule, records to be kept by licensees~~ commissioner pursuant to Section 31A-2-201.

###### R590-170-2. Purpose and Scope.

(1) The purpose of this rule is to set minimum standards ~~[that shall be followed for fiduciary and]~~ for a licensee's trust account obligations ~~[pursuant to Sections 31A-23a-406, 31A-23a-409 and 31A-25-305].~~

(2) This rule applies to ~~[all Chapter 31A-23a and Chapter 31A-25 licensees]~~ a licensee holding funds in a fiduciary capacity.

###### R590-170-3. Definitions.

~~[For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and the following]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "Trust ~~[A]~~ account" means a checking or savings account where funds are held in a fiduciary capacity.

(2) "Accounts ~~[R]~~ receivable" means a licensee's invoiced premiums, fees, or taxes ~~[invoiced by a licensee].~~

(3) "Accounts ~~[P]~~ payable" means:

(a) premiums or fees due to insurers that a licensee is responsible for invoicing and collecting from insureds on an insurer or licensee's behalf ~~[of insurers and licensees];~~ and

(b) premium taxes due to taxing entities.

(4) "Licensee" means a ~~[licensee]~~ person licensed under ~~Chapters 31A-23a and 31A-25];~~

(a) Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries; or

(b) Title 31A, Chapter 25, Third Party Administrators.

###### R590-170-4. Establishing ~~[the]~~ Trust Account.

(1)(a) ~~[All]~~ Each record[s] relating to a trust account shall be identified with the wording "~~[T]~~trust ~~[A]~~account" or ~~[words of~~

~~similar import.]~~ wording similar to the term "trust account," including the term "premium fund account."

(b) ~~[These]~~ A trust account record[s] includes a:

(i) check[s];

(ii) bank statement[s];

(iii) general ledger[s] ~~and];~~ or

(iv) bank-retained record[s] ~~retained by the bank~~ pertaining to the trust account.

(2) ~~[All]~~ A licensee shall open a trust account ~~[s shall be established]~~ with a Federal Employer Identification ~~[N]~~ number or a Social Security ~~[N]~~ number.

(3)(a) A trust account shall be a separate and distinct account from the licensee's operating and personal accounts ~~[, i.e.,]~~.

(b) The trust account shall have:

(i) a separate account number ~~[,];~~

(ii) a separate account register ~~[, and different];~~ and

(iii) separate checks, deposit slips, and withdrawal slips.

(4) A ~~[non]~~ person other than a licensee may ~~[not]~~ be a signatory on a licensee's trust account ~~[, unless the non licensee signatory]~~ only if that person:

(a) is an employee of the licensee; and

(b) has specific responsibility for the licensee's trust account.

###### R590-170-5. Maintaining ~~[the]~~ Trust Account.

(1) Funds deposited into a trust account shall be limited to:

(a) premiums, which may include commissions;

(b) return premiums;

(c) fees or taxes paid with premiums;

(d) financed premiums;

(e) funds held pursuant to a third ~~[]-~~ party administrator contract;

(f) funds deposited with a title insurance agent ~~[in connection with any]~~ regarding an escrow settlement or closing ~~[, amounts];~~

(g) funds necessary to cover trust account bank charges ~~[on the trust account];~~ and

(h) interest on the trust account, except as provided under Subsection 31A-23a-406(2)(b).

(2) Disbursements from a trust account shall be limited to:

(a) premiums paid to insurers;

(b) return premiums to policyholders; ~~[transfer of]~~

(c) commission[s] and fee[s] transfers;

(d) fees or taxes collected with premiums paid to an insurer[s] or taxing authority;

(e) funds paid pursuant to a third ~~[]-~~ party administrator contract;

(f) funds ~~[disbursed by]~~ a title insurance agent ~~[in connection with any]~~ disburses regarding an escrow settlement or closing; and

(g) ~~[the transfer of]~~ accrued interest transfers.

(3) Personal or business expenses may not be paid from a trust account, even if the trust account has sufficient commissions ~~[exist in the account]~~ to cover the ~~[se]~~ personal or business expenses.

(4) ~~[Commissions]~~ A commission may not be disbursed from a trust account ~~[prior to]~~ before the beginning of the policy period for which the premium ~~[has been]~~ is collected.

(5) ~~[Commissions]~~ A commission attributed to premiums and fees collected ~~[must]~~ shall be disbursed from a trust account on a date no ~~[t]~~ later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) ~~Premiums]~~ A premium due to an insurer[s] may not be paid from a trust account unless:

(a) ~~the premiums [directly]~~ relating to the amount due ~~[have been deposited into, and] are being held in[;] the trust account[; or unless funds have been retained in the trust account consistent with Subsection 5 above;];~~ or

(b) ~~a licensee placed [by a licensee into]~~ the funds in the trust account to finance premiums on the insured's behalf[~~of insureds]~~.

(7) Premiums financed by a licensee ~~[must]~~ shall be accounted for as a loan [with] and accrue interest [charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23a-404] at the contracted rate.

**R590-170-6. Insurers' Access to a Trust Account[s].**

(1) ~~[Insurer access to licensee trust funds is not prohibited by the trust relationship; however, licensees must take reasonable steps to assure trust funds are protected from misappropriation by limiting access to those trust funds]~~ An insurer may access licensee trust funds in a trust relationship when a licensee takes reasonable steps to prevent misappropriation by limiting access to trust funds.

(2) An insurer ~~[desiring to]~~ may access funds in a licensee's trust account [may do so] if:

(a)(i) ~~the contract between the insurer and the licensee allows [electronic] fund transfers into or out of the licensee's trust account[;];~~

(ii) ~~the contract expressly permits the insurer to withdraw only the amount [authorized by]~~ the licensee authorizes for each transaction; and

(iii) ~~[specific]~~ the insurer receives the licensee's authorization [from the licensee of the amount to be withdrawn] to withdraw a specific amount from the licensee's trust account [must be received by the insurer prior to the withdrawal] before the insurer withdraws the funds; or

(b) ~~the licensee provides the insurer electronic funds transfer into or out of a separate trust account set up solely for trust funds deposited for that insurer.~~

(3) ~~[By implementing]~~ An insurer that implements electronic funds transfers from a licensee's trust account[~~, the insurer]~~ accepts the commissioner's right to oversight [of] on all electronic funds transfers between the insurer and the licensee[~~;~~

(4) ~~Insurers utilizing electronic funds transfer contracts will annually report to the commissioner the name of each licensee with whom they have such contracts.~~

(a) ~~The report is due January 15 of each year.~~

(b) ~~The report will include the name and address of each licensee and the line of business involved, i.e. personal lines, commercial lines, health, life, etc].~~

**R590-170-7. Maintaining Accounting Records[~~to be Maintained]~~.**

(1) ~~[Bank statements for trust accounts]~~ Trust account bank statements shall be reconciled monthly.

(2) An accounts receivable report showing each credit[s] and debit[s] shall be maintained and reconciled monthly[~~. This report must list, at a minimum,~~], and shall list, at a minimum, the following:

(a) ~~the account name[ ~~and]~~;~~

(b) ~~the amount and date due for each receivable[~~. The sum of all receivables shall be shown on the report]; and~~~~

(c) ~~the sum of all receivables[~~. Receivables]~~.~~

(3) ~~The report required under Subsection (2) shall list separately each receivable and their sums that are over 90 days old[ shall be shown separately on the report].~~

(4) ~~An accounts payable report showing [the status of] each account's status shall be maintained and reconciled monthly.~~

(5) ~~Adequate records shall be maintained to establish ownership of all funds in the trust account, including:~~

(a) ~~records showing from whom the[~~y]~~ funds were received; and~~

(b) ~~records showing for whom the[~~y]~~ funds are held.~~

(6) ~~Trust account registers shall maintain a running balance.~~

(7) ~~All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.~~

**R590-170-8. Insurer Responsibility.**

(1) ~~Insurers and their managing general agents shall provide a written report to the [insurance] commissioner within 15 days if:~~

(a) ~~if] (a) a licensee fails to pay an account payable within 30 days of the due date[~~. This does not apply where a legitimate dispute exists regarding the account payable if the licensee has properly notified the insurer of any disputed items and has provided documentation supporting that position]; or~~~~

(b) ~~if] (b) a licensee issues a check that is not honored when presented [at] to the bank [is not honored] or is returned because of insufficient funds.~~

(2) ~~Subsection (1)(a) may not apply when a legitimate dispute exists regarding the account payable if:~~

(a) ~~the licensee has properly notified the insurer of any disputed items; and~~

(b) ~~the licensee has provided documentation to the insurer supporting the licensee's position.~~

**R590-170-9. Severability.**

~~[If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable] If any provision of this rule, Rule R590-170, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that 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 Last Change: ~~2022[October 30, 2014]~~

Notice of Continuation: February 11, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-406; 31A-23a-409; 31A-23a-412; 31A-25-305

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-203	Filing ID 54482

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-203. Health Grievance Review Process
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear and updates the new severability Section R590-203-8 to use the Department's current language. Section R590-203-9 is removed because this rule is already in force. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.

<b>B) Local governments:</b>			
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.			
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>			
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.			
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>			
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.			
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>			
There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.			
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>			
There are no compliance costs for any affected persons. The changes are largely clerical in nature.			
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>			
After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner			
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>			
<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0

Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 31A-2-201	Section 31A-2-203	Section 31A-22-629

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022
<b>10. This rule change MAY become effective on:</b>	
05/23/2022	
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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**R590. Insurance, Administration.**

**R590-203. Health Grievance Review Process.**

**R590-203-1. Authority.**

This rule is ~~specifically authorized by Subsections 31A-22-629(4) and 31A-4-116, which requires the commissioner to establish minimum standards for grievance review procedures. The rule is also promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to examine carrier records, files, and documentation is provided by Section 31A-2-203]~~promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-2-203, and 31A-22-629.

**R590-203-2. Purpose and Scope.**

(1) The purpose of this rule is to ensure that a carrier's grievance review procedure[s] for an individual and a group health insurance and disability income insurance plan[s comply], complies with 29 CFR 2560.503-1, and Sections 31A-4-116 and 31A-22-629.

**R590-203-3. Applicability and Scope.]**

~~(1)(2)~~ This rule applies to individual and group:

- (a) health ~~care]~~insurance;
- (b) disability income ~~[policies]~~insurance; and
- (c) health maintenance organization contracts.

~~(2)(3)~~ Long ~~[Term Care]~~term care and Medicare supplement policies are not considered health insurance ~~[for the purpose of]~~under this rule.

~~(3)(4)~~ ~~[D]~~A disability income ~~[policies are]~~insurance policy is exempt from R590-203-~~[6]~~5.

~~(4)(5)~~ This rule does not apply to a health benefit plan that complies with R590-261, Health Benefit Plan Adverse Benefit Determinations.

**R590-203-~~[4]~~3. Definitions.**

~~[In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule]~~Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-629. Additional terms are defined as follows:

~~[~~(1)(a) "Adverse benefit determination" means the:

- ~~(i) denial of a benefit;~~
- ~~(ii) reduction of a benefit;~~
- ~~(iii) termination of a benefit; or~~
- ~~(iv) failure to provide or make payment, in whole or in part, for a benefit.~~

~~(b) "Adverse benefit determination" includes:~~

- ~~(i) denial, reduction, termination, or failure to provide or make payment that is based on a determination of an insured's eligibility to participate in a plan;~~
- ~~(ii) a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of a utilization review; and~~
- ~~(iii) failure to cover an item or service for which benefits are otherwise provided because it is determined to be:~~

- ~~(A) experimental;~~
- ~~(B) investigational; or~~
- ~~(C) not a medical necessity or appropriate.]~~

~~[(2)](1) "Carrier" means [any] a person or entity [that provides] providing health insurance or disability income insurance [in this state] including:~~

- (a) an insurance company;
- (b) a prepaid hospital or medical care plan;
- (c) a health maintenance organization;
- (d) a multiple employer welfare arrangement;
- ~~(e) a managed care organization; and~~

~~[(e)](f) any other person or entity providing a health insurance or disability income insurance plan under Title 31A, Insurance Code.~~

~~[(3)](2) "Consumer [Representative] may be [representative] means an employee of [the] a carrier who [is] represents a consumer [of a health insurance or a disability income policy, as long as] perspective, if the employee is not:~~

- (a) the individual who made the adverse benefit determination; or
- (b) ~~a~~ subordinate to the individual who made the adverse benefit determination.

~~(3)(a) "Health insurance" means insurance providing:~~

- ~~(i) a health care benefit; or~~
- ~~(ii) payment of an incurred health care expense.~~

~~(b) Health insurance includes an accident and health insurance policy allowing for an adverse benefit determination on the basis of medical necessity, rather than a specified event.~~

~~(4)(a) "Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations.~~

~~(b) The independent review organization chosen may not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.~~

~~(5)(a) "Medical [Necessity]necessity" means[:~~

~~(a) ] a health care service[s] or product[s] that a prudent health care professional would provide to a patient [for the purpose of preventing, diagnosing or treating] to prevent, diagnose, or treat an illness, injury, disease, or its symptoms in a manner that is:~~

- (i) in accordance with generally accepted standards of medical practice in the United States;
- (ii) clinically appropriate in terms of type, frequency, extent, site, and duration;
- (iii) not primarily for the convenience of the patient, physician, or other health care provider; and
- (iv) covered under the contract~~[and]~~.

~~(b) [that when]When a medical question-of-fact exists, medical necessity [shall]includes the most appropriate available supply or level of service that is known to be effective[for the individual in question], considering potential benefits and harms to the individual in question[, and known to be effective].~~

~~(i) For an intervention[s] not yet in widespread use, the effectiveness [shall be]is based on scientific evidence.~~

~~(ii) For an established intervention[s], the effectiveness [shall be]is based on:~~

- (A) scientific evidence;
- (B) professional standards; and
- (C) expert opinion.

~~[(5)](6)(a) "Scientific evidence" means:~~

(i) a scientific ~~[studies]study~~ published in or accepted for publication by a medical journal[s] that meets nationally recognized requirements for scientific manuscripts and that submits most of ~~[their]its~~ published articles for review by experts who are not part of the editorial staff; or

(ii) ~~[findings, studies]a finding, study,~~ or research conducted by or under the auspices of a federal government ~~[agencies and]agency or~~ nationally recognized federal research institute[s].

(b) Scientific evidence ~~[shall]does not include:~~

~~(i) published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer; or~~

~~(ii) a single study without other supportable studies.~~

~~[(6)](7)(a) "Urgent care claim" means a request for a health care service or course of treatment [with respect to]for which the time period[s] for making non-urgent care request determination:~~

(i) could seriously jeopardize the life or health of ~~[the]an~~ insured or the ability of ~~[the]an~~ insured to regain maximum function; or

(ii) in the opinion of a physician with knowledge of the insured's medical condition, would subject ~~[the]an~~ insured to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

~~(b)(i) Except as provided in Subsection [(6)](7)(a)(ii), [in determining whether a request is to be treated as an urgent care request,]an individual acting on behalf of [the]a carrier shall apply the judgment of a prudent layperson who possesses an average knowledge of health and medicine to determine whether a request is an urgent care claim.~~

~~(ii) [Any request that]If a physician with knowledge of [the]an insured's medical condition determines that a request is an urgent care request within the meaning of Subsection [(6)](7)(a), the request shall be treated as an urgent care claim.~~

#### **R590-203-~~5~~4. Adverse Benefit Determination.**

~~(1) [A carrier's]An adverse benefit determination review procedure shall [be compliant]comply with the adverse benefit determination review requirements set forth in 29 CFR 2560.503-1[, effective January 20, 2001. This document is incorporated by reference and available for inspection at the Insurance Department].~~

~~(2) A carrier's adverse benefit determination appeal board or body shall include at least one consumer representative [that shall be]who is present at every meeting.~~

#### **R590-203-~~6~~5. Independent and Expedited Adverse Benefit Determination Reviews for Health Insurance.**

~~(1) A carrier shall provide an independent review procedure as a voluntary option [for the resolution of]to resolve an adverse benefit determination[s] of medical necessity.~~

~~(2) An independent review procedure shall be conducted by an independent review organization, person, or entity other than the carrier, the plan, the plan's fiduciary, the employer, or any employee or agent of any of the foregoing, that do not have any material professional, familial, or financial conflict of interest with the health plan, any officer, director, or management employee of the health plan, the enrollee, the enrollee's health care provider, the provider's medical group or independent practice association, the health care facility where service would be provided and the developer or manufacturer of the service being provided.~~

~~(3)[Independent](a) An independent review organization [s shall be]is designated by the carrier[, and the] or the commissioner.~~



(b) The independent review organization chosen ~~shall~~ ~~may not~~ ~~own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health insurance plan, a national, state, or local trade association of health insurance plans, and a national, state, or local trade association of health care providers.~~ be owned or controlled by, or exercise control with:

- (i) the insurer;
- (ii) the health plan;
- (iii) the health plan's fiduciary;
- (iv) a national, state, or local trade association of:
  - (A) health insurance plans; or
  - (B) trade association of health care providers;
- (v) the employer; or
- (vi) an employee or agent of any person listed in Subsections (3)(b)(i) through (v).

(c) An independent review organization chosen may not have a material professional, familial, or financial conflict of interest with:

- (i) the health plan;
- (ii) an officer, director, or management employee of the health plan;
- (iii) the enrollee;
- (iv) the enrollee's health care provider;
- (v) the health care provider's medical group or independent practice association;
- (vi) a health care facility where service would be provided; or
- (vii) the developer or manufacturer of the service that would be provided.

(4) ~~The~~ Submission to an independent review procedure is ~~purely~~ voluntary and ~~left to~~ at the discretion of the claimant.

(5)(a) A ~~carrier's~~ voluntary independent review procedure shall:

~~(a)~~(i) waive any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a dispute of medical necessity to a voluntary level of appeal provided by the plan;

~~(b)~~(ii) agree that any statute of limitation[s] or other defense based on timeliness is tolled ~~during the time~~ while a voluntary appeal is pending;

~~(c)~~(iii) allow a claimant to submit a dispute of medical necessity to a voluntary level of appeal only after exhaustion of the appeals permitted under 29 CFR ~~Subsection~~ 2560.503-1(c)(2);

~~(d)~~(iv) upon request from ~~any~~ a claimant, provide sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed decision about whether to submit a dispute of medical necessity to the voluntary level of appeal. ~~This information shall contain a statement that the decision to use a voluntary level of appeal will not affect the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, and the process for selecting the decision maker.~~; and

~~(e)~~(v) ~~An~~ disclose that:

(A) an independent review conducted ~~in compliance with~~ ~~under~~ Section 31A-22-629[s] and this rule ~~can~~ may be binding on both parties ~~A~~; and

(B) a claimant's submission to a binding independent review is ~~purely~~ voluntary and ~~appropriate~~ disclosure and notification must be given ~~as required by~~ under 29 CFR 2560.503-1.

(b) If requested, the information to be provided under Subsection (5)(a)(iv) shall contain:

(i) a statement that the decision to use a voluntary level of appeal will not affect the claimant's right to any other benefit under the plan; and

(ii) information about the applicable rules, the claimant's right to representation, and the process for submitting an independent review.

(6) Standards for voluntary independent review:

(a) ~~The~~ A carrier's internal adverse benefit determination process must be exhausted unless the carrier and claimant ~~mutually~~ agree to waive the internal process.

(b) Any adverse benefit determination of medical necessity may be the subject of an independent review.

(c) The claimant has 180 calendar days from the date of the final internal review decision to request an independent review.

(d) A carrier shall use the same minimum standard[s] and ~~times of~~ notification requirement for an independent review that ~~are~~ is used for internal levels of review, as set forth in 29 CFR ~~Subsection~~ 2560.503-1(h)(3), 29 CFR 2560.503-1(i)(2) and 29 CFR 2560.503-1(j).

(7) A carrier shall provide an expedited review process for ~~cases involving~~ urgent care claims.

(8)(a) A request for ~~an~~ expedited review of an adverse benefit determination of medical necessity may be submitted either orally or in writing.

(b) If ~~the~~ a request is made orally, a carrier shall ~~within 24 hours~~ send written confirmation to the claimant acknowledging the receipt of the request ~~for an expedited review~~ within 24 hours.

(9) An expedited review shall require[s] a carrier to:

(a) ~~transmit~~ all necessary information between the plan and the claimant electronically, including the plan's original adverse benefit determination ~~be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method~~;

(b) ~~a carrier to~~ notify the claimant of the adverse benefit ~~review~~ determination review, as soon as possible, ~~taking into account~~ considering the medical urgency, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination; and

(c) ~~a carrier to~~ use the same minimum standard for timing and notification as set forth in 29 CFR ~~Subsection~~ 2560.503-1(h), 29 CFR 2560.503-1(i)(2)(i), and 29 CFR 2560.503-1(j).

~~(10) This section, R590-203-6, does not apply to disability income policies.~~

**R590-203-~~7~~6. Disability Income Insurance Adverse Benefit Determination Review.**

(1) A carrier ~~will~~ shall notify a claimant of ~~the~~ an adverse benefit determination review within 45 days of receipt of the claimant's request for review of an adverse benefit determination.

(2) The time ~~period~~ for making an adverse benefit determination ~~on~~ review may be extended for up to 45 days ~~when~~ if necessary due to matters beyond the carrier's control ~~of the carrier~~.

(3) If the response time ~~period~~ is extended due to the claimant's failure to submit information necessary to decide a claim, the time ~~period~~ for making the benefit determination on an adverse benefit determination review shall be tolled from the date on which the notification of the extension is sent until the date on which the claimant responds to the request for additional information.

(4) Upon request, relevant information ~~free of charge~~ must be provided to the claimant on any adverse benefit determination free of charge.

**R590-203-[8]7. File and Record Documentation.**

A carrier shall:

(1) ~~make available~~ upon request by the commissioner, make available all adverse benefit determination review files and related documentation; and

(2) ~~shall~~ maintain these records for the current calendar year plus five years.

**~~R590-203-[9] Enforcement Date.~~**

~~The commissioner shall begin enforcing the revised provisions of this rule on the effective date.~~

**~~R590-203-[10]8. Severability.~~**

~~[If a provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected] If any provision of this rule, Rule R590-203, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that 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 Last Change: 2022~~December 8, 2014~~**

**Notice of Continuation: April 4, 2017**

**Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-203; 31A-4-116; 31A-22-629**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R590-241	Filing ID 54483

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R590-241. Rule to Recognize the Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule is being changed in compliance with Executive Order No. 2021-12. During the review of this rule, the Department of Insurance (Department) discovered a number of minor issues that needed to be amended.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The majority of the changes are being done to fix style issues to bring this rule text more in line with current rulewriting standards. Other changes make the language of this rule more clear, and update the severability Section R590-241-6 to use the Department's current language. The changes do not add, remove, or change any regulations or requirements.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the Department functions.
<b>B) Local governments:</b>
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <b>agency</b>):</b>

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. Jonathan T. Pike, Commissioner

**6. A) 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	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 31A-2-201	Section 31A-17-402	
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:** 05/16/2022

**10. This rule change MAY become effective on:** 05/23/2022

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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**R590. Insurance, Administration.**

**R590-241. ~~Rule to Recognize the~~ Preferred Mortality Tables ~~for Use in Determining~~ to Determine Minimum Reserve Liabilities.**

**R590-241-1. Authority.**

This rule is promulgated by the ~~insurance~~ commissioner pursuant to ~~Subsections~~ Sections 31A-2-201~~(3)~~ and 31A-17-402~~(4)~~.

**R590-241-2. Purpose and Scope.**

(1) The purpose of this rule is to recognize, permit, and prescribe the use of mortality tables that reflect differences in mortality between ~~P~~ preferred and ~~S~~ standard lives ~~in determining~~ to determine minimum reserve liabilities ~~in accordance with~~ under Sections 31A-17-504 and R590-198-5.

(2) This rule ~~shall apply~~ applies to ~~all~~ a life insurance ~~companies and~~ company or a fraternal benefit ~~societies~~ society;

~~(a) doing business in this S state and to all life insurance companies and fraternal benefit societies which are~~ or;

(b) authorized to reinsure life insurance business in this [S]state.

### **R590-241-3. Definitions.**

Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

(1) "2001 CSO Mortality Table" means ~~[that]~~the mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002 and is supplemented by the 2001 CSO Preferred Class Structure Mortality Table~~[defined below in Subsection (2)].~~ Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(a) "2001 CSO Mortality Table (F)" means ~~[that]~~the mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(b) "2001 CSO Mortality Table (M)" means ~~[that]~~the mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(c) "Composite mortality table[s]" means the mortality table[s] with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality table[s]" means the mortality table[s] with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September 2006 national meeting and published in the Proceedings of the NAIC, 3rd Quarter 2006. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) ~~[The tables identified in Subsections R590-241-3(1) and R590-241-3(2) are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.~~

~~(4) "Statistical agent" means an entity with a proven system[s] for protecting the confidentiality of individual [that:~~

~~(a) protects confidential information of:~~

~~(i) an insured; and~~

~~(ii) an insurer[ information; demonstrated resources for and];~~

(b) demonstrates a history of ongoing electronic communications and data transfer [ensuring data] integrity with insurers[ which are its members or subscribers]; and

(c) demonstrates a history of [and means for] aggregation of data and accurate promulgation of [the] experience modifications in a timely manner.

### **R590-241-4. 2001 CSO Preferred Class Structure Table.**

~~[At the election of the company,]~~(1) An insurer, for each calendar year of issue[;] and for ~~[any one or more]~~ a specified plan[s] of insurance~~[and subject to satisfying the conditions stated in this rule],~~ may substitute the 2001 CSO Preferred Class Structure Mortality Table ~~[may be substituted in place of]~~ for the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for ~~[policies]~~ a policy issued on or after January 1, 2007.~~[No such election shall be made until the company.]~~

(2) An insurer may not make the substitution in Subsection (1) unless the insurer demonstrates that at least 20% of the business to be valued on this table is in one or more ~~[of the]~~ preferred classes.

(3) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, [will] shall be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation.

### **R590-241-5. Conditions.**

~~(1) For each plan of ]~~(1)(a) An insurer offering an insurance plan with separate rates for ~~[P]preferred and [S]standard [N]nonsmoker lives[ , an insurer may use the ]~~ may substitute Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables ~~[to substitute]~~ for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves.

(b) At the time of [election] substitution and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, [the] an appointed actuary shall certify that:

~~(a) The ]~~(i) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class[;] and

~~(b) The ]~~(ii) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

~~(2) For each plan of ]~~(2)(a) An insurer offering an insurance plan with separate rates for ~~[P]preferred and [S]standard [S]smoker lives[ , an insurer may use ]~~ may substitute the Preferred Smoker and Residual Standard Smoker tables ~~[to substitute for the Smoker mortality table found in ]~~ for the 2001 CSO Mortality Table to determine minimum reserves.

(b) At the time of [election] substitution and annually thereafter, for business valued under the Preferred Smoker Table, [the] an appointed actuary shall certify that:

~~(a) The ]~~(i) the present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table[;] and

~~(b) The ]~~(ii) the present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation

date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.

(3)(a) Unless exempted by the commissioner, ~~every authorized~~ ~~an~~ insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner or, at the direction of the commissioner, with the NAIC or ~~with~~ a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and ~~such~~ other information ~~as required by the commissioner~~ ~~may deem necessary or expedient for the administration of the provisions of this rule. The form of the~~.

(b) The reports shall be ~~established~~ ~~in a form approved by the commissioner~~ ~~or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner~~.

**R590-241-6. Severability.**

~~If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected~~ If any provision of this rule, Rule R590-241, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that 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: life insurance mortality tables**

**Date of Last Change:** ~~2022~~ August 8, 2007

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

**Authorizing, and Implemented or Interpreted Law:** 31A-2-201; 31A-17-402

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New		
Utah Admin. Code Ref (R no.):	R653-10	Filing ID 54485

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Water Resources	
<b>Room no.:</b>	310	
<b>Building:</b>	Natural Resources Building	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Martin Bushman	801-538-7273	martinbushman@agutah.gov
Joel Williams	801-538-7349	joelwilliams@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule or section catchline:</b>
R653-10. 2021 Grant Money for Metering Existing Secondary Water Systems
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this proposed rule is to describe the eligibility requirements, limitations, conditions, and application and approval process for secondary water providers to receive grant money from the Board of Water Resources for the purchase and installation of meters on existing secondary water connections.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
The proposed rule language does not amend or repeal existing administrative rule. It is a new rule in an existing Title of the Administrative Code (R653) and is singularly devoted to the purposes identified in the response to Box 3 above.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
The Legislature appropriated \$100,000,000 in ARPA one-time funding to the Department of Natural Resources, Division of Water Resources (Division) for "Water Projects" in S.B. 1001, Item 96 in the 2021 First Special Session. The substance and prioritization components of the proposed rule have been approved by the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee and the Executive Appropriations Committee as required in S.B. 1001. This rule governs the distribution of one half of the full appropriation (\$50,000,000) in secondary water metering grants. Funding is not ongoing and the grant program set for in the proposed rule will expire by 2026. Hence, the January 15, 2027, sunset provision. The grant program will be administered by existing staff at the Division, no new hires or overtime pay will be required.
<b>B) Local governments:</b>
The grant program will not fiscally impact local governments negatively. The program simply makes funding available to secondary water providers for the installation of meters on existing secondary water connections in their respective systems. This rule does not require secondary water providers to meter existing connections or to seek grant funds to install meters. Participation in the program is completely voluntary under this rule. Those that choose to participate and receive grant funding, however, must contribute 30% to 35% of the

cost of each meter installed to receive grant funding for remainder. The cost to purchase and install one meter is estimated at \$2,500. The total out-of-pocket cost to a grant recipient will depend on the number of meters it receives funding for. The secondary meters, once installed, will provide benefits to the secondary water provider in promoting water conservation, curbing excessive use, avoiding water shortages, implementing a tiered rate system that increases water use rates based on the volume used, etc.

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

To the extent a secondary water provider is not a local government and more closely related to a small or non-small business, it will be impacted similarly to that described in the local governments section. A residual benefit of this rule and the grant program it implements to small and non-small businesses will be increased demand for: 1) the manufacture and purchase of meters; and 2) qualified contractors to install them. In total, the grant program over the next 4 years will infuse \$71,428,571 (\$50,000,000 in 70% grants plus \$21,428,571 in 30% cost share) into the purchase and installation of meters.

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

Impacts to non-small businesses is anticipated to be no different than to small businesses. See small businesses impact response in Box 5C above.

**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 anticipated impacts to others different than to local governments, small businesses, or non-small businesses. See previous responses.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

This rule does not require secondary water providers to meter existing connections or to seek grant funds to install meters. Participation in the program is completely voluntary under this rule. Those that choose to participate and receive grant funding, however, must contribute 30% to 35% of the cost of each meter installed to receive grant funding for remainder. The cost to purchase and install one meter is estimated at \$2,500. The total out-of-pocket expense to a grant recipient will depend on the number of meters it receives grant funding for. The maximum grant amount available to a secondary water provider with 7,000 or fewer connections is \$5,000,000. Those with more than 7,000 connections may receive no more than \$10,000,000. Assuming a secondary water provider receives the maximum grant amount permitted by this rule, their 30% cost share total would be \$2,142,750 on a

\$5,000,000 grant and \$4,285,500 on a \$10,000,000 grant. Again, participation in the program under this rule is voluntary.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

The Executive Director agrees with the responses 5A) through 5F) above and has no further comments to add. Brian Steed, Executive Director

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Executive Director of the Department of Natural Resources, Brian Steed, approves the regulatory impact analysis provided in this submission.

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
SB 1001, Item 96, First Special Session	Section 73-10-1.5	Section 73-10-34

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>10. This rule change MAY become effective on:</b>	06/01/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Candace Hasenyager, Director	<b>Date:</b>	04/01/2022
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**R653. Natural Resources, Water Resources.  
R653-10. 2021 Grant Money for Metering Existing Secondary Water Systems.**

**R653-10-1. Purpose.**  
(1) The Legislature appropriated \$50,000,000 from American Rescue Plan Act funds to improve water conservation by issuing grants to secondary water suppliers for the acquisition and installation of meters on existing systems.  
(2) This rule sets forth the procedures and requirements for issuance and receipt of grant funds for installation of secondary water meters.

**R653-10-2. Definitions.**  
(1) As used in this section:  
(a) "Applicant" means a secondary water supplier.  
(b) "Board" means the Board of Water Resources.  
(c) "Division" means the Division of Water Resources.  
(d) "Project" means the purchase and installation of a meter for a secondary water system that, as of the effective date of this rule, provides secondary water service that is not metered.  
(e) "Secondary water" means the same as that term is defined in Section 73-10-34.  
(f) "Secondary water connection" means the location where the water leaves the secondary water supplier's mainline and enters the water user's line.  
(g) "Secondary water supplier" means the same as that term is defined in Section 73-10-34.

**R653-10-3. Grants for Secondary Water Meters.**  
(1)(a) The board may issue a grant to an applicant to fund a project for the purchase and installation of meters on an existing secondary water system that provides secondary water service that is not metered.  
(b) The board may not issue a grant under this section to fund:  
(i) metering of secondary water for service that begins on or after the effective date of this rule; or  
(ii) the replacement or repair of an existing secondary water meter.  
(2)(a) A secondary water supplier with 7,000 secondary water connections or fewer may receive no more than \$5,000,000 in grant funds.  
(b) A secondary water supplier with more than 7,000 secondary water connections may receive no more than \$10,000,000 in grant funds.  
(c)(i) Subject to the other provisions of this rule, a grant may not exceed the following amounts for the costs associated with a project, including installation or purchase of meters:  
(A) for contracts completed with the board calendar year 2022, 70% of the costs of a project;  
(B) for contracts completed with the board calendar year 2023, 70% of the costs of a project; and  
(C) for contracts completed with the board calendar year 2024, 65% of the costs of a project.  
(d) A secondary water supplier may pay up to 85% of its share of project costs under Subsection (c) through a 1% interest loan from the board.  
(3) Projects receiving project grant funds under this rule must:  
(a) commit all grant funds through contract no later than December 31, 2024; and  
(b) spend all grant funds and complete construction of the project no later than December 31, 2026.

**R653-10-4. Applications for Grants.**  
(1)(a) To obtain a grant under this rule, an applicant shall submit an application with the division.  
(b) If grant funding described in Subsection R653-10-1(1) remains after the first round of applications and grant disbursements, the board may designate one or more additional application periods to ensure the entire funding amount is awarded by December 31, 2024.  
(2) An application submitted to the division shall include:  
(a) a detailed project cost estimate, including engineering fees, meter costs, and installation costs;  
(b) the total number of pressurized secondary water connections in the applicant's secondary water system;  
(c) the number of meters to be installed under the grant;  
(d) detailed estimated secondary water use information, including:  
(i) average lot size;  
(ii) average irrigated acreage; and  
(iii) estimated secondary water usage before the project versus after completion of the project;  
(e) the timeline for purchase and installation of meters under the project, including the projected start date and expected completion date;  
(f) estimated need for additional water and timeline for anticipated shortages;

(g) project plans and specifications---stamped and signed by the Utah licensed professional engineer responsible for the project;

(h) an agreement to:

(i)(A) provide an educational component promoting water conservation on a monthly water use statement provided to the applicant's secondary water customers; or

(B) bill according to usage based on a tiered conservation rate; or

(C) provide both an educational component on water conservation and bill based on a tiered conservation rate; and

(ii)(A) commit project grant funds through contract no later than December 31, 2024; and

(B) spend all project grant funds and complete construction of the project no later than December 31, 2026;

(i) applicant's verification that the information provided in the application is accurate and any estimates or projections submitted are based on sound professional judgement and the best available data; and

(i) additional information required on the application.

**R653-10-5. Application Review and Prioritization.**

(1) The division shall:

(a) review and prioritize an application submitted under Section R653-10-4; and

(b) recommend to the board which applicants should be awarded a grant under this rule.

(2) In reviewing and prioritizing applications submitted under Subsection (1), the division:

(a) may contact an applicant to:

(i) verify information in the application;

(ii) seek clarifications and supplemental information; and

(iii) address and correct anomalies and inconsistencies in the application; and

(b) shall score the applications based on the following:

(i) Return on Investment---projects that provide the greatest level of water conservation from funds contributed by the state.

(A) The metric for measuring Return on Investment is the ratio of estimated annual water use savings resulting from the project divided by the total state contribution to the project, including grants, loans, and other forms of financial assistance provided by the state.

(ii) Need---applicants facing imminent secondary water shortages where the project will delay or eliminate the need for new water development.

(A) The metric for measuring Need is the imminency of secondary water shortage and the period of time the project will delay the shortage and the need for new water development.

(iii) Shovel Readiness---projects with accelerated construction schedules.

(A) The metric for measuring Shovel Readiness is the project's start date, and time to completion divided by the number of meters installed.

(3) Each scoring category in Subsection (2) will be weighted as follows:

(a) Return on Investment---60% weight;

(b) Need---20% weight; and

(c) Shovel Readiness---20% weight.

(4)(a) The division will prioritize each application based on the scoring criteria in Subsection (2) and weighting requirements in Subsection (3).

(b) The prioritization will form the basis for the division's recommendation to the board on applicants that should be awarded a grant.

**R653-10-6. Grant Award and Agreement.**

(1) Based on the grant applications submitted under Section R653-10-4 and prioritization of those applications performed by the division under Section R653-10-5, the board may award a grant to a qualified applicant for installing secondary water use meters, subject to the requirements and conditions of this rule.

(2)(a) As a condition to receiving a grant under this section, the applicant shall enter into a contract with the board for use of the grant money.

(b) The contract with the board shall be executed no later than December 31, 2024 and require that grant funds are:

(i) committed through contract no later than December 31, 2024; and

(ii) completely spent and the project completed under the term of the grant no later than December 31, 2026.

(c) Nothing in Subsection (2) limits the division or board from including additional terms and conditions in the grant contract.

**R653-10-7. Statutory Supremacy.**

Should any provision in this rule conflict with future legislation or parts thereof governing the distribution of American Rescue Plan Act grants funds for secondary water metering, the conflicting provisions in statute shall control.

**R653-10-8. Sunset Clause.**

This rule will sunset on January 15, 2027, unless sooner amended, superseded, or repealed.

**KEY: secondary water meter funding**

**Date of Last Change: 2022**

**Authorizing, and Implemented or Interpreted Law: 73-10**

**NOTICE OF PROPOSED RULE**

**TYPE OF RULE:** Amendment

**Utah Admin. Code Ref (R no.):** R708-41

**Filing ID**  
54451

**Agency Information**

<b>1. Department:</b>	Public Safety	
<b>Agency:</b>	Driver License	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84129	
<b>Mailing address:</b>	PO Box 144501	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4501	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b> <b>Email:</b>	
Kim Gibb	801-556-8198	kgibb@utah.gov



Tara Zamora	801-964-4483	tarazamora@utah.gov
Britani Flores	801-884-8313	bflores@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R708-41. Requirements for Acceptable Documentation, Storage and Maintenance
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
The purpose of this rule amendment is to implement legislative changes for H.B. 163 from the 2022 General Session.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>
This rule filing adds the covered humanitarian parolee status as a form acceptable to establish lawful presence or status in order to obtain a limited term license or limited term identification card.

**Fiscal Information**

<b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
This rule change is not expected to have any impact on state government because this rule is utilizing resources already in place and is simply adding the covered humanitarian parolee status to the list of those allowed to apply for a limited term driving privilege or limited term identification card.
<b>B) Local governments:</b>
This rule change is not expected to have any impact on local governments because this rule is utilizing resources already in place and is simply adding the covered humanitarian parolee status to the list of those allowed to apply for a limited term driving privilege or limited term identification card.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
This rule change is not expected to have any impact on small businesses because this rule is utilizing resources already in place and is simply adding the covered humanitarian parolee status to the list of those allowed to

apply for a limited term driving privilege or limited term identification card.																								
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>																								
This rule change is not expected to have any impact on non-small businesses because this rule is utilizing resources already in place and is simply adding the covered humanitarian parolee status to the list of those allowed to apply for a limited term driving privilege or limited term identification card.																								
<b>E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>):</b>																								
This rule change could have a direct non fiscal benefit for citizens who are now able to apply for a limited term driving privilege or limited term identification card as a covered humanitarian parolee.																								
<b>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</b>																								
There are no compliance costs for affected persons associated with this rule. This rule change is not adding or changing any processes already in place.																								
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>																								
This rule change should have no effect on businesses because it is only adding covered humanitarian parolee status as a form acceptable to establish lawful presence or status in order to obtain a limited term license or limited term identification card. Jess L. Anderson, Commissioner																								
<b>6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>																								
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<table border="1"> <thead> <tr> <th>Fiscal Cost</th> <th>FY2022</th> <th>FY2023</th> <th>FY2024</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table>	Fiscal Cost	FY2022	FY2023	FY2024	State Government	\$0	\$0	\$0	Local Governments	\$0	\$0	\$0	Small Businesses	\$0	\$0	\$0	Non-Small Businesses	\$0	\$0	\$0	Other Persons	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0																					

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<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
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Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	\$0	\$0	\$0
<b>Net Fiscal Benefits</b>	\$0	\$0	\$0
<b>B) Department head approval of regulatory impact analysis:</b>			
The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 53-3-104	Section 53-3-205	Section 53-3-214
Section 53-3-410	Section 53-3-804	

**Public Notice Information**

<b>9. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>10. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Christopher Caras, Director	<b>Date:</b>	03/22/2022
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**R708. Public Safety, Driver License.**

**R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.**

**R708-41-1. Purpose.**

The purpose of this rule is to:

(1) define acceptable documentation for:

(a) a driver license certificate or identification card;

(b) honorable or general discharge from the United States military; and

(c) establishing homelessness as verified by the Department of Workforce Services to prove residency and obtain a fee waiver for an identification card; and

(2) establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3, Uniform Driver License Act.

**R708-41-2. Authority.**

This rule is authorized by Section 53-3-104.

**R708-41-3. Definitions.**

(1) Terms used in this rule are defined in Section 53-3-102.

(2) In addition:

(a) "acceptable document" means an original document, or a copy of an original document certified by the issuing agency, that the division shall accept for determining the validity of information submitted ~~[in connection with]~~for a license certificate or identification card application;

(b) "alternate document" means a document that may be accepted when the applicant ~~[is unable to]~~cannot present the necessary documents to establish identity or date of birth as required ~~[in connection with]~~for a license certificate or identification card application;

(c) "covered humanitarian parolee" means a person who is a citizen and national of Afghanistan who has been paroled into the United States between July 31, 2021, and September 30, 2022, and certain immediate family members who have been paroled into the United States after September 30, 2022;

~~(e)~~(d) "DHS" means the Department of Homeland Security;

~~(d)~~(e) "exception process" means a written, defined process for persons who are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or ~~[U.S.]~~US citizenship;

~~(e)~~(f) "identity document" means an original, government-issued document that contains identifying information about the subject of the document;

~~(f)~~(g) "full legal name evidence" means the name established on an identity document;

~~(g)~~(h) "ITIN" means an individual tax identification number;

~~(h)~~(i) "ITIN evidence" means an official document used to verify an individual's assigned individual tax identification number;

~~(i)~~(j) "lawful presence or status" means that an individual's presence in the United States does not violate state or federal law;

~~(j)~~(k) "lawful presence or status evidence" means a document issued by the federal government or approved by DHS, or the division director or designee, that shows legal presence of an individual;

~~(k)~~(l) "SAVE" means the Systematic Alien Verification for Entitlements system;

~~(4)~~(m) "SAVE verification" means verification of a document issued by the federal government through DHS, SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security;

~~(m)~~(n) "SSN" means a social security number issued by the Social Security Administration;

~~(m)~~(o) "SSN evidence" means an official document used to verify an individual's social security number;

~~(o)~~(p) "SSOLV" means the social security online verification system;

~~(p)~~(q) "Utah residence address" means the place where an individual has a fixed permanent home and principal establishment in Utah and where the individual voluntarily resides, that is not for a special or temporary purpose;

~~(p)~~(r) "Utah residence address evidence" means a document that displays the applicant's name and principal Utah residence address;

~~(p)~~(s) "veteran indicator" means the word VETERAN added to a driver license certificate or identification card during the application process at the applicant's request upon the applicant providing proof of an honorable discharge or general discharge under honorable conditions from the United States military.

#### **R708-41-4. Acceptable Forms of Identity Documents.**

(1) Acceptable forms of identity documents include the following:

(a) a valid, unexpired United States passport or passport card;

(b) a certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's state of birth;

(c) Consular Report of Birth Abroad forms FS-240, DS-1350 or FS-545, issued by the United States Department of State;

(d) a valid, unexpired Permanent Resident Card;

(e) a valid, unexpired Conditional Permanent Resident Card;

(f) a Temporary Stamp Visa or Temporary Admittance Document form I-551;

(g) a Certificate of Naturalization issued by DHS, form N-550 or form N-570;

(h) a Certificate of Citizenship, form N-560 or form N-561, issued by DHS;

(i) a regular driver license, commercial driver license, or identification card that has been issued by the Utah Driver License Division on or after January 1, 2010, which is only acceptable for renewal or duplicate certificates and may provide evidence of both lawful presence and identity;

(j) an unexpired Employment Authorization Document, or EAD, issued by DHS, form I-766, or form I-688B verified through the SAVE system;

(k) an unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE;

(l) a foreign birth certificate or unexpired foreign passport, including a certified translation if the document is not in English;

(m) alternate documents may be accepted if approved by DHS or the division director or designee.

(2) In addition to one of the identity documents listed in Subsection R708-41-4(1), individuals applying for a driving privilege card will be required to show one of the following:

(a) church records;

(b) court records;

(c) driver license;

(d) employee identification card;

(e) insurance identification card;

(f) matricular consular card issued in Utah;

(g) Mexican voter registration card;

(h) school records;

(i) Utah DPC; or

(j) other evidence considered acceptable by the division director or designee.

#### **R708-41-5 Acceptable Forms of Lawful Presence or Status Evidence.**

Acceptable forms of lawful presence or status evidence include documents listed in Subsections R708-41-4(1)(a) through R708-41-4(1)(i) in addition to the following:

(1) a document issued by the federal government that verifies lawful entrance into the United States verified through SAVE;

(2) unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the federal government;

(3) pending or approved application for asylum in the United States;

(4) admission into the United States as a refugee;

(5) pending or approved application for temporary protected status in the United States;

(6) approved deferred action status;~~(o)~~

(7) pending application for adjustment of status to legal permanent resident or conditional resident~~[-]; or~~

(8) proof of covered humanitarian parolee status.

#### **R708-41-6 Acceptable Forms of Social Security Number Evidence.**

Acceptable forms of SSN evidence include the following:

(1) social security card issued by the federal government that has been signed; or

(2) if the social security card is not available, the applicant may present one of the following documents that contain the applicant's name and SSN:

(a) W-2 form;

(b) SSA-1099 form;

(c) non SSA-1099 form;

(d) pay stub showing the applicant's name and full SSN;

(e) ineligibility letter from the Social Security Administration; or

(f) other documents approved by DHS or the division director or designee.

#### **R708-41-7 Acceptable Forms of Individual Tax Identification Number (ITIN) Evidence.**

Acceptable forms of ITIN evidence include the following:

(1) an ITIN card issued by the Internal Revenue Service; or

(2) a document or letter from the Internal Revenue Service verifying the ITIN.

#### **R708-41-8 Acceptable Forms of Utah Residence Address Evidence.**

(1) Acceptable forms of Utah residence address include the following:

(a) bank statement;

(b) court documents;

(c) current mortgage or rental contract;

- (d) major credit card bill;
  - (e) property tax notice statement or receipt;
  - (f) school transcript;
  - (g) utility bill;
  - (h) vehicle title; or
  - (i) other documents acceptable to the division upon review.
- (2) Residency evidence dated over 90 days may be reviewed by the division ~~[prior to]~~ before acceptance.

(3) An individual using a letter of verification of homelessness verified by the Department of Workforce Services may be eligible for a waiver of the fee for an identification card. The verification letter shall also be acceptable evidence for Utah residency.

(4) Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business, the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division shall recognize the sponsoring agency's address as the Utah residence address of the applicant.

**R708-41-9 Acceptable Forms to Obtain Veteran Indicator.**

(1) Acceptable proof of an honorable discharge or general discharge under honorable conditions from the United States military include the following:

- (a) DD214, certificate of release or discharge of duty;
- (b) DD256, honorable discharge certificate;
- (c) DD257, general discharge certificate;
- (d) NGB22, report of separation and record of service; or
- (e) other documents approved by the division director or designee.

**R708-41-10. Document Requirements.**

(1) Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) Documents shall display the applicant's full legal name.

(3) Any name variation from the original or certified documents must be accompanied by legal authorizing documentation, except the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division.

(4) Upon application for any license certificate or identification card, a change of the applicant's full legal name must be accompanied by an acceptable document that authorizes the name change.

(5) A copy of an original document must be certified by the issuing agency.

**R708-41-11. Exceptions.**

This rule does not apply when issuing driver license certificates or identification cards in support of federal, state, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

**R708-41-12. Document Storage.**

Documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change

will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a United States birth certificate may be written on the license or identification card application rather than scanning the document.

**KEY: acceptable documents, identification cards, license certificates, limited-term license certificates**

**Date of Last Change: 2022[December 23, 2021]**

**Notice of Continuation: March 3, 2020**

**Authorizing, and Implemented or Interpreted Law: 53-3-104; 53-3-205; 53-3-214; 53-3-410; 53-3-804**

NOTICE OF PROPOSED RULE		
TYPE OF RULE: Amendment		
Utah Admin. Code Ref (R no.):	R714-560	Filing ID 54441

**Agency Information**

<b>1. Department:</b>	Public Safety	
<b>Agency:</b>	Highway Patrol	
<b>Building:</b>	Calvin Rampton Complex	
<b>Street address:</b>	4501 S 2700 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84119-5994	
<b>Mailing address:</b>	PO Box 141100	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1100	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kim Gibb	801-556-8198	kgibb@utah.gov

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

**General Information**

<b>2. Rule or section catchline:</b>
R714-560. Technology and Equipment for Officer-Involved Critical Incident Investigation
<b>3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
This rule was originally enacted as a result of the passage of S.B. 68 during the 2021 General Session. At that time, \$500,000 was appropriated for implementation of the bill. None of the funding was disbursed during 2021, so the funding was rolled over into our FY23 base budget to allow time for agencies to purchase equipment and submit applications for grant funding.
<b>4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):</b>

Changes the application submission deadline date from October 31, 2021, to May 1, 2023.

**Fiscal Information**

**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

The Division of Highway Patrol (Division) anticipates a cost of \$40,000 to the state in administrative costs associated with the review of grant funding applications from local law enforcement entities, and the awarding of grant funding for the purchase of approved equipment and technology.

The Utah Legislature appropriated \$460,000 to provide matching grant funding for law enforcement entities for the purchase of qualifying equipment or technology as outlined in Section 53-1-121 to assist in the investigation of officer-involved critical incidents involving a firearm. In addition, \$40,000 was appropriated to cover the costs of administering the grant program through the Department of Public Safety.

There have not been any applications submitted since the date this rule was originally enacted, so the amount appropriated in FY22 was rolled over into FY23 by the legislature during the 2022 General Session to allow local law enforcement agencies to apply for grant funding for approved equipment or technology.

**B) Local governments:**

The Division anticipates a cost savings of \$460,000 to local governments. Local law enforcement entities will have the ability to apply for matching funding from the \$460,000 appropriation in order to obtain reimbursement for costs associated with the purchase of equipment or technology to assist in the investigation of officer-involved critical incidents involving a firearm. Local law enforcement entities will submit an application for approval of grant funding awards, and once approved will pay the costs for purchases up front and will be reimbursed for 50% of the total amount paid for approved equipment or technology.

There have not been any applications submitted since the date this rule was originally enacted, so the amount appropriated in FY22 was rolled over into FY23 by the legislature during the 2022 General Session to allow local law enforcement agencies to apply for grant funding for approved equipment or technology.

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

The Division anticipates that there are two small businesses that either have, or will have in the very near future, equipment and technology available that will meet the requirements outlined in Section 53-1-121. Under the grant program created in Section 53-1-121, these businesses will have a potential to sell qualifying

technology and equipment to law enforcement entities in the amount of \$920,000 with the combination of the \$460,000 in grant funding appropriated by the legislature, and the matching funding of \$460,000 provided by the law enforcement entities.

There have not been any applications submitted since the date this rule was originally enacted, so the amount appropriated in FY22 was rolled over into FY23 by the legislature during the 2022 General Session to allow local law enforcement agencies to apply for grant funding for approved equipment or technology.

**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 because the Division is not aware of any non-small businesses that have, or will have, equipment and technology available that will meet the requirements outlined in Section 53-1-121.

**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 persons other than small businesses, non-small businesses, state, or local government entities because this rule identifies the process for a law enforcement entity to seek grant matching funding for the purchase of technology or equipment to assist in the investigation of officer-involved critical incidents involving a firearm.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for affected persons because this rule identifies the process for a law enforcement entity to seek grant matching funding for the purchase of technology or equipment to assist in the investigation of officer-involved critical incidents involving a firearm.

**G) Comments by the department head on the fiscal impact this rule may have on businesses** (Include the name and title of the department head):

Businesses that produce technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm as specified under Section 53-1-121 will continue to have the ability to receive up to \$460,000 in grant funds and \$460,000 in matching law enforcement entity funds, for a total of \$920,000, for the sale of approved technology and equipment through FY23. Jess L. Anderson, Commissioner

**6. A) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If

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

<b>Regulatory Impact Table</b>			
<b>Fiscal Cost</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>
State Government	\$40,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$460,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$40,000	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$460,000	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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

The Commissioner of the Department of Public Safety, Jess L. Anderson, has reviewed and approved this fiscal analysis.

**Citation Information**

**7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Section 53-1-121		
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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. See Section 63G-3-302 and Rule R15-1 for more information.)

<b>A) Comments will be accepted until:</b>	05/16/2022
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<b>10. This rule change MAY become effective on:</b>	05/23/2022
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NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mike Rapich, Colonel UHP	<b>Date:</b>	03/21/2022
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**R714. Public Safety, Highway Patrol.**

**R714-560. Technology and Equipment for Officer-Involved Critical Incident Investigation.**

**R714-560-1. Purpose.**

(1) The purpose of this rule is to create a program to assist law enforcement agencies through monetary grants to purchase technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm in accordance with Section 53-1-121.

**R714-560-2. Authority.**

This rule is authorized by Section 53-1-121.

**R714-560-3. Definitions.**

(1) Terms used in this rule are found in Section 53-1-102.

(2) In addition:

(a) "committee" means the Technology and Equipment for Officer-Involved Critical Incident Investigation Committee established under this rule; and

(b) "equipment" means technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm that meets the criteria specified in Section 53-1-121.

**R714-560-4. Technology and Equipment for Officer-Involved Critical Incident Investigation Committee.**

This rule establishes the Technology and Equipment for Officer-Involved Critical Incident Investigation Committee, which shall be responsible for assisting the department in awarding funds to purchase equipment in accordance with Section 53-1-121.

**R714-560-5. Committee Membership.**

(1) The committee shall consist of six members made up of one representative from each of the following groups or organizations:

- (a) Utah Highway Patrol Colonel or designee;
- (b) Utah Highway Patrol, Training Section;
- (c) Utah Attorney General's Office;
- (d) Utah Sheriffs Association;
- (e) Utah Chiefs of Police Association;
- (f) Statewide Association of Prosecutors;

(2) Members of the committee shall:

(a) be approved by the Commissioner of the Utah Department of Public Safety;

- (b) be appointed for four year terms; and
- (c) cease to be members of the committee immediately upon the termination of their membership in the group or organization they represent.
- (3) If a vacancy occurs during the four year term of a committee member, a new member shall be appointed from the same group or organization to complete the term of that member.
- (4) The committee shall select a ~~[chairman]~~chair and ~~[vice-chairman]~~vice-chair from among its members.
- (5) Four members shall constitute a quorum for committee action.
- (6) The department's special counsel shall assist the committee as needed.

**R714-560-6. Committee Meetings.**

The committee shall meet at least quarterly ~~[for the purpose of reviewing]~~to review and ~~[approving]~~approve applications from law enforcement agencies.

**R714-560-7. Applications.**

- (1) Applications for the funding of equipment shall be:
  - (a) made on department forms;
  - (b) mailed to the committee in care of the department;
  - (c) submitted no later than ~~[October 31, 2021]~~May 1, 2023;
- and
- (d) submitted ~~[prior to]~~before the purchase of technology or equipment.

**R714-560-8. Criteria and Awards.**

- (1) The committee shall:
  - (a) evaluate equipment as it becomes available to determine if it meets requirements set forth under Section 53-1-121;
  - (b) review timely applications submitted by law enforcement agencies as described in ~~[Subsection]~~Section R714-560-7;

- (c) approve funding awards equitably to law enforcement agencies that have submitted completed applications for the purchase of approved equipment; and
- (d) notify each law enforcement agency that submitted an application of:
  - (i) the approval or denial of the application for funding; and
  - (ii) the amount of funding that will be made available to the law enforcement agency for the purchase of equipment.
- (2) In order receive awarded funds for the purchase of equipment, the law enforcement agency shall submit to the committee:
  - (a) a completed request for reimbursement form for the amount awarded to the law enforcement agency by the committee; and
  - (b) an invoice for the purchase of equipment that has been approved by the committee.

**R714-560-9. Agency Accountability.**

- Law enforcement agencies that receive funding shall:
- (a) use the awarded resources only in the manner set forth in the agency's application;
  - (b) use the awarded resources only to purchase technology and equipment to assist in the investigation of officer-involved critical incidents involving a firearm;
  - (c) maintain records for five years sufficient to show how the funding is used; and
  - (d) cooperate with the committee if and when the committee determines it is necessary to audit agency records, and evaluate use of the funding.

**KEY: technology, equipment, officer[-]involved critical incident**  
**Date of Last Change: 2022[August 9, 2021]**  
**Authorizing, and Implemented or Interpreted Law: 53-1-121**

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





## NOTICES OF CHANGES IN PROPOSED RULES

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

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

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends May 16, 2022.

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 August 13, 2022, an agency may notify the Office of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

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

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

NOTICE OF CHANGE IN PROPOSED RULE		
Utah Admin. Code Ref (R no.):	R539-4	Filing ID: 54228

#### Agency Information

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Services for People with Disabilities	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Bruce Quaglia	435-669-4855	bquaglia@utah.gov
Jonah Shaw	801-538-4219	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

#### General Information

<b>2. Rule or section catchline:</b>
R539-4. Behavior Interventions
<b>3. Publication date of previous proposed rule or change in proposed rule:</b>
01/15/2022 (EDITOR'S NOTE: The original proposed repeal and reenactment upon which this change in proposed rule (CPR) was based was published in the January 15, 2022, issue of the Utah State Bulletin, on page 97. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed repeal and reenactment together to understand all of the changes that will be enforceable should the agency make this rule effective.)
<b>4. Reason for this change (Why is the agency submitting this filing?):</b>
The changes are in response to public comments.
<b>5. Summary of this change (What does this filing do?):</b>
Language was changed to distinguish seclusion in general from the use of seclusion rooms in particular and to clarify the differences in approval process for use of various restraints.

#### Fiscal Information

<b>6. Aggregate anticipated cost or savings to:</b>
<b>A) State budget:</b>
No anticipated cost or savings to the state budget. Changes to this rule do not alter program access or funding.
<b>B) Local government:</b>
No anticipated cost or savings to local governments. Local governments do not contribute funding to state disability services.
<b>C) Small businesses ("small business" means a business employing 1-49 persons):</b>
No anticipated cost or savings to small businesses. Small businesses do not contribute funding to state disability services.
<b>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</b>
No anticipated cost or savings to non-small businesses. Non-small businesses do not contribute funding to state disability services.
<b>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 <i>agency</i>):</b>
No anticipated cost or savings to persons other than small businesses, non-small businesses, state, or local government entities. The changes to this rule do not alter program access or funding.
<b>F) Compliance costs for affected persons:</b>
No anticipated compliance costs for affected persons. The changes to this rule do not alter program access or funding.
<b>G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</b>
After conducting a thorough analysis, it was determined that this proposal will not result in a fiscal impact to businesses. Tracy Gruber, Executive Director
<b>7. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)</b>

Regulatory Impact Table			
Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Cost</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Fiscal Benefits</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>B) Department head approval of regulatory impact analysis:</b>			
The Executive Director of the Department of Human Services, Tracy Gruber, has reviewed and approved this fiscal analysis.			

**Citation Information**

<b>8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:</b>		
Section 62A-5-102	Section 62A-5-103	

**Public Notice Information**

<b>10. The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)	
<b>A) Comments will be accepted until:</b>	05/16/2022

<b>11. This rule change MAY become effective on:</b>	05/23/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	03/31/2022
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**R539. Human Services, Services for People with Disabilities.**

**R539-4. Behavior Interventions.**

**R539-4-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 62A-5-103(2)(g) and 62A-5-103(2)(l).

(2) This rule defines and establishes a standard for behavior intervention to prevent infringement of a person's constitutionally protected rights without due process.

(3) The standard intends to:

- (a) protect and promote a person's rights;
- (b) prevent abuse and neglect;
- (c) encourage positive behavior support;
- (d) ensure health and safety; and
- (e) ensure that the least intrusive behavior intervention is provided in the minimum amount necessary.

**R539-4-2. Definitions.**

(1) Terms used in this rule are defined in Sections 62A-5-101, R539-1-3, R539-2-3, ~~and~~ R539-3-3, and Rule R501-1.

(2) "Applied behavior analysis (ABA)" means a well-developed discipline based on a mature body of scientific knowledge and established standards for evidence-based practice. ABA focuses on the analysis, design, implementation and evaluation of social and other environmental modifications to produce meaningful changes in behavior. ABA is a behavioral health treatment that is intended to develop, maintain, or restore, to the maximum extent attainable, the functioning of a person who requires behavioral intervention. ABA-based therapies are characterized by reliable empirical evidence and are not experimental or investigational.

(3) "Aversive stimulus" means a highly undesirable stimulus change or condition that exceeds what typically occurs in the environment, but is not harmful.

(4) "Behavior intervention" means a specific technique or procedure designed to teach a skill, decrease the occurrence of unwanted target behavior and increase desirable target behavior, ensure the safety of the person or any other person, or reduce significant property damage.

(5) "Behavior support plan" means a written plan of instruction designed to address a person's specific unwanted target behavior and teach a wanted target behavior.

(6) "Contingent Rights Restriction" means a temporary loss of a human right based on the occurrence of a previously identified unwanted target behavior.

(7) "Deprivation" means the non-contingent removal of or limiting access to a person's stimuli or their ability to access stimuli with their own available funds to increase its value as a potential reinforcer. The potential reinforcer is given to the person contingent on the occurrence of a desired targeted adaptive behavior or other desired targeted response. If a person does not own the item or has insufficient funds to purchase the item, removal or limiting access to that item is not deprivation.

(8) "Emergency behavior intervention" means the temporary use of an intrusive behavior intervention, including an emergency rights restriction, not outlined in a person's behavior support plan and only used in emergency situations to prevent imminent injury to a person, any other person, or significant property damage.

(9) "Emergency rights restriction" means a temporary loss of a human right based upon the occurrence of a previously identified unwanted target behavior.

(10) "Enforced compliance" means that a person is physically guided through completion of a request or command and the person is more than minimally resisting.

(11) "Error correction" means that a person must repeat the step of a skill where an error was made, while receiving as much help as needed to complete the skill without making additional errors. A person is not resisting throughout the process.

(12) "Extinction" means the reinforcement that maintained or increased the unwanted target behavior is withheld.

(13) "Functional behavior assessment" means a systematic assessment for obtaining information about the function an unwanted target behavior serves for a person. The assessment is conducted by a qualified behavior professional.

(14) "Intrusive behavior intervention" means an unpleasant and restrictive behavior intervention with the potential to restrict a person's human right and affect the safety of a person.

(15) "Manual restraint" means that a person's body is physically held or restricted in a way that prevents a person's free movement but must be administered in a way that ensures a person's general safety with specific emphasis on appropriate breathing and circulation. Manual restraint does not mean briefly holding a person who is not resisting to calm a person or escort a person safely from one area to another.

(16) "Mechanical restraint" means that a device is attached to or adjacent to a person's body, that cannot easily be removed by a person, and restricts a person's freedom of movement. ~~and is implemented to decrease the occurrence of a person's unwanted target behavior.~~ A mechanical restraint must be administered in a way that ensures a person's general safety with specific emphasis on appropriate breathing and circulation and which prevents skin irritation.

(17) "Non-intrusive behavior intervention" means a positive behavior intervention that incorporates prevention, reinforcement, positive teaching, and training strategies.

(18) "Physical guidance" means that a person's appropriate body part is physically guided through the proper motion by a caregiver or staff and a person is no more than minimally resisting. The intervention is considered intrusive if a person demonstrates any level of resistance. Physical guidance may include partial physical prompts and full physical prompts.

(19) "Positive behavior support" means the use of a positive behavior intervention that achieves a socially important

behavior change. The support addresses the functionality of a problem and results in an outcome that is acceptable to the person, the family, and the community. Support focuses on prevention and teaching replacement behavior.

(20) "Positive practice overcorrection" means that a person repeatedly practices a positive alternative behavior in those situations when unwanted target behavior commonly occurs.

(21) "Reinforcement" means anything that occurs following a behavior that increases or strengthens that behavior.

(22) "Replacement behavior" means a necessary social, behavioral, or communication skill used to replace the unwanted target behavior.

(23) "Response-cost" means that previously obtained rewards, including tokens, points, activities, or the opportunity to exchange points or tokens to obtain a reward, are removed from a person for a time, contingent upon the occurrence of an unwanted target behavior.

(24) "Restitutional overcorrection" means that a person must repeatedly restore an environment to its original condition.

(25) "Satiation" means that a person is non-contingently presented with an overabundance of a reinforcer to decrease its reinforcing properties and subsequently decrease the occurrence of the unwanted target behavior. Satiation may not be used in conjunction with enforced compliance.

(26) "Seclusion" means the same as defined in Section 62A-2-101 and Rule 501-1, and includes social isolation, and removing the person from a specific setting that exceeds ten minutes. Seclusion is not a voluntary time-out or medical quarantine and isolation when approved by a medical professional.

(27) "Seclusion Room" is a specific type of seclusion and means that the person is placed alone in a room designed as a seclusion room for up to a specified amount of time. The behavior support plan determines the specified allowable amount of time. Use of the seclusion room may require enforced compliance to move the person to or prevent them from leaving the seclusion room.

### **R539-4-3. Review Committees.**

(1) Each person with a behavior support plan and using a provider service shall have access to a Provider Peer Review Committee and the State Behavior Review Committee.

(2) Each person with a behavior support plan and a resident of the developmental center shall have access to the State Behavior Review Committee.

(3) A Provider Peer Review Committee shall consist of at least three specialists.

(a) Each specialist shall have experience in the field of positive behavior support and the field of ABA.

(b) At least one of the three specialists may not be employed by the provider.

(4) A Provider Peer Review Committee shall evaluate a behavior support plan for:

(a) quality of design and implementation;

(b) effectiveness; and

(c) compliance with the least intrusive standard.

(5) The State Behavior Review Committee shall consist of at least three professionals.

(a) Each professional shall have training and experience in ABA.

(b) At least one professional shall be an employee of the division.

(6) For each behavior support plan, the State Behavior Review Committee shall:

(a) review each behavior support plan for effectiveness and compliance with the least intrusive standard; and

(b) determine if the behavior support plan may be used.

(7) For each intervention training program, the State Behavior Review Committee and a medical professional shall:

(a) review each curriculum and manual restraint procedure;

(b) determine if the curriculum or manual restraint procedure may be used; and

(c) keep a copy of the curriculum for each approved intervention training program.

**R539-4-4. Behavior Support Plans.**

(1) Each behavior support plan shall be based on the results of a functional behavior assessment conducted by a qualified behavior professional.

(a) The functional behavior assessment guides the design of each behavior intervention and shall include:

(i) a clear description of an unwanted target behavior exhibited by a person;

(ii) any situation that predicts when an unwanted target behavior will likely occur;

(iii) any consequence that maintains the desired target behavior; and

(iv) a summary statement or hypothesis.

(b) The functional behavior assessment may include any interview, checklist, direct observation, or other helpful information.

(2) Each behavior support plan shall use the principles of ABA or any other intervention consistent with best practice and research on effectiveness that is directly related to a person's goals.

(a) A behavior support plan is a modification to a person-centered support plan and must use the least intrusive, effective intervention designed to assist a person with:

(i) acquiring or maintaining a skill; or

(ii) preventing an unwanted target behavior.

(b) Staff shall provide the least intrusive intervention in the minimum amount necessary for a purpose that includes:

(i) preventing harm to the person;

(ii) preventing harm to any other person; or

(iii) reducing property damage.

(c) A behavior support plan shall include:

(i) an individualized assessed need;

(ii) a clear description of the behavior intervention;

(iii) a focus on prevention;

(iv) a method to teach a replacement behavior;

(v) a planned response to an unwanted target behavior;

(vi) a data collection system to evaluate at least annually the effectiveness of the plan and determine if a modification may be ended;

(vii) documentation of each positive behavior intervention and support used before modifying the behavior support plan and person-centered support plan;

(viii) documentation of each less intrusive method of meeting the need that was previously used and did not work, including an explanation of why the method did not work;

(ix) an assurance that each behavior intervention and support cause no harm to the person; and

(x) the informed consent of the person.

(d) A behavior intervention included in a behavior support plan must comply with Section R539-3-10.

(3) A non-intrusive behavior intervention may be used informally and without approval.

(a) Document a non-intrusive behavior intervention in a written support strategy or a behavior support plan.

(b) A non-intrusive behavior intervention includes:

(i) reinforcement;

(ii) error correction;

(iii) extinction;

(iv) positive behavior intervention;

(v) positive behavior supports; and

(vi) positive practice overcorrection.

(c) Use of a non-intrusive behavior intervention must comply with Section R539-3-10.

(4) A behavior support plan that includes an intrusive behavior intervention requires review and approval at least annually by the Provider Peer Review Committee as described in Section R539-4-3 and the Provider Human Rights Committee as described in Section R539-3-4.

(a) Any intrusive behavior intervention must be directly proportionate to the assessed need.

(b) An intrusive behavior intervention must be included in the behavior support plan as described in Section R539-4-6.

(c) The Provider Peer Review Committee and the Provider Human Rights Committee must promote use of a non-violent intervention or a de-escalation technique.

(5) A behavior support plan shall be implemented only after:

(a) a review committee approves any intrusive behavior intervention;

(b) the team approves the behavior support plan; and

(c) the person gives informed consent.

(6) A person must consent to a behavior support plan before implementing the plan.

(a) If a person does not consent to a behavior support plan approved by the team, the Provider Human Rights Committee shall:

(i) review the behavior support plan; and

(ii) make a recommendation to the person and the team about how to proceed.

(b) The person may appeal the Provider Human Rights Committee decision to the Division Human Rights Council.

(7) Each staff involved in implementing a procedure outlined in the behavior support plan shall receive adequate training on a behavior support plan before implementation. The provider shall document and keep a record of training completion.

**R539-4-5. Emergency Behavior Interventions.**

(1) An emergency behavior intervention may be used if imminent danger is present or threatened, including imminent injury to a person, any other person, or property destruction. If possible, try and exhaust any non-intrusive behavior intervention before implementing an emergency behavior intervention.

(2) Use of an emergency behavior intervention must comply with Section R539-3-10.

(3) An emergency behavior intervention requires additional oversight, approval, and review.

(a) A manual restraint may be used as described in Section R539-4-6.

(b) A mechanical restraint may be used as described in Section R539-4-6.

(c) A provider administrator or qualified behavior professional must approve use of ~~[seclusion or use of]~~ a seclusion room as described in Section R539-4-6 within 15 minutes of staff initiating each intervention.

(i) If staff does not get approval within 15 minutes, the staff shall release the person from ~~[seclusion or]~~ the seclusion room.

(ii) Staff must have approval from a provider administrator or qualified behavior professional before shutting the door or holding the door shut.

(d) If a provider uses an emergency behavior intervention for three or more incidents or for a total of 25 minutes or longer within 30 consecutive days, then the team shall meet within ten business days of the most recent emergency behavior intervention to determine if:

(i) any medical or environmental factor is causing the behavior;

(ii) the person needs a behavior support plan;

(iii) a non-intrusive behavior intervention is needed in the person's behavior support plan;

(iv) an intrusive behavior intervention is needed in the person's behavior support plan;

(v) additional medical, mental health, or other professional assistance is needed; or

(vi) another solution is available to help the person avoid or prevent future use of an emergency behavior intervention.

(e) The Provider Human Rights Committee or Provider Peer Review Committee shall review each emergency behavior intervention incident report during the next regularly scheduled committee meeting or within 30 days of the date of each emergency intervention used.

(4) Any emergency behavior intervention shall:

(a) result in an emergency rights restriction;

(b) be considered reasonable and necessary under the circumstances;

(c) not be used as a substitute for the behavior support plan;

(d) not be used for a length of time longer than is necessary to ensure the health and safety of any person in imminent danger; and

(e) not exceed an amount of force considered reasonable and necessary under the circumstances.

(5) If prolonged use of an emergency intervention occurs, staff shall seek assistance from the provider's administrator and any public safety service needed under the circumstances.

(6) For each occurrence of an emergency behavior intervention, a provider shall submit a critical incident report through the division's case management system. An incident report requires the same information as described in Rule R501-1.

(7) The incident report shall be reviewed by the person's support coordinator.

(a) The provider communicates each follow-up action to the person's support coordinator.

(b) The support coordinator documents each follow-up action taken.

#### **R539-4-6. Intrusive Behavior Intervention.**

(1) If a provider or the developmental center uses an intrusive behavior intervention, the intrusive behavior intervention must be:

(a) identified in the behavior support plan; and

(b) used immediately after the person engages in an unwanted target behavior identified in the behavior support plan.

(2) An intrusive behavior intervention includes:

(a) aversive stimulus;

(b) contingent rights restriction;

(c) deprivation;

(d) emergency rights restriction;

(e) enforced compliance;

(f) seclusion;

(g) manual restraint;

(h) mechanical restraint;

(i) physical guidance;

(j) response-cost;

(k) restitutional overcorrection;

(l) satiation; and

(m) seclusion room.

(3) To include an intrusive behavior intervention in the behavior support plan, describe the:

(a) method of intervention;

(b) safety and efficacy monitoring procedure; and

(c) time limitation or individualized release criteria.

(4) Individualized release criteria for manual restraint, mechanical restraint, seclusion, and seclusion room shall be based on:

(a) a predetermined behavior that must be achieved; or

(b) a predetermined amount of time spent in restraint or seclusion.

(5) Aversive stimulus shall be free from any procedure or action that is degrading, humiliating, harsh, punitive, painful, or abusive. A provider and the developmental center may not use:

(a) a device that transmits an electric shock to the person;

(b) heat and cold exposure; or

(c) any procedure or action likely to result in psychological or physical trauma.

(6) Except when approved by a provider administrator or a qualified behavior professional as described in Subsection R539-4-6(6)(a), use of a manual restraint, mechanical restraint, or seclusion may not exceed one hour.

(a) If the predetermined behavior release criteria in the person's behavior support plan is not met within one hour of beginning the restraint or seclusion, one additional hour may be approved.

(b) Use of restraint or seclusion that exceeds one hour requires review by the team and the Provider Peer Review Committee.

(c) Any time that the person spends asleep must count toward the predetermined amount of time in the release criteria.

(d) Total time spent in restraint or seclusion may not exceed two hours in a 24-hour period.

(7) Staff shall complete detailed documentation of each use of a manual restraint, mechanical restraint, or seclusion; and any observation requirement included in the behavior support plan.

(8) A provider or the developmental center shall submit each [~~manual restraint,~~]mechanical restraint, seclusion, or seclusion room included in the behavior support plan to the State Behavior Review Committee for review. The State Behavior Review Committee must approve the intervention before it may be used[~~use of the intervention.~~]

(9) A manual restraint shall be used as described in Rule R501-1 and Section R539-4-6.

(a) A manual restraint program or procedure may be used after approval by the State Behavior Review Committee and Division Human Rights Council.

(b) Intervention training programs currently approved by the State Behavior Review Committee include:

- (i) the Mandt System;
- (ii) the Professional Assault Response Training (PART);
- (iii) Supports Options and Actions for Respect (SOAR);
- (iv) Crisis Prevention Intervention (CPI); and
- (v) Safety Care.

(10) A mechanical restraint shall be used as follows:

(a) Safety and efficacy monitoring procedure shall ensure a person's health and safety.

(i) Each procedure must be individualized.

(ii) Procedure must include a method to monitor the person before, during, and after use of a mechanical restraint.

(iii) Procedure must include observation and documentation of the person's status at a minimum of 15-minute intervals.

(b) A mechanical restraint device includes gloves, mitts, helmet, splints, and wrist or ankle binding.

(c) A mechanical restraint device does not include:

(i) a device commonly used to ensure a person's safety such as seatbelts or protective sporting equipment;

(ii) medically necessary equipment related to a health condition used to promote healing or to prevent injury; and

(iii) a protective helmet used to limit injury to a person during a seizure or other medical reason.

(11) Seclusion shall be used as described in Rule R501-1 and Subsection R539-4-6(11).

(a) A seclusion room may be used as follows:

(i) A provider licensed through the Office of Licensing may use a seclusion room as described in Rule R501-1.

(ii) A provider not licensed through the Office of Licensing and the developmental center may use a seclusion room as described in Rule R501-1 and use the seclusion room for an adult or child.

(iii) The developmental center may not use a seclusion room as an emergency behavior intervention as described in 42 CFR 483.450(c)(1)(i).

(b) To include seclusion or a seclusion room in a behavior support plan, describe the individualized release criteria for each intervention as described in Subsection R539-4-6(3).

(c) Staff shall maintain constant visual and auditory observation of the person during each seclusion and use of a seclusion room.

(12) Use of a [~~closed door during seclusion~~]seclusion room must be approved by the division director before the intervention may be used.

(a) A provider or the developmental center must request that the State Behavioral Review Committee review the use of a [~~closed door~~]seclusion room in a behavior support plan. The behavior support plan must include a procedure for ensuring:

(i) the person's health and safety;

(ii) that staff must maintain constant visual and auditory observation of the person;

(iii) observation and documentation of the person's status at a minimum of 15-minute intervals; and

(iv) that staff shall open the door if the person falls asleep before release from the seclusion room.

(b) The State Behavior Review Committee may recommend that a provider be allowed to shut a door or hold a door shut during use of the seclusion room included in a behavior support plan.

(i) The recommendation must be based upon adequate justification and documentation.

(ii) The intervention must help the person be more safely served within the division support system.

(c) The State Behavioral Review Committee sends the behavior support plan and committee recommendation to the Division Human Rights Council for review.

(d) The division director may approve use of a [~~closed door~~]seclusion room on a case-by-case basis after reviewing the recommendation of the State Behavioral Review Committee and Division Human Rights Council.

**KEY: people with disabilities, behavior**

**Date of Last Change: 2022**

**Notice of Continuation: July 15, 2019**

**Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103**

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





# NOTICES OF 120-DAY (EMERGENCY) RULES

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

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

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

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

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

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

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

NOTICE OF EMERGENCY (120-DAY) RULE		
Utah Admin. Code Ref (R no.):	R380-65	Filing ID: 54456

### Agency Information

<b>1. Department:</b>	Health	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	430	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 141000	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michelle Hofmann	801-538-6111	udohedo@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

<b>2. Rule or section catchline:</b>
R380-65. Public Health Emergency Protocols
<b>3. Effective Date:</b>
04/08/2022
<b>4. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):</b>
Rule R380-65 establishes Department of Health (Department) protocols to administer, dispense, and distribute vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state or local emergency. Federal distribution methods for new medications and antivirals, considered scarce resources in times of surges, has been a consistently changing process which requires the Department to adjust protocols and criteria. The Department has been unable to establish a final protocol in order to establish a rule through regular rulemaking. S.B.194, passed in the 2022 General Session, requires the Department to make rules to establish a procedure to adopt, modify, require, facilitate, or recommend rationing criteria for scarce health care resources. The rules required by S.B.194 must be coordinated with the permanent proposed version of this rule.
<b>5. Summary of the new rule or change (What does this filing do?):</b>

This rule explains the criteria necessary for when this rule will be in effect. This rule establishes the requirements for the Department to administer, dispense, distribute, and issue standing prescription drug orders for the medication. This rule also includes record keeping and confidentiality requirements.

**6. A) The agency finds that regular rulemaking would:**

- cause an imminent peril to the public health, safety, or welfare;
- cause an imminent budget reduction because of budget restraints or federal requirements; or
- place the agency in violation of federal or state law.

**B) Specific reasons and justifications for this finding:**

The state has been in a public health emergency for over 24 months. As new medications and antivirals become available, it is necessary to establish a criteria by which they can be administered to the public.

**Fiscal Information**

**7. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:**

**A) State budget:**

Related to this rule, there is no anticipated savings. The cost to the state budget is unknown. Any anticipated cost would be dependent on the specific medication to be administered, dispensed, and distributed. Factors related to the cost could include whether the medication would be provided by the federal government in full, if it would be subsidized, if there would be federal funding made available for expenses related to the administration, dispensing, and distribution

**B) Local governments:**

Any cost or savings to the local governments would depend on how the medication is dispensed or distributed. Potential cost could be if the Local Health Departments were part of the dispensing or distribution process. There could be a cost for personnel to either administer medication or support staff for record keeping. The overall cost would depend on the level of expertise required for the specific situation.

Additional considerations related to the cost or savings would be funding provided by either the federal government, state government, or other sources.

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

Any cost or savings to small businesses will be related to the distribution or dispensing of the medication; and any record keeping involved. The cost would be relative to the skills needed and the extent they would be involved with providing the medication to the public. Any effect on small businesses would be specific to the specific public health

emergency. To what extent small businesses would be involved in the distribution, dispensing, or writing of prescriptions for the public would depend on the situation. Any increase in their staff would be evaluated, including skill level required or additional clerical support.

Additional considerations related to the cost would be if funding were available through federal or state government or if the cost would be passed on to the small businesses.

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

Any cost or savings to other than small businesses will be related to the distribution or dispensing of the medication and any record keeping involved. The cost would be relative to the skills needed and the extent they would be involved with providing the medication to the public. Any effect on these businesses would be specific to the public health emergency. To what extent these businesses would be involved in the distribution, dispensing, or writing of prescriptions for the public, would be evaluated based on the specific situation. Any increase in their staff would include skill level required or additional clerical support.

Additional considerations related to the cost would be if funding would be available or if cost would be passed on to the small businesses.

**E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):**

Any compliance cost for affected persons is unknown at this time. Considerations would be evaluated based on the emergency situation, cost of medication, staffing concerns, and volume of the public needing the services. Additional consideration related to the cost for compliance expenses would include potential funding from federal and state government, as well as other sources.

**F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):**

The fiscal impact to businesses are inestimable since any cost or savings will be related to the specific activities required by the public health emergency in the distribution or dispensing of the medication and any record keeping involved. Nate Checketts, Executive Director

**Citation Information**

**8. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

Subsection 58-1-307(6)	Subsection 58-1-307(7)	Subsection 58-1-307(8)
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Subsection 58-1-307(9)	Title 26, Chapter 3	Title 26, Chapter 23b
Title 26, Chapter 25		

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nate Checketts, Executive Director	<b>Date:</b>	03/31/2022
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**R380. Health, Administration.****R380-65. Public Health Emergency Protocols.****R380-65-1. Authority and Purpose.**

(1) Pursuant to Section 26-1-5 and Subsection 58-1-307(6)(b), this rule establishes the Department's protocols to administer, dispense, and distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state or local emergency.

(2) The protocols shall only be in effect during a public health emergency.

**R380-65-2. Definitions.**

(1) "Administer" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient.

(2) "Controlled Substance" means the same as defined in Section 58-37-2.

(3) "Declaration of Emergency" means the declaration of a national emergency pursuant to federal law, a state emergency pursuant to Section 53-2a-206, a local emergency pursuant to Section 53-2a-208 or a public health emergency pursuant to Section 26-23b-104.

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

(5) "Dispense" means the interpretation, evaluation, and implementation of a prescription drug order or device or nonprescription drug or device under a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration or use.

(6) "Distribute" means to deliver a drug or device other than by administering or dispensing.

(7) "Public health emergency" means the same as defined in Subsection 26-23b-102(9).

**R380-65-3. Administration of Medication.**

(1) Upon the declaration of a public health emergency, the Department may administer a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance.

(2) The Department shall administer a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance in accordance with all licensing requirements in Title 58, Occupations and Professions.

**R380-65-4. Dispensing Medication.**

(1) Upon the declaration of an emergency, the Department may dispense or coordinate dispensing a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance for distribution, dispensing and administration.

(2) The Department may dispense a medication authorized in Subsection (1) in accordance with Section R380-65-5 or upon receipt of a valid prescription drug order issued by an individual

licensed under Title 58, Occupation and Professions, who is authorized to issue a prescription drug order.

(3) The Department shall retain prescription files and other records in accordance with Title 58, Occupations and Professions.

(4) The Department may establish a written protocol for a prescription drug order that it considers necessary for dispensation of a medication.

**R380-65-5. Distribution of Medication.**

(1) Upon the declaration of an emergency, the Department may coordinate the distribution of a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance for distribution, dispensing and administration.

(2) The Department, through the medical director or other person with authority to prescribe, may issue a valid standing prescription drug order that authorizes a pharmacist and a pharmacist intern licensed under the Pharmacy Practice Act, Title 58, Chapter 17b, to dispense according to the requirements of the standing order.

(3) When the Department coordinates the distribution of a medication without issuing a valid standing prescription drug order, the Department may:

(a) distribute the medication;

(b) distribute the medication through local health departments pursuant to Section R380-60; or

(c) enter into an agreement with a third party to distribute the medication.

**R380-65-6. Protocol for Issuance of a Standing Prescription Drug Order.**

Each standing prescription drug order issued under this rule shall adhere to the requirements of Subsection 58-1-307(6). In addition, each standing order shall also include the following:

(1) the conditions justifying dispensing the medication under a statewide standing prescription;

(2) a requirement specifying the persons or entities authorized to dispense the medication;

(3) the conditions required for a patient to receive the medication;

(4) the conditions, if any, for refill of the prescription;

(5) a requirement that those authorized to dispense the medication to make and retain a record of each person to whom the medication is dispensed pursuant to the recordkeeping requirements in this rule; and

(6) the expiration date of the standing order.

**R380-65-7. Record Keeping for Standing Prescription Drug Orders.**

(1) A person authorized to dispense medication in the standing order shall make and retain a record that includes the following information:

(a) the name, age, address and contact information of each patient receiving the medication;

(b) the NDC, or other identifying code, of the medication dispensed; and

(c) any other relevant information required by the standing order issued by the Medical Director or a physician designated by the Executive Director.

NOTICES OF 120-DAY (EMERGENCY) RULES

(2) A person authorized to distribute medication shall make and retain a record that includes the name, address and contact information of each entity receiving the medication and any other relevant information required by the Department at the time of distribution.

(3) If the circumstances of the emergency make it impossible to comply with this section, the Executive Director of the Department may grant an exception in writing to this requirement and limit the record keeping requirement to records as are appropriate and possible in the circumstances of the emergency.

(4) If no exception is made by the Executive Director of the Department as described in Subsection R380-65-7(3), record keeping shall be in effect as required by Section R156-37-602.

**R380-65-8. Confidentiality.**

Information created or collected by the department for activities conducted under this rule, or a standing order, is confidential and protected, and the use, access, or disclosure of such information is subject to the specific provisions of applicable law, rule, or regulation governing the activity. Where there is a conflict between two applicable provisions of law, the provision that is the most protective of the privacy of the information shall govern. Where there is no other more specific or applicable provision of law,

the information shall be subject to Title 26, Chapter 3, Health Statistics.

**R380-65-9. Compliance with Inventory Management.**

(1) Recipients of vaccine, antiviral, antibiotic, or other prescription medications shall maintain inventory records in accordance with Department requirements. The Department may also obtain and review records of the recipient at any time.

(2) If the circumstances of the emergency make it impossible to keep inventory records, the Executive Director of the Department may grant an exception in writing to this requirement limiting the record keeping requirement to such records as are appropriate and possible in the circumstances of the emergency.

(3) If no exception is made by the Executive Director of the Department as described in Subsection R380-65-9(2), record keeping shall be in effect as required by law.

**KEY: public health emergency, medication protocols, standing orders, distribution of medication**

**Date of Last Change: April 8, 2022**

**Authorizing, and Implemented or Interpreted Law: 58-1-307; 26-3; 26-23b; 26-25**

**End of the Notices of 120-Day (Emergency) Rules Section**

## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at [adminrules.utah.gov](http://adminrules.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.):	R37-1	Filing ID: 53896
Effective Date:	03/21/2022	

### Agency Information

1. Department:	Government Operations	
Agency:	Risk Management	
Building:	Taylorsville State Office Building	
Street address:	4315 S 2700 W	
City, state and zip:	Taylorsville, UT 84129-2128	
Mailing address:	PO Box 1321	
City, state and zip:	Salt Lake City, UT 84114-1321	
Contact person(s):		
Name:	Phone:	Email:
Darin Dennis	801-520-0670	darindennis@utah.gov
Please address questions regarding information on this notice to the agency.		

### General Information

2. Rule catchline:
R37-1. Risk Management General Rules
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 provisions of Subsection 63A-4-101.5(2)(b) which directs the risk manager to recommend rules to the executive director regarding risk management issues.

#### 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 have been received.

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

The purpose of this rule is to summarize the liability and property insurance coverage provided by the Risk Management Fund, and outline many of the conditions, underwriting standards, and other rules that govern or control the use of this coverage. This need still exists, as does the statutory requirement. Therefore, this rule should be continued.

### Agency Authorization Information

Agency head or designee, and title:	Brian Nelson, Director	Date:	03/17/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R37-2	Filing ID: 53897
Effective Date:	03/21/2022	

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Risk Management	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 1321	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1321	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Darin Denis	801-520-0670	darindennis@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R37-2. Risk Management State Workers' Compensation Insurance Administration
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted under the provisions of Subsection 63A-4-101.5(2)(a) which authorizes the State's Risk Manager to acquire and administer workers' compensation insurance for the state.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The purpose of this rule is to establish the responsibilities and guidelines governing the acquisition and administration of workers' compensation insurance, the allocation of costs and the required activities or actions of covered agencies utilizing this coverage. This need still exists, as does the statutory requirement. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Nelson, Director	<b>Date:</b>	03/17/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R37-3	<b>Filing ID:</b> 53898
<b>Effective Date:</b>	03/21/2022	

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Risk Management	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 1321	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1321	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Darin Denis	801-520-0670	darindennis@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R37-3. Risk Management Adjudicative Proceedings
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted under the provisions of Section 63A-4-103 which outlines duties of covered entities of the Risk Fund.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The purpose of this rule is to identify the procedures for informal adjudicative proceedings against the Fund. This need still exists, as does the statutory requirement. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Nelson, Director	<b>Date:</b>	03/17/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R37-4	Filing ID: 53899
Effective Date:	03/21/2022	

**Agency Information**

<b>1. Department:</b>	Government Operations	
<b>Agency:</b>	Risk Management	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129-2128	
<b>Mailing address:</b>	PO Box 1321	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1321	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Darin Denis	801-520-0670	darindennis@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is enacted under the provisions of Subsection 63G-7-605(4) which authorizes biennial adjustments to the Governmental Immunity Limitations.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
The purpose of this rule is to provide historical and current Governmental Immunity Limitations. This need still exists, as does the statutory requirement. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Nelson, Director	<b>Date:</b>	03/09/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Utah Admin. Code Ref (R no.):	R65-5	Filing ID: 50131
Effective Date:	03/21/2022	

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Marketing and Development	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Linda Gillmor	801-982-2354	lgillmor@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R65-5. Utah Red Tart and Sour Cherry Marketing Order
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 4-2-103 authorizes the Department of Agriculture and Food (Department) to issue marketing orders for any designated agricultural product to promote orderly market conditions for any product, give the producer a fair return on the producer's investment at the marketplace, and promote the marketing of Utah agricultural commodities. It also allows the Department to establish boards of control to administer the marketing orders.

**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 during or 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 Marketing Board is a high-impact board for the industry. The industry is able to use these funds to market Utah Tart Cherries successfully not only domestically, but internationally. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/21/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R65-11</b>	<b>Filing ID:</b>	<b>50132</b>
<b>Effective Date:</b>	<b>03/23/2022</b>		

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Marketing and Development	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov
Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Leann Hunting	801-982-2242	leannhunting@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R65-11. Utah Sheep Marketing Order

**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 4-2-103 authorizes the Department of Agriculture and Food (Department) to issue marketing orders for any designated agricultural product to promote orderly market conditions for any product, give the producer a fair return on the producer's investment at the marketplace, and promote the marketing of Utah agricultural commodities. It also allows the Department to establish boards of control to administer the marketing orders.

**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 during or 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:**

The Utah Sheep Board is important to the industry as it allows all the producers to pool their money, time, and talents together to market lamb and wool products. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/23/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R70-520</b>	<b>Filing ID:</b>	<b>50180</b>
<b>Effective Date:</b>	<b>03/21/2022</b>		

**Agency Information**

<b>1. Department:</b>	Agriculture and Food	
<b>Agency:</b>	Regulatory Services	
<b>Street address:</b>	350 N Redwood Road	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146500	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6500	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Amber Brown	385-245-5222	ambermbrown@utah.gov



Kelly Pehrson	801-982-2200	kwpehrson@utah.gov
Travis Waller	801-982-2250	twaller@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R70-520. Standard of Identity and Labeling Requirements for Honey
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Sections 4-2-103, 4-5-104, and 4-5-502 authorize the Department of Agriculture and Food to adopt rules to efficiently enforce the Utah Wholesome Food Act and to adopt rules to establish labeling requirements for food designated as raw honey.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No known written comments were received during and since the last five-year review.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is needed to efficiently enforce the Utah Wholesome Food Act and regulate the identity and labeling for honey. This rule is meant to reduce economic fraud by controlling the pervasive, illegal practices of blending or diluting pure honey with low-cost syrups such as sugar, cane and corn, and representing highly processed honey as raw honey. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Craig W. Buttars, Commissioner	<b>Date:</b>	03/21/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R156-47b	<b>Filing ID:</b> 54046
<b>Effective Date:</b>	03/21/2022	

**Agency Information**

<b>1. Department:</b>	Commerce	
<b>Agency:</b>	Occupational and Professional Licensing	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S	
<b>City, state and zip:</b>	Salt Lake City, UT 84111-2316	
<b>Mailing address:</b>	PO Box 146741	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6741	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Lynne Anthony	801-530-6628	lanthony@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R156-47b. Massage Therapy Practice Act Rule
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Title 58, Chapter 47b, provides for the licensure and regulation of massage therapists and massage apprentices. 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 Board of Massage Therapy duties, functions, and responsibilities includes recommending to the director appropriate rules. This rule was enacted to clarify the provisions of Title 58, Chapter 47b, with respect to massage therapists and massage apprentices.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
Since this rule was last reviewed in April 2017, this rule has been amended two times, once in October 2018 and once in December 2021. The Division has received no written comments with respect to this rule since April 2017.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 47b. This rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

requirements, and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. Therefore, this rule should be continued.

The purpose of this chapter is to provide the Department's policy, procedures, and requirements for the North Gate of the South Point Complex of the Prison. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Mark B. Steinagel, Division Director	<b>Date:</b>	12/28/2021
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**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Nielson, Executive Director	<b>Date:</b>	03/29/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R251-704</b>	<b>Filing ID: 50359</b>
<b>Effective Date:</b>	<b>03/30/2022</b>	

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R380-1</b>	<b>Filing ID: 50871</b>
<b>Effective Date:</b>	<b>03/25/2022</b>	

**Agency Information**

<b>1. Department:</b>	Corrections	
<b>Agency:</b>	Administration	
<b>Street address:</b>	14717 S. Minuteman Drive	
<b>City, state and zip:</b>	Draper, UT 84020	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Matt Anderson	801-545-5589	mattanderson@utah.gov
Please address questions regarding information on this notice to the agency.		

**Agency Information**

<b>1. Department:</b>	Health	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	430	
<b>Building:</b>	Cannon Health Building	
<b>Street address:</b>	288 N 1460 W	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 141000	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Heather Borski	385-341-1340	hborski@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R251-704. North Gate
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-14, which allows the Department of Corrections (Department) to adopt standards and rules in accordance with its responsibilities.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received supporting or opposing this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>

**General Information**

<b>2. Rule catchline:</b>
R380-1. Petitions for Department Declaratory Orders
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
As required by Section 63G-4-503, and as authorized by Subsection 26-1-5(3) and Section 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department of Health (Department), rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department. Rule R380-5 governs petitions for

declaratory orders concerning orders issued by committees having statutory authority to issue orders.

**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 have been received.

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

This rule is required by statute. It provides key procedural mechanisms regarding petitions for Department declaratory orders. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Executive Director	<b>Date:</b>	03/28/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R380-5</b>	<b>Filing ID:</b>	<b>50874</b>
<b>Effective Date:</b>	<b>03/25/2022</b>		

**Agency Information**

<b>1. Department:</b>	Health		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	430		
<b>Building:</b>	Cannon Health Building		
<b>Street address:</b>	288 N 1460 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 141000		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000		
<b>Contact person(s):</b>			
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>	
Heather Borski	385-341-1340	hborski@utah.gov	
Please address questions regarding information on this notice to the agency.			

**General Information**

<b>2. Rule catchline:</b>
R380-5. Petitions for Declaratory Orders on Orders Issued by Committees

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

As required by Section 63G-4-503, and as authorized by Subsection 26-1-5(3) and Section 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. Rule R380-1 governs petitions for declaratory orders concerning the applicability of statutes administered by the Department of Health (Department), rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department.

**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 have been received.

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

This rule is required by statute. It provides key procedural instructions for petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Nathan Checketts, Executive Director	<b>Date:</b>	03/28/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R380-20</b>	<b>Filing ID:</b>	<b>50883</b>
<b>Effective Date:</b>	<b>03/25/2022</b>		

**Agency Information**

<b>1. Department:</b>	Health		
<b>Agency:</b>	Administration		
<b>Room no.:</b>	430		
<b>Building:</b>	Cannon Health Building		
<b>Street address:</b>	288 N 1460 W		
<b>City, state and zip:</b>	Salt Lake City, UT 84116		
<b>Mailing address:</b>	PO Box 141000		
<b>City, state and zip:</b>	Salt Lake City, UT 84114-1000		

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Contact person(s):		
Name:	Phone:	Email:
Heather Borski	385-341-1340	hborski@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R380-20. Government Records Access and Management
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 establishes procedures that implement the Government Records Access and Management Act, Title 63G, Chapter 2, within the Department of Health. It is authorized by Sections 26-1-5 and 26-1-17, and Subsections 63G-2-204(2) and 63A-12-104(2).
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 have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule is required by statute and includes key procedures for implementation of Title 63G, Chapter 2, Government Records Access and Management Act. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Nathan Checketts, Executive Director	Date:	03/25/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R547-6	Filing ID:	54221
Effective Date:	03/23/2022		

**Agency Information**

1. Department:	Human Services
Agency:	Juvenile Justice Services
Building:	MASOB
Street address:	195 N 1950 W 3rd Floor

City, state and zip:	Salt Lake City, UT 84116	
Mailing address:	195 N 1950 West 3rd Floor	
City, state and zip:	Salt Lake City, UT 84116	
Contact person(s):		
Name:	Phone:	Email:
Reg Garff	801-602-6261	rgarff@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R547-6. Youth Parole Authority
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 62A-1-111 authorizes the Department of Human Services to adopt administrative rules. Section 80-5-202 authorizes the Division of Juvenile Justice Services (Division) to promulgate rules to govern the operation of secure care facilities. Section 80-5-701 establishes a Youth Parole Authority within the Division. The authority has statutory responsibility for parole release, rescission, revocation, and termination of parole for juvenile offenders committed to the Division for secure confinement.
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 have been received.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
Section 80-5-701 establishes a Youth Parole Authority within the Division. The authority has statutory responsibility for parole release, rescission, revocation, and termination of parole for juvenile offenders committed to the Division for secure confinement. This rule establishes the standards and procedures for the youth parole authority, hearing, and arrest and revocation. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Tracy Gruber, Executive Director	Date:	03/20/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R547-13	Filing ID: 52793
Effective Date:	03/23/2022	

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Juvenile Justice Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	195 N 1950 West 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Reg Garff	801-602-6261	rgarff@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R547-13. Guidelines for Admission to Secure Youth Detention Facilities
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 80-5-202(1)(a) authorizes the Division of Juvenile Justice Services to establish standards for the admission of minors to detention. Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments were received.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule establishes the standards for the admission of minors to detention. It is essential for the Division of Juvenile Justice Services. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	03/20/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

Utah Admin. Code Ref (R no.):	R547-14	Filing ID: 54067
Effective Date:	03/23/2022	

**Agency Information**

<b>1. Department:</b>	Human Services	
<b>Agency:</b>	Juvenile Justice Services	
<b>Building:</b>	MASOB	
<b>Street address:</b>	195 N 1950 W 3rd Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Reg Garff	801-602-6261	rgarff@utah.gov
Jonah Shaw	385-310-2389	jshaw@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R547-14. Possession of Prohibited Items in Juvenile Detention Facilities
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 62A-1-111 authorizes the Department of Human Services to adopt administrative rules. This rule establishes that no person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter a secure area of any juvenile detention or secure care facility with any items prohibited by Section 76-8-311.1 or 76-8-311.3.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments 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 that no person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall be permitted to enter a secure area of any juvenile detention or secure care facility with any items prohibited by Section 76-8-311.1 or 76-8-311.3. It also establishes that the director or administrator of each juvenile detention and secure care facility shall, establish secure areas within the facility, prominently display a notice at each entrance of a secure area, and provide secure weapon storage at each entrance to a secure area facility. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Tracy Gruber, Executive Director	<b>Date:</b>	03/20/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-68</b>	<b>Filing ID:</b>	<b>51336</b>
<b>Effective Date:</b>	<b>04/01/2022</b>		

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-68. Insider Trading of Equity Securities of Domestic Stock Insurance Companies

**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 31A-2-201(3) authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-5-303(3)(a) authorizes the insurance commissioner to adopt a rule to define terms and prescribe conditions for certain securities and transactions.

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

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

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

This rule gives substantial additional guidance regarding Section 31A-5-303, Insider Trading of Securities. Without this more detailed guidance, several forms of exemption from the requirements of the statute would not be apparent or effectively available to entities to whom the described situations apply. This lack of guidance would be confusing and could lead to costly decisions being made in error regarding the form of any insider trading transaction or the absence thereof. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-85</b>	<b>Filing ID:</b>	<b>54384</b>
<b>Effective Date:</b>	<b>04/01/2022</b>		

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	

Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R590-85. Accident and Health Insurance and Medicare Supplement Rates

**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 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Section 31A-2-201.1 authorizes the insurance commissioner to write rules to provide specific requirements for the filing of rates. Sections 31A-22-605 and 31A-22-620 establish minimum loss ratios and implement procedures for the filing of all individual accident and health insurance rates and all Medicare supplement premium rates, including the initial filing of rates and any subsequent rate changes.

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

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

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

This rule provides standards for rating certain policies. It allows insurers to request increases as necessary to maintain a viable block of business and to protect consumers against unfair pricing of policies. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	04/01/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R590-108	Filing ID:	53911
Effective Date:	04/01/2022		

**Agency Information**

1. Department:	Insurance
Agency:	Administration
Room no.:	Suite 2300
Building:	Taylorville State Office Building
Street address:	4315 S 2700 W
City, state and zip:	Taylorville, UT 84129
Mailing address:	PO Box 146901
City, state and zip:	Salt Lake City, UT 84114-6901

Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R590-108. Interest Rate During Grace Period or Upon Reinstatement of 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:**

Section 31A-2-201 authorizes the insurance commissioner to adopt rules to implement Title 31A, Insurance Code. Sections 31A-22-402 and 31A-22-407 authorize the insurance commissioner to establish by rule the rate of interest an insurer may charge in a life insurance or annuity contract upon premiums due or overdue during a grace period or upon subsequent reinstatement of a contract.

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

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

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

This rule provides limits for the maximum interest rate that an insurer may charge on premiums due under a life insurance or annuity contract during a grace period or upon subsequent reinstatement of a contract. It protects consumers against their insurer charging them an unreasonably high interest rate. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R590-120	<b>Filing ID:</b> 53859
<b>Effective Date:</b>	04/01/2022	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-120. Surety Bond Forms
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 31A-2-201(3) authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Subsection 31A-21-101(5) authorizes the insurance commissioner to exempt by rule a class of insurance contracts from any or all provisions of Title 31A, Chapter 21, Insurance Contracts in General.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
The Department of Insurance has received no written comments regarding this rule during the past five years.

<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule exempts surety insurers from filing forms. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R590-146	<b>Filing ID:</b> 54383
<b>Effective Date:</b>	04/01/2022	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R590-146. Medicare Supplement Insurance Standards
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Section 31A-22-620 requires the insurance commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>



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

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

This rule provides consumer protection and guidelines for Medicare supplement plans sold in Utah. It ensures that the various plans are the same from company to company. This allows consumers to decide on the type of plan they want and then base their purchase on price and service. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	04/01/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-203</b>	<b>Filing ID: 51400</b>
<b>Effective Date:</b>	<b>03/31/2022</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Steve Gooch	801-957-9322	sgooch@utah.gov

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

**General Information**

<b>2. Rule catchline:</b>
R590-203. Health Grievance Review Process
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code. Section 31A-2-203 authorizes the insurance commissioner to examine carrier records, files, and documentation. Section 31A-4-116 and Subsection 31A-22-629(4) require the insurance commissioner to establish minimum standards for grievance review procedures.

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

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

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

This rule clarifies statute and explains the differences between federal laws and state statutes. This rule also ensures that a carrier's grievance review procedures for individual and group health insurance and disability income insurance plans comply with federal law. Removing this rule would confuse insurers as to what is required of them in regard to their grievance procedures. This rule provides consumer protections. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Steve Gooch, Public Information Officer	<b>Date:</b>	03/31/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R590-239</b>	<b>Filing ID: 51419</b>
<b>Effective Date:</b>	<b>04/01/2022</b>	

**Agency Information**

<b>1. Department:</b>	Insurance	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 2300	
<b>Building:</b>	Taylorsville State Office Building	
<b>Street address:</b>	4315 S 2700 W	
<b>City, state and zip:</b>	Taylorsville, UT 84129	
<b>Mailing address:</b>	PO Box 146901	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6901	

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

2. Rule catchline:
R590-239. Exemption of Student Health Centers From Insurance Code
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 31A-1-103(3)(d) allows the insurance commissioner to exempt certain businesses from regulation under Title 31A, Insurance Code, when regulation would not offer protection to residents of Utah, or when it would be impracticable to require compliance. Section 31A-2-201 authorizes the insurance commissioner to write rules to implement Title 31A, Insurance Code.
4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:
The Department of Insurance has received no written comments regarding this rule during the past five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:
This rule exempts student health centers established by institutions of higher education from regulation under Title 31A, Insurance Code. This rule also clarifies what is and is not insurance to not impose a greater burden on an organization that does not sell insurance. It states that student health centers are not insurance and therefore are not regulated by the Insurance Department. Health insurance from an insurer sold or provided through an institution to its students is not exempt from state insurance regulations. Therefore, this rule should be continued.

**Agency Authorization Information**

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date:	04/01/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
Utah Admin. Code Ref (R no.):	R628-17	Filing ID:	51529
Effective Date:	03/25/2022		

**Agency Information**

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

**General Information**

2. Rule catchline:
R628-17. Limitations on Commercial Paper and Corporate Notes
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 51-7-18 of the Utah Money Management Act allows the Money Management Council to set quality criteria for public treasurers when they invest in corporate obligations. This section also allows the Council to make rules regarding the conditions and procedures by which public treasurers may invest public funds.
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 in the last five years.
5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

This rule provides limits on exposure to any one issuer of corporate obligations that are reasonable by basing the limit on the size of the portfolio being invested by the public treasurer. This rule allows for the investment in corporate obligations by public treasurers while limiting exposure to one single issuer of investments. In Council's review of this rule, it was noted that a substantial number of public entities use corporates or commercial paper as investment vehicles, so the rule is needed in place to provide limits of exposure to any one issuer. Council also determined that they will review the percentage allowed and will probably tighten up the amount of any one issuer that smaller portfolios can use going forward. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	K. Wayne Cushing, Treasurer	<b>Date:</b>	03/25/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R634-1</b>	<b>Filing ID: 51538</b>
<b>Effective Date:</b>	<b>03/23/2022</b>	

**Agency Information**

<b>1. Department:</b>	Natural Resources	
<b>Agency:</b>	Administration	
<b>Room no.:</b>	Suite 3000	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146301	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6301	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Kaelyn Anfinson	801-538-7201	kaelynanfinson@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R634-1. Americans With Disabilities Complaint Procedure
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>

This rule is promulgated pursuant to Subsection 63-46a-3(2) of the state Administrative Rulemaking Act. The Department of Natural Resources, pursuant to 28 CFR 35.107, 2002 ed., adopts, defines and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

**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 supporting or opposing Rule R634-1 were received since 03/04/2003, when this rule was last reviewed.

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

Rule R634-1 implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12202, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by this or any such entity. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian C. Steed, Executive Director	<b>Date:</b>	03/23/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R651-102</b>	<b>Filing ID: 51604</b>
<b>Effective Date:</b>	<b>03/23/2022</b>	

**Agency Information**

<b>1. Department:</b>	Natural Resources
<b>Agency:</b>	Parks and Recreation
<b>Room no.:</b>	116
<b>Building:</b>	Department of Natural Resources, Salt Lake Office
<b>Street address:</b>	1594 W North Temple
<b>City, state and zip:</b>	Salt Lake City, UT 84116
<b>Mailing address:</b>	PO Box 146001
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6001

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Contact person(s):		
Name:	Phone:	Email:
Amber Stubbings	801-538-7418	amberstubbings@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R651-102. Government Records Access Management Act
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The Government Records Access Management Act (GRAMA) rule describes the responsibilities of both the records requestor, and the Division of Parks and Recreation (Division) in responding to government records requests. This includes the format of which a records request should be received, access to private or controlled records, the proper handling of intellectual property, designating any fees owed for the record, and the process for appealing an access denial determination.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No written comments have been received by the Division in support or opposition of this rule in the past five years.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary for the benefit of the general public. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Steed, Executive Director	<b>Date:</b>	03/23/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
<b>Utah Admin. Code Ref (R no.):</b>	R651-301	<b>Filing ID:</b> 52477
<b>Effective Date:</b>	03/23/2022	

**Agency Information**

<b>1. Department:</b>	Natural Resources
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<b>Agency:</b>	Parks and Recreation	
<b>Room no.:</b>	116	
<b>Building:</b>	Department of Natural Resources, Salt Lake Office	
<b>Street address:</b>	1594 W North Temple	
<b>City, state and zip:</b>	Salt Lake City, UT 84116	
<b>Mailing address:</b>	PO Box 146001	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-6001	
Contact person(s):		
Name:	Phone:	Email:
Amber Stubbings	801-538-7418	amberstubbings@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R651-301. State Recreation Fiscal Assistance Programs
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
The State Recreational Fiscal Assistance Grant (FIG) rule identifies the authority of the Department of Natural Resources, Division of Parks and Recreation to facilitate grant applications. This rule outlines the application process, requirements, timelines, approval procedures, and priorities.
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
There is no record of written comments received regarding the rules for the Fiscal Incentive Grant.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is still operable and required for the issuance of Fiscal Incentive Grants. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Brian Steed, Executive Director	<b>Date:</b>	03/23/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R746-420	Filing ID: 51976
Effective Date:	03/17/2022	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M. Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R746-420. Requests for Approval of a Solicitation Process
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 54-17-103(1) requires the Public Service Commission (PSC) to create certain rules and authorizes it to make other rules, as necessary, to implement the Energy Resources Procurement Act, Title 54 Chapter 17. See also Section 54-17-202 "providing the PSC" shall make rules ... outlining the requirements for a solicitation process" and specifying certain items such rules must include."
<b>4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:</b>
No comments have been received since the last five-year review of this rule.
<b>5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:</b>
This rule is necessary and specifically required by statute to implement the Energy Resources Procurement Act, which governs the circumstances under which an electric utility must, and in some cases may, obtain approval from the PSC before procuring certain energy resources. This rule is specifically required to implement the act's requirements concerning the PSC's approval of solicitation

processes for eligible procurements. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	03/17/2022
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION		
Utah Admin. Code Ref (R no.):	R746-430	Filing ID: 51979
Effective Date:	03/17/2022	

**Agency Information**

<b>1. Department:</b>	Public Service Commission	
<b>Agency:</b>	Administration	
<b>Building:</b>	Heber M Wells Building	
<b>Street address:</b>	160 E 300 S, 4th Floor	
<b>City, state and zip:</b>	Salt Lake City, UT 84111	
<b>Mailing address:</b>	PO Box 4558	
<b>City, state and zip:</b>	Salt Lake City, UT 84114-4558	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Michael Hammer	801-530-6729	michaelhammer@utah.gov
Please address questions regarding information on this notice to the agency.		

**General Information**

<b>2. Rule catchline:</b>
R746-430. Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource
<b>3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule:</b>
Subsection 54-17-103(1) requires the Public Service Commission (PSC) to create certain rules and authorizes it to make other rules, as necessary, to implement the Energy Resources Procurement Act, Title 54 Chapter 17. See also Subsection 54-17-301(2)(a) "providing the PSC 'shall make rules providing a process for its review of an [affected utility's] action plan;" Subsection 54-17-302(8) "providing the PSC 'shall make rules regarding the process

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

for approval of a significant energy resource decision under this section."

**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 have been received 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 and specifically required by statute to implement the Energy Resources Procurement Act, which governs the circumstances under which an electric utility must, and in some cases may, obtain approval from the PSC before procuring certain energy resources. Therefore, this rule should be continued.

**Agency Authorization Information**

<b>Agency head or designee, and title:</b>	Thad LeVar, PSC Chair	<b>Date:</b>	03/17/2022
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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

**EXTENSIONS** are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION		
Utah Admin. Code Ref (R no.):	R359-1	Filing ID: 52583
New Date:	Deadline	07/28/2022

### Agency Information

1. Department:	Governor	
Agency:	Economic Opportunity, Pete Suazo Utah Athletic Commission	
Building:	World Trade Center	
Street address:	60 E South Temple	
City, state and zip:	Salt Lake City, UT 84111	
Contact person(s):		
Name:	Phone:	Email:
Dane Ishihara	801-792-8764	dishihara@utah.gov

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

### General Information

2. Rule catchline:
R359-1. Pete Suazo Utah Athletic Commission Act Rule
3. Reason for requesting the extension and the new deadline date:
The office is currently drafting a comprehensive amendment to this rule. To streamline the process, the office intends to have the rule amendment codified prior to filing the five-year review and continuation.

### Agency Authorization Information

Agency head or designee, and title:	Dan Hemmert, Executive Director	Date:	03/24/2022
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**End of the Notices of Five-Year Review Extensions Section**





## NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

NOTICE OF EXPIRED RULE		
Utah Admin. Code Ref (R no.):	R856-4	ID No. 52056

letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.

### Agency Information

<b>1. Department:</b>	Science Technology and Research Governing Authority (Utah)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	Not Applicable	
<b>City, state, and zip:</b>	Not Applicable	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

NOTICE OF EXPIRED RULE		
Utah Admin. Code Ref (R no.):	R856-5	ID No. 52065

### Agency Information

<b>1. Department:</b>	Science Technology and Research Governing Authority (Utah)	
<b>Agency:</b>	Administration	
<b>Street address:</b>	Not Applicable	
<b>City, state, and zip:</b>	Not Applicable	
<b>Contact person(s):</b>		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

### General Information

<b>2. Title of rule (catchline):</b>		
R856-4. USTAR Science Technology Initiation Grant		
<b>3. Effective Date:</b>	03/23/2022	
<b>4. Summary:</b>		
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is		

### General Information

<b>2. Title of rule (catchline):</b>		
R856-5. Utah Science, Technology, and Research (USTAR) Energy Research Triangle Professors (ERT-P) Grant		

NOTICES OF FIVE-YEAR EXPIRATIONS

<b>3. Effective Date:</b>	03/23/2022
<b>4. Summary:</b>	
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.	

NOTICE OF EXPIRED RULE		
<b>Utah Admin. Code Ref (R no.):</b>	<b>R856-6</b>	<b>ID No. 52069</b>

**Agency Information**

<b>1. Department:</b>	Science Technology and Research Governing Authority (Utah)
<b>Agency:</b>	Administration
<b>Street address:</b>	Not Applicable
<b>City, state, and zip:</b>	Not Applicable

Contact person(s):		
<b>Name:</b>	<b>Phone:</b>	<b>Email:</b>
Nancy L. Lancaster	801-957-7102	rulesonline@utah.gov

**General Information**

<b>2. Title of rule (catchline):</b>	
R856-6. Utah Science, Technology and Research (USTAR) Energy Research Triangle Scholars (ERT-S) Grant	
<b>3. Effective Date:</b>	03/23/2022
<b>4. Summary:</b>	
The Utah Science Technology and Research Governing Authority (USTAR) was repealed by S.B. 95 in the 2020 General Session. Since there is no entity to repeal this rule and there is not a mechanism in the Utah Administrative Rulemaking Act that allows the Office of Administrative Rules (OAR) to remove this rule, OAR is letting it expire as the five-year review and notice of continuation comes due. This rule has now expired and will be removed from the Utah Administrative Code.	

**End of the Notices of Notices of Five-Year Expirations Section**

## NOTICES OF RULE EFFECTIVE DATES

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

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

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

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### Agriculture and Food

Conservation Commission

No. 54357 (New Rule) R64-4: Agricultural Water Optimization Program  
Published: 02/15/2022  
Effective: 04/05/2022

### Regulatory Services

No. 54355 (Amendment) R70-101: Bedding, Upholstered Furniture and Quilted Clothing  
Published: 02/15/2022  
Effective: 04/05/2022

### Education

Administration

No. 54217 (Amendment) R277-419: Pupil Accounting  
Published: 01/01/2022  
Effective: 03/15/2022

No. 54216 (New Rule) R277-427: LEA Financial Information Systems  
Published: 01/01/2022  
Effective: 03/15/2022

No. 54251 (Amendment) R277-484: Data Standards  
Published: 01/15/2022  
Effective: 03/15/2022

No. 54218 (Repeal) R277-703: Centennial Scholarship for Early Graduation  
Published: 01/01/2022  
Effective: 03/15/2022

### Governor

Economic Opportunity

No. 54378 (Amendment) R357-3: Economic Development Tax Increment Financing Rule  
Published: 03/01/2022  
Effective: 04/08/2022

No. 54377 (Amendment) R357-22: Rural Employment Expansion Program

Published: 03/01/2022  
Effective: 04/08/2022

### Health

Disease Control and Prevention, Epidemiology

No. 54145 (Amendment) R386-703: Injury Reporting Rule  
Published: 12/15/2021  
Effective: 03/16/2022

Center for Health Data, Vital Records and Statistics

No. 54337 (Amendment) R436-1: Duties of the Department of Health  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54328 (Repeal and Reenact) R436-3: Amendments and Corrections to Vital Records  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54371 (Amendment) R436-4: Delayed Registration of Birth  
Published: 03/01/2022  
Effective: 04/11/2022

No. 54331 (Amendment) R436-5: New Birth Certification After Legitimation, Court Determination of Paternity, or Adoption  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54372 (Amendment) R436-7: Death Registration  
Published: 03/01/2022  
Effective: 04/11/2022

No. 54333 (Amendment) R436-8: Authorization for Final Disposition of Deceased Persons  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54325 (Amendment) R436-9: Persons and Institutions Required to Keep Monthly Listings of Vital Statistics Events  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54321 (Amendment) R436-10: Death Registration  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54334 (Amendment) R436-12: Certified Copies of Vital Statistics Records  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54336 (Amendment) R436-13: Disclosure of Records  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54373 (Amendment) R436-14: Copies of Data From Vital Records  
Published: 03/01/2022  
Effective: 04/11/2022

No. 54332 (Amendment) R436-17: Review and Approval of Research Requests  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54322 (Amendment) R436-19: Abortion Reporting  
Published: 02/01/2022  
Effective: 03/16/2022

#### Human Services

Administration, Administrative Services, Licensing

No. 54356 (Amendment) R501-1: General Provisions for Licensing  
Published: 02/15/2022  
Effective: 04/05/2022

Child and Family Services

No. 54241 (Amendment) R512-203: Child Protective Services, Significant Risk Assessments  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54242 (Amendment) R512-205: Child Protective Services, Investigation of Domestic Violence Related Child Abuse  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54243 (Amendment) R512-300: Out-of-Home Services  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54252 (Amendment) R512-311: Psychotropic Medication Oversight Panel  
Published: 02/15/2022  
Effective: 03/25/2022

Recovery Services

No. 54368 (Amendment) R527-5: Release of Information  
Published: 03/11/2022  
Effective: 04/11/2022

No. 54369 (Amendment) R527-200: Administrative Procedures  
Published: 03/01/2022  
Effective: 04/11/2022

No. 54172 (Amendment) R527-305: High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases  
Published: 12/15/2021  
Effective: 04/01/2022

No. 54172 (Change in Proposed Rule) R527-305: High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases  
Published: 03/01/2022  
Effective: 04/01/2022

Services for People with Disabilities

No. 54360 (New Rule) R539-12: Person-Centered Budget  
Published: 02/15/2022  
Effective: 03/25/2022

Insurance  
Administration

No. 54362 (Repeal and Reenact) R590-91: Credit Life Insurance and Credit Accident and Health Insurance  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54319 (Amendment) R590-143: Life and Health Reinsurance Agreements  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54320 (Amendment) R590-157: Surplus Lines Insurance Premium Tax and Stamping Fee  
Published: 02/01/2022  
Effective: 03/16/2022

No. 54363 (Amendment) R590-160: Adjudicative Proceedings  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54364 (Amendment) R590-176: Health Benefit Plan Enrollment  
Published: 02/15/2022  
Effective: 03/25/2022

No. 54365 (Amendment) R590-181: Yankee Bond Rule  
Published: 02/15/2022  
Effective: 03/25/2022

Natural Resources

Administration

No. 54361 (New Rule) R634-4: Health Reform - Health  
Insurance Coverage in State Contracts - Implementation  
Published: 02/15/2022  
Effective: 03/28/2022

Tax Commission

Administration

No. 54350 (Amendment) R861-1A-42: Waiver of Penalty  
and Interest for Reasonable Cause Pursuant to Utah Code  
Ann. Section 59-1-401  
Published: 02/01/2022  
Effective: 03/28/2022

Motor Vehicle Enforcement

No. 54349 (Amendment) R877-23V-14: Dealer  
Identification of Fees Associated with Issuance of Temporary  
Permits Pursuant to Utah Code Ann. Sections 41-3-301 and  
41-3-302  
Published: 02/01/2022  
Effective: 03/28/2022

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

