

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed June 02, 2022, 12:00 a.m. through June 15, 2022, 11:59 p.m.

Number 2022-13
July 01, 2022

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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Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
- I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 02, 2022, 12:00 a.m., and June 15, 2022, 11:59 p.m. are included in this, the July 01, 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 August 01, 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 October 29, 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.

The Proposed Rules Begin on the Following Page

| NOTICE OF PROPOSED RULE | | |
|-------------------------------|-------|-----------------|
| TYPE OF RULE: Amendment | | |
| Utah Admin. Code Ref (R no.): | R25-7 | Filing ID 54697 |

Agency Information

| | | |
|--|------------------------------------|-------------------|
| 1. Department: | Government Operations | |
| Agency: | Finance | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W, Floor 3 | |
| City, state and zip: | Taylorsville, UT 84129-2128 | |
| Mailing address: | PO Box 141031 | |
| City, state and zip: | Salt Lake City, UT 84114-1031 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Janica Gines | 801-957-7727 | jmgines@utah.gov |
| Ally Branch | 801-957-7701 | abbranch@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|--|
| 2. Rule or section catchline: |
| R25-7. Travel-Related Reimbursements for State Travelers |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| <p>Due to the Internal Revenue Service (IRS) announcement to increase the mileage reimbursement rate for private vehicles from 56 cents per mile to 62 cents per mile, the Division of Finance (Division) has determined that the reimbursement rate for private vehicles should increase to 62 cents per mile to align with the federal mileage rate. The mileage reimbursement rate for a private vehicle when a fleet vehicle is available also increased from 38 cents to 44 cents.</p> <p>The meal per diem rates were increased due to inflation. The Division chose to use the Government Services Administration (GSA) base federal meal rates. The rates for in-state and out-of-state, will now be reimbursed at the same amount. Breakfast \$13, lunch \$15, and dinner \$25, for a total of \$54 a day. Some hotel rates were increased to be consistent with surrounding hotels. This was due to rising costs of hotels in some areas.</p> <p>The nonsubstantive changes to the rule text were to address inconsistencies with the Utah Rulewriting Manual,</p> |

in compliance with the Governor's Executive Order (EO No. 2012-12).

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):

These rule changes increase the reimbursement rates for mileage, lodging, and food. These changes were made to be consistent with the federal rates, and inflation. The language changes to the rule text were made to be in compliance with the Governor's Executive Order (EO No. 2012-12).

Fiscal Information

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

A) State budget:

There will potentially be an increased cost to the state as reimbursements for meals, mileage, and hotels have increased. However, the Division cannot determine exactly what the increase will be because it is impossible to anticipate how much travel state employees will do.

B) Local governments:

Local governments that have to comply with this rule, may see an increase in reimbursement costs. However, the Division cannot determine exactly what the increase will be. It is impossible to anticipate how much travel local governments will do.

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

Because the change deals only with reimbursement rates for state employees, small businesses are not affected.

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

Because the change deals only with reimbursement rates for state employees, non-small businesses are not affected.

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**):

Individuals eligible for reimbursement will see a slight increase in their mileage reimbursements, and meal reimbursement amounts.

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

Because the amendment only changes mileage, per diem, and hotel rates, and does not require any new action on the part of persons applying for reimbursements, there are not 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):

I have reviewed these changes with the Division of Finance Director and believe these changes are warranted. Individuals may see a slight increase in reimbursement amounts. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement. This rule will have no impact 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

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:

Section 63A-3-107 | Section 63A-3-106 |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|------------------------|--------------|------------|
| Agency head or designee, and title: | Janica Gines, Director | Date: | 06/02/2022 |
|--|------------------------|--------------|------------|

R25. Government Operations, Finance.

R25-7. Travel-Related Reimbursements for State Travelers.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to pay travel-related Reimbursements to Travelers of an Agency or a Political Subdivision that is subject to this rule.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting ~~[Per Diem]~~per diem and travel expenses for ~~[Board]~~board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any ~~[Department]~~department, division, ~~[Board]~~board, bureau, office, or other administrative subunit of state government. This definition includes the executive, legislative, and judicial branches.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive ~~[Departments]~~departments of state government.

(4) "Executive Director" means a ~~[Department Executive Director, Department Commissioner, Chief of Staff or the equivalent of a Chief Executive Officer for a Political Subdivision.]~~department executive director, department commissioner, chief of staff, or equivalent of a chief executive officer for political subdivision.

(5) "Fleet Vehicle" means a vehicle owned or leased by an ~~[Agency or Political Subdivision]~~agency or political subdivision. This also includes vehicles rented for use as motor pool vehicles by an ~~[Agency or Political Subdivision]~~agency or political subdivision.

(6) "Home Base" means the location from which the ~~[Traveler]~~traveler leaves to begin travel and the location to which the ~~[Traveler]~~traveler returns to end travel. In determining the ~~[Home Base of a Traveler, an Agency]~~home base of a traveler, an agency should consider at least the following non-exclusive factors:

(a) If the ~~[Traveler]~~traveler is leaving on travel directly from home, or if there a valid business reason for the ~~[Traveler]~~traveler to go to a designated work location before leaving for the travel destination, the ~~[Home Base]~~home base should be the last location the ~~[Traveler]~~traveler was in, home or designated work location, ~~[prior to]~~before leaving on travel.

(b) If the ~~[Traveler]~~traveler is going directly home after the trip, or if there a valid business reason for the ~~[Traveler]~~to first go to a designated work location ~~[prior to]~~before the ~~[Traveler returning]~~traveler returns home, the ending ~~[Home Base]~~home base for travel is the first location the employee goes to when returning from travel.

(7) "Per Diem" means an allowance paid daily.

(8) "Political Subdivision" means a county, city, town, school district, local district, special service district, or any entity, other than an ~~[Agency]~~agency, subject to this rule by statute.

(9) "Rate" means an amount of money.

(10) "Reimbursement" means money paid to compensate a ~~[Traveler]~~travel for money spent.

(11) "Traveler" means any person who is traveling on business for an ~~[Agency or Political Subdivision]~~agency or political subdivision. This definition includes employees, ~~[Board]~~board members, elected officials, vendors, volunteers, and grant recipients or award beneficiaries.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover any travel-related normal areas of expenses that are ordinary and reasonable ~~[in the]~~under the circumstances.

(2) Requests for ~~[Reimbursement]~~reimbursement must be accompanied by original itemized receipts for any expenses except those for which flat allowance amounts are established.

(3) When an original itemized receipt is not available, ~~[Agency or Political Subdivision]~~agency or political subdivision management may use discretion in determining the appropriate amount of alternative documentation ~~[prior to]~~before ~~[Reimbursement]~~reimbursement of expenses.

(4) Alcoholic Beverages are not reimbursable.

R25-7-5. Approvals.

(1) For insurance purposes, state business travel, whether reimbursed or not, must have prior approval by an appropriate authority. This also includes non-state employees where the ~~[Agency or Political Subdivision]~~agency or political subdivision is paying for the travel expenses.

(2) Out-of-state travel must be approved by the ~~[Executive Director]~~executive director or designee. The approval of in-state travel ~~[Reimbursement]~~reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization", in the ~~[State's ESS Travel]~~state's ESS travel system, or in another system with equivalent controls and calculations.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of form FI5 "Request for Out-of-State Travel Authorization", in the ~~[State's ESS Travel]~~state's ESS travel system or in another system with equivalent controls and calculations, and must be approved by the ~~[Executive Director]~~executive director or the designee.

(4) The ~~[Executive Director]~~executive director or designee must approve any travel to out-of-state functions where more than two ~~[Travelers]~~travelers from the same ~~[Department]~~department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) Travelers who travel on business may be eligible for a meal ~~[Reimbursement]~~reimbursement.

(2) The ~~[Reimbursement]~~reimbursement will include tax, tips, and other expenses associated with the meal.

~~[— (3) Allowances for in-state travel differ from those for out-of-state travel.]~~

(a) The daily travel meal allowance for in-state travel is ~~[\$45.00]~~\$54 and is computed according to the ~~[Rates]~~rates listed in ~~[the following]~~Table 1.

~~[TABLE 1]~~

~~In-State Travel Meal Allowances~~

| Meals | Rate |
|-----------|---------|
| Breakfast | \$11.00 |
| Lunch | \$14.00 |
| Dinner | \$20.00 |
| Total | \$45.00 |

| TABLE 1 In-State Travel Meal Allowances | |
|--|---------|
| Meals | Rate |
| Breakfast | \$13.00 |
| Lunch | \$15.00 |
| Dinner | \$26.00 |
| Total | \$54.00 |

(b) The daily travel meal allowance for out-of-state travel is ~~[\$50.00]~~\$54 and is computed according to the ~~[R]~~ates listed in the following table.

~~[TABLE 2]~~

~~Out-of-State Travel Meal Allowances~~

| Meals | Rate |
|-----------|---------|
| Breakfast | \$13.00 |
| Lunch | \$14.00 |
| Dinner | \$23.00 |
| Total | \$50.00 |

TABLE 2
Out-of-State Travel Meal Allowances

| Meals | Rates |
|-----------|---------|
| Breakfast | \$13.00 |
| Lunch | \$15.00 |
| Dinner | \$26.00 |
| Total | \$54.00 |

(4)(3) Tier I premium locations in this subsection are Anchorage, Alaska; Chicago, Illinois; each location in Hawaii; New York City, New York; San Francisco, California; and Seattle, Washington. Tier II premium locations in this subsection are Atlanta, Georgia; Baltimore, Maryland; Boston, Massachusetts; Dallas, Texas; Los Angeles, California; San Diego, California; and Washington, DC.

(a) When traveling to a Tier I premium location, the ~~Traveler~~ traveler may choose to accept the ~~Per Diem Rate~~ per diem rate for out-of-state travel, as shown in Table 2 ~~above~~, or to be reimbursed at the actual meal cost, with original receipts, up to \$71 ~~per day~~ a day.

(b) When traveling to a Tier II premium location, the ~~Traveler~~ traveler may choose to accept the ~~Per Diem Rate~~ per diem rate for out-of-state travel, as shown in Table 2 ~~above~~, or to be reimbursed at the actual meal cost, with original receipts, up to \$61 ~~per day~~ per day.

(c) Subject to Subsections 6(a) and 6(b), the ~~Traveler~~ traveler will qualify for premium ~~Rates~~ rates on the day the travel begins and the day the travel ends only if the trip is of sufficient duration to qualify for meals on that day.

(d) Complimentary meals with lodging accommodations and meals included in event registration costs are deducted from the premium location allowance as follows:

(i) Tier I Location

(a) If breakfast is provided deduct \$18, leaving a premium allowance for lunch and dinner of actual up to \$53.

(b) If lunch is provided deduct \$19, leaving a premium allowance for breakfast and dinner of actual up to \$52.

(c) If dinner is provided deduct \$34, leaving a premium allowance for breakfast and lunch of actual up to \$37.

(ii) Tier II Location

(a) If breakfast is provided deduct \$16, leaving a premium allowance for lunch and dinner of actual up to \$45.

(b) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to \$44.

(c) If dinner is provided deduct \$28, leaving a premium allowance for breakfast and lunch of actual up to \$33.

(d) The ~~Traveler~~ traveler must use the same method of ~~Reimbursement~~ reimbursement for an entire day.

(e) Actual meal cost includes tips.

(5)(4) When traveling in foreign countries, the ~~Traveler~~ traveler may choose to accept the ~~Per Diem Rate~~ per diem rate for out-of-state travel, as shown in Table 2, or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal ~~Reimbursement Rate~~ reimbursement rate for the location as of the date of travel.

(a) The ~~Traveler~~ traveler may use both ~~Reimbursement~~ reimbursement methods during a trip; however, they must use the same method of ~~Reimbursement~~ reimbursement for an entire day.

(b) Actual meal cost includes tips.

(6)(5) The meal ~~Reimbursement~~ reimbursement calculation ~~is comprised~~ consists of three parts:

(a) The day the travel begins. The ~~Traveler's~~ traveler's entitlement is determined by the time of day the ~~Traveler~~ traveler leaves their ~~Home Base~~ home base, as illustrated in ~~the following~~ ~~t~~ Table 3.

[TABLE 3

The Day Travel Begins

| 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|--------------|-------------|-------------|-------------|
| 12:01 AM - | 6:01 AM - | 12:01 PM - | 6:01 PM - |
| 6:00 AM | 12:00 PM | 6:00 PM | 12:00 AM |
| *B, L, D | *L, D | *D | *no meals |
| In-State | | | |
| \$45.00 | \$34.00 | \$20.00 | \$0 |
| Out-of-State | | | |
| \$50.00 | \$37.00 | \$23.00 | \$0 |

*B = Breakfast, L = Lunch, D = Dinner]

TABLE 3
The Day Travel Begins

| 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|--------------|-------------|-------------|-------------|
| 12:01 AM - | 6:01 AM - | 12:01 PM - | 6:01 PM - |
| 6:00 AM | 12:00 PM | 6:00 PM | 12:00 AM |
| *B,L,D | *L,D | *D | *no meals |
| In-State | | | |
| \$54.00 | \$41.00 | \$26.00 | \$0 |
| Out-of-State | | | |
| \$54.00 | \$41.00 | \$26.00 | \$0 |

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals and meals included in a registration cost are deducted from the total daily meal allowance. However, a continental breakfast will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal ~~Reimbursement the~~ ~~Traveler~~ reimbursement the traveler is entitled to is determined by the time of day the ~~Traveler~~ traveler returns to their ~~Home Base~~ home base, as illustrated in ~~the following~~ ~~t~~ Table 4.

[TABLE 4

The Day Travel Ends

| 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|--------------|-------------|-------------|-------------|
| 12:01 AM | 6:01 AM | 12:01 PM | 6:01 PM |
| 6:00 AM | 12:00 PM | 6:00 PM | 12:00 PM |
| *no meals | *B | *B, L | *B, L, D |
| In-State | | | |
| \$0 | \$11.00 | \$25.00 | \$45.00 |
| Out-of-State | | | |
| \$0 | \$13.00 | \$27.00 | \$50.00 |

*B = Breakfast, L = Lunch, D = Dinner]

| Table 4 The Day Travel Ends | | | |
|--------------------------------|-------------|-------------|-------------|
| 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 12:01 AM - | 6:01 AM - | 12:01 PM - | 6:01 PM - |
| 6:00 AM | 12:00 PM | 6:00 PM | 12:00 PM |
| *no meals | *B | *B, L | *B, L, D |
| <u>In-State</u> | | | |
| \$0 | \$13.00 | \$28.00 | \$54.00 |
| <u>Out-of-State</u> | | | |
| \$0 | \$13.00 | \$28.00 | \$54.00 |
| *B = | L = Lunch | D = Dinner | |
| <u>Breakfast</u> | | | |

(7)(6) A [Traveler]traveler may be authorized by the [Executive Director]executive director or designee to receive a taxable meal allowance on an officially approved trip when the [Traveler's]traveler's farthest destination is at least 100 miles one way from their [Home Base]home base and the [Traveler]traveler does not stay overnight.

(a) Breakfast is paid when the [Traveler]traveler leaves their [Home Base]home base before 6[:00] a.m.

(b) Lunch is paid when the [Traveler]traveler leaves their [Home Base]home base before 10[:00] a.m. and returns after 2[:00] p.m.

(c) Dinner is paid when the [Traveler]traveler leaves their [Home Base]home base and returns at or after 6[:00] p.m.

(d) The allowance is not considered an absolute right of the [Traveler]traveler and is authorized at the discretion of the [Executive Director]executive director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a [Board]board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where employees or other advisors or consultants must, of necessity, attend such a meeting [in order]to permit the [Board]board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the [Board]board is requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

A [Traveler]traveler who travels on business may be eligible for a lodging [Reimbursement]reimbursement.

(1) For stays at a conference hotel, the [Traveler]traveler will be reimbursed the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The [Traveler]traveler must include the conference registration brochure with the [Travel Reimbursement Request]travel reimbursement request, form FI 51A, FI 51B, on ESS [Travel]travel, or equivalent form or system.

(2) For in-state lodging at a non-conference hotel, the [Traveler]will be reimbursed the actual cost up to \$75 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in [the t]Table [below]5.

[TABLE 5

Cities with Differing Rates

Note: The Rates described below indicate the nightly single occupancy room Rate. Any applicable taxes and mandatory fees are in addition to the Rates below.

| City | Rate |
|---|----------|
| Blanding | \$85.00 |
| Bluff | \$100.00 |
| Brigham City | \$80.00 |
| Bryce Canyon City | \$90.00 |
| Cedar City | \$80.00 |
| Duchesne | \$90.00 |
| Ephraim | \$80.00 |
| Fillmore | \$80.00 |
| Hanksville | \$85.00 |
| Heber | \$85.00 |
| Kanab | \$90.00 |
| Layton | \$90.00 |
| Logan | \$90.00 |
| Mexican Hat | \$90.00 |
| Moab/Green River | \$110.00 |
| Monticello | \$80.00 |
| Ogden | \$95.00 |
| Park City/Midway | \$110.00 |
| Provo/Orem/Lehi/American Fork/Springville | \$85.00 |
| Roosevelt/Ballard | \$90.00 |
| Salt Lake City Metropolitan Area | |
| — (Draper to Farmington), Tooele | \$100.00 |
| St. George/Washington/Springdale/Hurricane/ | |
| — La Verkin | \$85.00 |
| Torrey | \$95.00 |
| Tremonton | \$90.00 |
| Tropic | \$95.00 |
| Vernal | \$95.00 |
| Other Utah Cities | \$75.00] |

Table 5
Cities with Differing Rates

Note: The rates described below indicate the nightly single occupancy room rates. Any applicable taxes and mandatory fees are in addition to the rates below.

| City | Rate |
|-------------------|----------|
| Ballard | \$100.00 |
| Beaver | \$95.00 |
| Blanding | \$90.00 |
| Bluff | \$100 |
| Brigham City | \$90.00 |
| Bryce Canyon City | \$90.00 |
| Cedar City | \$80.00 |
| Duchesne | \$100.00 |
| Ephraim | \$80.00 |
| Escalante | \$85.00 |
| Fillmore | \$85.00 |
| Green River | \$110.00 |
| Heber | \$85.00 |
| Kanab | \$95.00 |
| Layton | \$90.00 |
| La Verkin | \$85.00 |
| Logan | \$95.00 |
| Mexican Hat | \$90.00 |
| Moab | \$150.00 |
| Monticello | \$100.00 |
| Nephi | \$95.00 |

| | |
|---|----------|
| Ogden | \$95.00 |
| Park City/Midway | \$110.00 |
| Payson | \$85.00 |
| Price | \$95.00 |
| Provo/Orem/Lehi/American Fork/Springville | \$85.00 |
| Roosevelt | \$90.00 |
| Salt Lake City Metropolitan Area (Draper to Farmington), Tooele | \$100.00 |
| Springdale | \$85.00 |
| St. George | \$90.00 |
| Torrey | \$95.00 |
| Tremonton | \$90.00 |
| Vernal | \$95.00 |
| Washington/Hurricane | \$95.00 |
| Other Utah Cities | \$75.00 |

(3) Travelers traveling less than 50 miles from their ~~[Home Base]~~home base are not entitled to lodging ~~[Reimbursement]~~reimbursement. Miles are calculated from the ~~[Traveler's Home Base]~~traveler's home base. An ~~[Executive Director]~~executive director may use discretion to authorize ~~[Reimbursement]~~reimbursement for lodging if the ~~[Agency or Political Subdivision]~~agency or political subdivision determines lodging is reasonable and in the best interest of the state. For example, if the ~~[Traveler]~~traveler is required to work at the travel destination after normal working hours or early the next day, or when weather or other safety issues exist, lodging may be appropriate.

(4) When an ~~[Agency or Political Subdivision]~~agency or political subdivision pays for a person from out-of-state to travel to Utah, the in-state lodging ~~[Per Diem Rates]~~per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the ~~[Traveler]~~traveler will be reimbursed the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging ~~[Rate]~~rate for the location. For ~~[Agency Travelers]~~agency travelers, these reservations must be made through the ~~[State Travel Office]~~state travel office.

(6) For ~~[Agency Travelers]~~agency travelers, the ~~[State]~~state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays when reservations are made through the ~~[State Travel Office]~~state travel office.

If lodging is not available at the allowable ~~[Per Diem Rate]~~per diem rate in the area the ~~[Traveler]~~traveler needs to stay, the ~~[State Travel Office]~~state travel office will book a hotel with the best available ~~[Rate]~~rate. In this circumstance, the ~~[Traveler]~~traveler will be reimbursed at the actual ~~[Rate]~~rate booked.

If a ~~[Traveler]~~traveler chooses to stay at a hotel that costs more than the allowable ~~[Per Diem Rate]~~per diem rate, the ~~[Traveler]~~traveler will only be reimbursed for the allowable ~~[Per Diem Rate]~~per diem rate plus tax and any mandatory fees charged by the hotel.

(7) Lodging is reimbursed at the ~~[Rates]~~rates listed in Table 5 for single occupancy only. For double ~~[Traveler]~~traveler occupancy, add \$20, for triple ~~[Traveler]~~traveler occupancy, add \$40, for quadruple ~~[Traveler]~~occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the ~~[Traveler's Executive Director]~~travelers executive director or designee ~~[prior]~~before to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5, in the ~~[State's ESS Travel]~~state's ESS travel system, or in another system with equivalent controls and calculations.

(b) Attach the written approval to the ~~[Travel Reimbursement Request]~~travel reimbursement request, form FI 51B, FI 51D, in ESS ~~[Travel]~~travel, or in another equivalent form or system.

(9) A proper receipt for lodging accommodations must accompany each request for ~~[Reimbursement]~~reimbursement.

A proper receipt is a copy of the registration form generally used by a motel or hotel which includes the following information: name of motel/hotel, street address, town and state, telephone number, receipt date, names of occupants dates of occupancy, amount and date paid, number in the party, and single, double, triple, or quadruple occupancy.

(10) When lodging is required, a ~~[Traveler]~~traveler should stay at the lodging facility nearest to the ultimate destination point of travel where state lodging ~~[Per Diem Rates]~~per diem rates are accepted ~~[in order]~~to minimize transportation costs.

(11) A ~~[Traveler]~~traveler may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel. With proof of staying overnight away from home on approved business, the ~~[Traveler]~~will be reimbursed the following:

(a) \$25 per night with no receipts required; or
(b) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) A ~~[Traveler]~~traveler on assignment away from the ~~[Home Base]~~home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 ~~[per]~~a day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

Travelers who travel on business may be eligible for a ~~[Reimbursement]~~reimbursement for incidental expenses.

(1) A ~~[Traveler]~~traveler will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, maid service, and bellman. Gratuities or tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5~~[-.00 per]~~a day. Include an original receipt for each individual incidental item above \$19.99.

(2) A ~~[Traveler]~~traveler will be reimbursed for incidental ground transportation and parking expenses.

(a) A ~~[Traveler]~~traveler shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to a restaurant is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking ~~[Rate]~~rate at the airport the ~~[Traveler]~~traveler is flying out of. A receipt is required for amounts of \$20 or more.

(d) Gratuities and tips for ground transportation will be reimbursed up to the greater of \$5 or 18% for each ride. Gratuities and tips must be shown on an original receipt.

(3) For an ~~[Agency]~~agency, a conference registration should be paid in advance by check or with a purchasing card.

(a) A copy of the approved FI 5 form must be included with the payment voucher or purchase card log for out-of-state registrations.

(b) For an [Agency]agency, if a [Traveler]traveler must pay the registration upon arrival, and does not have a purchase card or personal credit card, the [Agency]agency is expected to process a payment document and have the [Traveler]traveler take the state warrant to the event.

(4) A demonstrable expense for a business call will be reimbursed at the actual cost.

(a) The [Traveler]traveler shall list the amount of these calls separately on the [Travel Reimbursement Request]travel reimbursement request, form FI 51A, FI 51B, or in ESS [Travel]travel or equivalent form or system.

(b) The [Traveler]traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) An allowance for personal telephone calls made while out of town on business overnight may be based on the number of nights away from home. The [Traveler]traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls. Reimbursement must be calculated as follows:

(a) four nights or less, actual amount up to \$2.50 per night;

(b) five to eleven nights, actual amount up to \$20~~[-00]~~;

(c) twelve nights to ~~[thirty]~~30 nights, actual amount up to \$30~~[-00]~~; and,

(d) more than ~~[thirty]~~30 days, start over.

(6) Laundry expenses up to \$18~~[-00]~~ per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night. For use of coin-operated laundry facilities, the [Traveler]traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 ~~[per]~~a day will be allowed for [Travelers]travelers away ~~[in excess of]~~more than six consecutive nights beginning after the sixth night.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for [Travelers]travelers going to conferences.

(8) An ~~[Agency or Political Subdivision]agency or political subdivision~~ may provide for a [Traveler]traveler to return home over a weekend when the business portion of a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

A [Traveler]traveler who travels on business may be eligible for a transportation [Reimbursement]reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the [Executive Director]executive director or designee.

(a) For ~~[Agency Travelers]agency travelers~~, all reservations should be made through the [State Travel Office]state travel office for the least expensive air fare available ~~[at the time]~~when the reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the [Executive Director]executive director or designee.

(2) A [Traveler]traveler may be reimbursed for mileage to and from the airport and ~~[long term]~~long term parking or ~~[away from the]~~airport parking.

(a) The maximum [Reimbursement]reimbursement for parking, whether a [Traveler]traveler parks at the airport or away from the airport, is the long term parking [Rate]rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A, FI 51B, in ESS Travel or equivalent form or system for amounts of \$20 or more.

(c) A [Traveler]traveler may be reimbursed, up to the maximum [Reimbursement Rate]reimbursement rate, for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) A [Traveler]traveler may use a private vehicle with approval from the [Executive Director]executive director or designee.

(a) Only one person in a vehicle may receive the [Reimbursement]reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the [Rate]rate of ~~[38]~~44 cents per mile or ~~[56]~~62 cents per mile if a [Fleet Vehicle]fleet vehicle is not available to the [Traveler]traveler.

(i) To determine which [Rate]rate to use, the [Traveler]traveler must first determine if a [Fleet Vehicle]fleet vehicle is available that meets the [Traveler's]traveler's needs. This does not apply to special purpose vehicles. If reasonably available, the [Traveler]traveler should use a [Fleet Vehicle]fleet vehicle. If a [Fleet Vehicle]fleet vehicle is not reasonably available, the [Agency or Political Subdivision]agency or political subdivision may approve the [Traveler]traveler to use a private vehicle. If a [Fleet Vehicle]fleet vehicle is not reasonably available, the [Traveler]traveler may be reimbursed at ~~[56]~~62 cents per mile.

(ii) If a trip is estimated to average 100 miles or more ~~[per]~~a day, the [Agency or Political Subdivision]agency or political subdivision should approve the [Traveler]traveler to reserve a [Fleet Vehicle]fleet vehicle if one is reasonably available. Doing so will cost less than if the [Traveler]traveler takes a private vehicle. If the [Agency or Political Subdivision]agency or political subdivision approves the [Traveler]traveler to take a private vehicle, the [Traveler]traveler will be reimbursed at the lower [Rate]rate of ~~[38]~~44 cents per mile not to exceed the expense calculated in the link located in Subsection (e).

(c) A [Reimbursement Rate]reimbursement rate that is more restrictive than the [Rate]rate established in this [S]section may be established by the [Agency or Political Subdivision]agency or political subdivision.

(d) Any exceptions to this mileage [Reimbursement Rate]rate guidance must be approved in writing by the [Traveler's Executive Director]traveler's executive director or designee.

(e) A cost comparison worksheet is available at: <http://fleet.utah.gov/motor-pool-a/demand-motor-pool/personal-vehicle-vs-rental-vehicle/>

(f) Mileage will be computed using Mapquest, GoogleMaps or other generally accepted route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(g) If the [Traveler]traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(h) For an [Agency Traveler]agency traveler, an approved "Private Vehicle Usage Report", form FI 40, should be included with

the documentation reporting miles driven on business during the payroll period.

(i) Mileage ~~[Reimbursement]~~reimbursement may be allowed on an approved "Travel Reimbursement Request", form FI 51A, FI 51B, or in ESS Travel, or equivalent form or system, if other costs associated with the trip are to be reimbursed at the same time.

(4) A ~~[Traveler]~~traveler may choose to drive instead of flying if preapproved by the ~~[Executive Director]~~executive director or designee.

(a) If the ~~[Traveler]~~traveler drives a ~~[Fleet Vehicle]~~fleet vehicle, the ~~[Traveler]~~traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The ~~[Traveler]~~traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the ~~[Traveler]~~traveler drives a privately-owned vehicle, ~~[Reimbursement]~~reimbursement will be at the ~~[Rate]~~rate of ~~[38]~~44 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the ~~[Executive Director]~~executive director or designee.

(i) The lowest fare available within 30 days ~~[prior to]~~before the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A comparison printout which is available through the ~~[State Travel Office]~~state travel office is required when the ~~[Traveler]~~traveler is taking a private vehicle.

(iii) The ~~[Traveler]~~traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the ~~[Traveler]~~traveler uses a private vehicle on official business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the ~~[Reimbursement]~~reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of driving was less than or equal to the total cost of flying for the trip.

(d) If the travel time taken for driving during the ~~[Traveler's]~~traveler's normal work week is greater than that which would have occurred had the ~~[Traveler]~~traveler flown, the excess time used must not count as time worked.

(5) Use of non-fleet rental vehicles must be approved in writing in advance by the ~~[Executive Director]~~executive director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for ~~[Reimbursement]~~reimbursement and approved by the ~~[Executive Director]~~executive director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a ~~[Traveler]~~traveler staying at a conference hotel.

(c) When making rental car arrangements through the ~~[State Travel Office]~~state travel office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) A ~~[Traveler]~~traveler should rent vehicles to be used for business in their own names, using a contract available to the ~~[Traveler's Agency or Political Subdivision]~~traveler's agency or political subdivision to ensure the ~~[Agency's or Political Subdivision's]~~agency's or political subdivision's insurance coverage is extended in the rental.

(ii) For ~~[Agency Travelers]~~agency travelers, a rental vehicle reservation not made through the ~~[State Travel Office]~~state

travel office must be approved in advance by the ~~[Executive Director]~~executive director or designee.

(iii) The ~~[Traveler]~~traveler will be reimbursed the actual ~~[Rate]~~rate charged by the rental agency.

(iv) The ~~[Traveler]~~traveler must have approval for a rental car ~~[in order]~~to be reimbursed for rental car parking.

(6) Travel by private airplane for official business must be approved in advance by the ~~[Executive Director]~~executive director or designee.

(a) The pilot must certify to the ~~[Executive Director]~~executive director or designee that the pilot is certified to fly the plane being used for business.

(b) If the plane is owned by the pilot, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the ~~[Traveler and the Agency or Political Subdivision]~~traveler and the agency or political subdivision as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at ~~[56]~~62 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, ~~[usually traveled]~~usually traveled route.

~~[(7) Travel by private motorcycle must be approved prior to the trip by the Executive Director or designee. Travel will be reimbursed at 20 cents per mile.]~~

~~[(8)]~~(7) For ~~[Agency Travelers]~~agency travelers, a car allowance may be allowed in lieu of mileage ~~[Reimbursement]~~reimbursement in certain cases. Prior written approval from the ~~[Executive Director]~~executive director, the Executive Director of the Department of Government Operations, and the Governor is required.

KEY: air travel, per diem allowances, state travelers, transportation

Date of Last Change: 2022[February 23, 2021]

Notice of Continuation: February 8, 2018

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R70-320 | Filing ID 54676 |
|--------------------------------------|----------------|----------------------------------|

Agency Information

| | |
|-----------------------------|---|
| 1. Department: | Agriculture and Food |
| Agency: | Regulatory Services |
| Street address: | 4315 S 2700 W, TSOB, South Bldg Floor 2 |
| City, state and zip: | Taylorsville, UT 84129-2128 |
| Mailing address: | PO Box 146500 |
| City, state and zip: | Salt Lake City, UT 84114-6500 |

| Contact person(s): | | |
|--|--------------|----------------------|
| Name: | Phone: | Email: |
| 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

| |
|--|
| 2. Rule or section catchline: |
| R70-320. Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The changes are needed to make this rule text more consistent with the requirements of the 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): |
| The changes are made to make this rule text more consistent with the Utah Rulewriting Manual. |

Fiscal Information

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|---|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| The rule changes clarify the rule or are nonsubstantive. There is no fiscal impact to the state budget. |
| B) Local governments: |
| Local governments do not participate in the Department of Agriculture and Food's (Department) dairy program and will not be impacted by this rule change. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| The rule changes clarify the rule or are nonsubstantive. There is no fiscal impact to small businesses. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| The rule changes clarify the rule or are nonsubstantive. There is no fiscal impact to non-small businesses. |

| E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|-------------|------------|------------|--------|------------------|-----|-----|-----|-------------------|-----|-----|-----|------------------|-----|-----|-----|----------------------|-----|-----|-----|---------------|-----|-----|-----|--------------------------|------------|------------|------------|------------------------|--|--|--|------------------|-----|-----|-----|-------------------|-----|-----|-----|------------------|-----|-----|-----|----------------------|-----|-----|-----|---------------|-----|-----|-----|------------------------------|------------|------------|------------|
| The rule changes clarify the rule or are nonsubstantive. There is no fiscal impact to other persons. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| The compliance costs for affected persons will not change because the Department's administration of the milk program is 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 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <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> <tr> <td>Total Fiscal Cost</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Fiscal Benefits</td> <td></td> <td></td> <td></td> </tr> <tr> <td>State Government</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Local Governments</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Non-Small Businesses</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Other Persons</td> <td>\$0</td> <td>\$0</td> <td>\$0</td> </tr> <tr> <td>Total Fiscal Benefits</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 | Total Fiscal Cost | \$0 | \$0 | \$0 | Fiscal Benefits | | | | State Government | \$0 | \$0 | \$0 | Local Governments | \$0 | \$0 | \$0 | Small Businesses | \$0 | \$0 | \$0 | Non-Small Businesses | \$0 | \$0 | \$0 | Other Persons | \$0 | \$0 | \$0 | Total Fiscal Benefits | \$0 | \$0 | \$0 |
| 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 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Fiscal Cost | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Fiscal Benefits | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| State Government | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Local Governments | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Small Businesses | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Non-Small Businesses | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other Persons | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total Fiscal Benefits | \$0 | \$0 | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | | | |
|--|---------------|------------|------------|------------|
| Net Benefits | Fiscal | \$0 | \$0 | \$0 |
| B) Department head approval of regulatory impact analysis: | | | | |
| The Commissioner of the Utah Department of Agriculture and Food Craig W. Butters 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:**

| | | |
|---------------------------------------|-----------------|--|
| Subsections 4-2-103(1)(g) through (j) | Section 4-3-201 | |
|---------------------------------------|-----------------|--|

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.)**

| | |
|--|------------|
| A) Comments will be accepted until: | 08/01/2022 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
|--|------------|

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

| | | | |
|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Craig W. Butters, Commissioner | Date: | 06/10/2022 |
|--|--------------------------------|--------------|------------|

R70. Agriculture and Food, Regulatory Services.**R70-320. Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing.****R70-320-1. Purpose and Authority.**

~~[A.](1)~~ Promulgated ~~[U]~~ under ~~[A]~~ authority of Subsections 4-2-~~[2]~~103(1)~~(f)~~(g) through (j) and Section 4-3-201.

~~[B. Scope: It is the intent of these rules to encourage the sanitary production of milk, to promote the sanitary processing of milk for manufacturing purposes.]~~

(2) This rule establishes:

(a) minimum standards for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom;

(b) inspections of dairy farms and dairy plants, to certify dairy farms for the production and sale of milk for manufacturing purposes and to license dairy plants to handle and process milk for manufacturing purposes, in conformity with minimum standards and

specifications prescribed by this rule;

(c) requirements for licensed plants to keep appropriate books and records; and

(d) the licensing process for qualified milk graders and bulk milk collectors.

[R70-320-2. General.

~~A. The Commissioner of Agriculture and Food shall administer the provisions of these rules which are:~~

~~1. To establish and promulgate minimum standards for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom.~~

~~2. To inspect dairy farms and dairy plants, to certify dairy farms for the production and sale of milk for manufacturing purposes and to license dairy plants to handle and process milk for manufacturing purposes, in conformity with minimum standards and specifications prescribed by such rules as may be issued hereunder in effectuation of the intent hereof.~~

~~3. To require the keeping of appropriate books and records by plants licensed hereunder.~~

~~4. To license qualified milk graders and bulk milk collectors.~~

~~B. The Utah Commissioner of Agriculture and Food may for good cause, after notice and opportunity for hearing, suspend or revoke certification and licenses issued hereunder.~~

~~C. No person, firm, or corporation shall produce, sell, offer for sale, or process milk for the manufacture of human food except in accordance with the provisions of these rules issued pursuant hereunto.~~

~~D. Violation of any portion of these rules may result in civil or criminal action, pursuant to Section 4-2-2.~~

~~E. All manufacturing dairy plants shall furnish the Department with a current list of their producers semi annually. These lists shall be received no later than January 15th and July 15th of the current year.]~~

R70-320-3]2. Definitions.

~~[A. Definitions. Words used in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.~~

~~1. Regulatory agency. The Utah Commissioner of Agriculture and Food or his authorized representative is authorized by law to administer this rule.~~

~~2. Department. The Utah Department of Agriculture and Food.~~

~~3. License. A license issued under this Regulation by the Department.~~

~~4. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a processing or manufacturing plant for the purpose of dairy farm inspections and quality control work.~~

~~5. Compliance Officer. An employee of the Department qualified, trained, and authorized to perform dairy farm or plant inspections, and raw milk grading.~~

~~6. Milk Grader. A person licensed by the Utah Department of Agriculture and Food who is qualified and trained for the grading of raw milk.~~

~~7. Producer. The person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station and those who receive payment for this product. A "new producer" is one who has only recently entered into the production of milk for the market. A "transfer producer" is one who~~

has been shipping milk to one plant and transfers his shipment to another plant.

8. Milk hauler. Any person who transports raw milk and/or raw milk products from a dairy farm, milk plant, receiving or transfer station.

9. Farm Tank. A tank used to cool and/or store milk prior to transportation to the processing plant.

10. Transportation Tank and Bulk Tank. Tanks used to transport milk from a farm to a processing plant.

11. Dairy Farm or Farm. A place or premise where one or more milking cows are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant for manufacturing purposes.

12. Dairy Plant or Plant. Any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing and/or prepared for distribution. When "plant" is used in connection with minimum specifications for plants or licensing of plants, it means only those plants that manufacture, process and/or distribute dairy products.

13. Milk. The normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The word "milk" used herein includes only milk for manufacturing purposes.

14. Milk for manufacturing purposes. Milk produced for processing and manufacturing into products for human consumption that meets the requirements of this rule.

15. Acceptable Milk. Milk that is produced under the requirements as outlined in this rule.

16. Probational Milk. Milk that may not be produced under the requirements as outlined in this rule and that may be accepted by plants for specific time periods.

17. Reject Milk. Milk that does not meet the requirements of this rule.

18. Suspended Milk. All of a producer's milk suspended from the market by the provisions of this rule.

19. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated (plain or sweetened), and such other products, for human consumption, as may be otherwise designated.

20. Farm Certification. Certification by a compliance officer that a producer's herd, milking facility and housing, milk procedure, cooling, milkhouse or milk room, utensils and equipment and water supply have been found to meet the applicable requirements of this rule.

21. Official Methods. Official Methods of Analysis of the Association of Official Analytical Chemists.

22. Standard Methods. Standard Methods for the Examination of Dairy Products.

23. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk and Food Sanitarians, the United States Public Health Service, and the Dairy Industry Committee.

24. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation.

25. Permit. A document issued by the Department in order to sell milk and milk products.]

(1) "3-A sanitary standards and accepted practice" means the same as that term is defined in 7 CFR 58.101.

(2) "Acceptable milk" means milk that is produced under the requirements of this rule.

(3) "C-I-P" and "cleaned-in-place" mean the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned-in-place by circulation.

(4) "Compliance Officer" means an employee of the department qualified, trained, and authorized to perform dairy farm or plant inspections, and raw milk grading.

(5) "Dairy farm" or "farm" mean a place or premise where one or more milking cows are kept, with any milk produced being delivered, sold, or offered for sale to a plant for manufacturing purposes.

(6) "Dairy plant" or "plant" mean any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing, prepared for distribution, or both. When "plant" is used in connection with minimum specifications for plants or licensing of plants, it means only those plants that manufacture, process, or distribute dairy products.

(7) "Dairy products" means milk products for human consumption including butter, natural or processed cheese, dry whole milk, nonfat dry milk, dry buttermilk, dry whey, and plain or sweetened evaporated milk.

(8) "Department" means the Utah Department of Agriculture and Food.

(9) "Farm certification" means certification by a compliance officer that a producer's herd, milking facility and housing, milk procedure, cooling, milkhouse or milk room, utensils and equipment, and water supply have been found to meet the applicable requirements of this rule.

(10) "Farm tank" means a tank used to cool milk, store milk, or both before transportation to the processing plant.

(11) "Fieldman" means a person qualified and trained in the sanitary methods of production and handling of milk as described in this rule, and generally employed by a processing or manufacturing plant to perform dairy farm inspections and quality control work.

(12) "License" means a license issued under this rule by the department.

(13) "Milk" and "milk for manufacturing purposes" mean the normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows and used for processing and manufacturing into products for human consumption.

(14) "Milk grader" means a person licensed by the department who is qualified and trained for the grading of raw milk.

(15) "Milk hauler" means any person who transports raw milk, raw milk products, or both from a dairy farm, milk plant, receiving station, or transfer station.

(16) "New producer" means a producer who has only recently entered into the production of milk for the market.

(17) "Official Methods of Analysis of the Association of Official Analytical Chemists" means the same as that term is defined in 7 CFR 58.101.

(18) "Permit" means a document issued by the department to sell milk and milk products.

(19) "Probational milk" means milk that may not be produced under the requirements of this rule and that may be accepted by plants for specific time periods.

(20) "Producer" means a person who exercises control over the production of the milk delivered to a processing plant or receiving station and those who receive payment for this product.

(21) "Raw milk" means milk that has not been pasteurized, or heat treated.

(22) "Reject milk" means milk that:

(a) fails to meet the requirements for sight and odor;

(b) is classified No. 4 for sediment content; or

(c) is classified as abnormal milk.

(23) "Standard Methods for the Examination of Dairy Products" or "standard methods" means the same as that term is defined in 7 CFR 58.101.

(24) "Suspended milk" means any of a producer's milk suspended from the market by this rule.

(25) "Transfer producer" means a producer who has been shipping milk to one plant and transfers their shipment to another plant.

(26) "Transportation tank" and "bulk tank" mean tanks used to transport milk from a farm to a processing plant.

R70-320-~~4~~3. Milk Permits.

[By October 15, 1990, farms producing and selling](1) Each farm that produces and sells milk for manufacturing purposes shall apply for a permit.

[1-](2) Permits shall be required for the sale of milk for manufacturing purposes.

[2-](3) Only one permit shall be issued per facility.

[3-](4) Farm permits shall be effective from the date of issuance unless suspended or revoked by the [D]department.

R70-320-~~5~~4. Farm Inspection.

[A-](1) Each dairy farm operated by a producer of milk for manufacturing purposes shall be inspected initially and on any change of market by a compliance officer and shall have a passing score before the first milk is shipped.

(2) [A-]Any dairy farms producing milk for manufacturing purposes shall be inspected no less than once in each six- month period by a compliance officer.

[B-](3) Producers who cannot produce milk of wholesome sanitary quality [will]shall [be]have their producer permit suspended.

(4) Producers who are not in substantial compliance with Section R70-320-1~~[2]~~ relating to requirements for a farm producing milk for manufacturing [will]shall be re-inspected after an appropriate time for correction of deficiencies.

(a) If the farm does not then meet the requirements for farms producing milk for manufacturing, the producer permit to sell milk for manufacturing from that farm shall be suspended until [such]a time as the farm receives an acceptable score.

(b) The producer [will]shall be charged for the time and mileage [expended]used by the department for any subsequent visits required.

R70-320-~~6~~5. Minimum Quality Standards for Milk for Manufacturing Purposes.

[A-](1) Basis. The classification of [raw-]milk for manufacturing purposes shall be based on:

(a) sight;~~[and-]~~

(b) odor; and

(c) quality control tests for sediment content, bacterial estimate, and somatic cell.

[B-](2) Sight and odor.

(a) The odor of acceptable [raw-]milk shall be fresh and sweet.

(b) The milk shall be free from objectionable off-odors that would adversely affect the finished product, and it shall not show any abnormal condition [such as]including curdled, ropy, bloody, or mastitis condition as determined by an approved milk grader.

[C-](3) Sediment content classification. Milk in farm bulk tanks shall be classified for sediment content as follows:

[TABLE
SEDIMENT CONTENT

| | |
|---------------------|--|
| Sediment Content | Milk in farm bulk tanks |
| Classification | Mixed sample, 0.40 in. diameter disc or equivalent |
| No. 1 (acceptable) | Not to exceed 0.50 mg. equivalent |
| No. 2 (acceptable) | Not to exceed 1.50 mg. equivalent |
| No. 3 (probational) | Not to exceed 2.50 mg. equivalent |
| No. 4 (reject) | Over 2.50 mg. equivalent |

Sediment content based on comparison with applicable charts of Sediment Standards prepared by the United States Department of Agriculture.]

| TABLE 1 Sediment Content | |
|--|--|
| Sediment Content Classification | Milk in farm bulk tanks Mixed sample, 0.40 in. diameter disc or equivalent |
| No. 1-acceptable | Not to exceed 0.50 mg equivalent |
| No. 2-acceptable | Not to exceed 1.50 mg equivalent |
| No. 3-Probational | Not to exceed 2.50 mg equivalent |
| No. 4-Reject | Over 2.5 mg equivalent |
| Sediment content based on comparison with applicable charts of Sediment Standards prepared by the United States Department of Agriculture (USDA) | |

[1-](a) Method of Testing. Methods for determining sediment content of milk shall be those described in the current [edition of S]standard [M]methods[for the examination of dairy products].

[2-](b) Frequency of tests. At least once each month a sample shall be taken from each farm bulk tank and at irregular intervals.

[3-](c) Acceptance or rejection of milk.

(i) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted.

(ii) If the sediment disc is classified as No. 4, the milk shall be rejected.

(iii) If the shipment of milk is co-mingled with other milk in a transport tank, the next shipment shall not be accepted until its quality has been determined at the farm before being picked up; however, if the person making the test [is unable to]cannot get to the farm before the next shipment, it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better.

(iv) [In the case of]For milk classified as No. 3 or No. 4, the producer shall be notified immediately and the next shipment shall be tested.

[4-](d) Retests.

(i) On tests of the next shipment, milk classified as No. 1, No. 2, or No. 3 shall be accepted, but No. 4 milk shall be rejected.

(ii) Retests of bulk milk classified as No. 4 shall be made at the farm before pickup.

(iii) The producers of No. 3 or No. 4 milk shall be notified immediately and the next shipment tested.

(iv) This procedure of retesting successive and accepting ~~[probational -]~~ No. 3 ~~[3]~~ milk and rejecting No. 4 milk may be continued for a period, not to exceed ten calendar days. If at the end of this ~~[time]~~ period, the producer's milk does not meet the acceptable sediment content classification ~~[of]~~ No. 1 or No. 2 ~~[3]~~ it shall be suspended from the market.

~~[D-]~~ (4) Bacterial estimated classification. Milk shall be classified for bacterial estimate by one of the listed tests of the ~~[current standard methods]~~ Standard Methods for the Examination of Dairy Products.

[TABLE

Bacterial estimate ~~Direct microscopic clump~~
classification ~~count, standard plate~~
~~count or loop method~~

Acceptable ~~Not over 500,000 per ml.~~

Undergrade ~~Over 500,000 per ml~~
~~(probation 4 weeks)]~~

TABLE 2

| | |
|---|--------------------------|
| Bacterial estimate Direct microscopic clump classification count, standard plate count, or loop method | Not over 500,000 per ml. |
| Acceptable | Over 500,000 per ml. |
| Unacceptable | |
| (probation 4 weeks) | |

~~[A-]~~ (a) Method of testing. Methods for determining the bacterial estimate of milk shall be ~~[those described in the current edition of Standard Methods and the current edition of the Official Methods of the Analysis of the Association of Official Analytical Chemists]~~ those described in the "Standard Methods for the Examination of Dairy Products," "Official Methods of Analysis of the Association of Official Analytical Chemists," or other methods approved by the ~~[D]~~ department.

~~[2-]~~ (b) Frequency of tests. Tests shall be done ~~[A-]~~ at least once a month at irregular intervals, a mixed sample of each producer's milk shall be tested.

~~[3-]~~ (c) Acceptance of milk.

(i) If the sample of milk is classified as No. 1, the producer's milk may be accepted without qualification.

(ii) If the sample is classified as undergrade ~~[probational]~~, the producer's milk may be accepted for a temporary period of four weeks. The producer of undergrade milk shall be notified immediately.

~~[4-]~~ (d) Retests.

(i) Additional samples shall be tested and classified at least weekly, and the producer shall be notified immediately of the results.

(ii) This procedure of testing at least weekly and accepting undergrade milk may be continued for a period not exceeding four weeks.

(iii) If at the end of this ~~[time]~~ period, the producer's milk does not meet the acceptable bacterial estimate requirements ~~[of]~~ No. 1 or No. 2 ~~[3]~~ it shall be suspended from market.

~~[E-]~~ (5) Abnormal Milk.

(a) The Wisconsin Mastitis Test (WMT) may be used as a screening test.

(b) A test of 18 mm or higher ~~[shall be considered to indicate]~~ is considered abnormal milk and shall ~~[require]~~ need confirmation by the Direct Microscopic Somatic Cell Count Method (DMSCC) or an equivalent method according to the ~~[current edition]~~

~~of standard methods]~~ Standard Methods for the Examination of Dairy Products.

(i) Somatic Cell Count: Samples exceeding 18 mm WMT ~~[to]~~ shall be confirmed by DMSCC or other acceptable tests. ~~[Not]~~ Count shall not ~~[to]~~ exceed 750,000 per ml.

~~[A-]~~ (c) Frequency of tests. At least four times in each six-
[-] month period, at irregular intervals, a sample of each producer's milk shall be tested.

~~[2-]~~ (d) Notification to the department, written notice to the producer, and a farm inspection are required when ~~[ever]~~ two of the last four somatic cell counts exceed the standard.

~~[3-]~~ (e) Within 21 days after the farm inspection, another sample shall be tested for somatic cell count. If the result exceeds the allowable limit for somatic cell count, the producer's permit shall be suspended until corrections are made and the somatic cell count is reduced to 750,000 or less.

~~[F-]~~ (6) Drug Residue Level.

~~[A-]~~ (a) ~~[AH]~~ Each licensed dairy plant ~~[s]~~ shall not accept for processing any milk testing positive for drug residue.

(i) ~~[AH]~~ Any milk received at a licensed ~~[dairy]~~ dairy plant shall be sampled and tested, ~~[prior to]~~ before processing, for beta lactam drug residue.

(ii) When directed by the ~~[regulatory agency]~~ department, additional testing for other drug residues shall be performed.

(iii) Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists ~~[AOAC]~~ and accepted by the Food and Drug Administration (FDA) as effective in determining compliance with "safe levels" or established tolerances.

(iv) "Safe levels" and tolerances for particular drugs are established by the FDA and can be obtained from the U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition.

~~[2-]~~ (b) Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment, and shall be representative of ~~[all]~~ any milk received from the producer.

~~[3-]~~ (c) A load sample shall be taken from the bulk milk shipment after its arrival at the plant and ~~[prior to]~~ before further commingling. A sample shall be obtained at the plant using a procedure that includes ~~[all]~~ any milk produced and received.

~~[4-]~~ (d) Follow-up to positive-testing.

(i) When a load sample tests positive for drug residue, industry personnel shall notify the ~~[appropriate state regulatory agency immediately, according to state policy,]~~ department of the positive test result and of the intended disposition of the shipment of milk containing the drug residue.

(ii) ~~[AH]~~ Any milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines.

~~[5-]~~ (e) Identification of producer.

(i) Each individual producer sample represented in the positive-testing load sample shall be singly tested as directed by the ~~[state regulatory agency]~~ department to determine the producer of the milk sample testing positive for drug residue.

(ii) Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the ~~[state regulatory agency]~~ department.

~~[6-]~~ (f) Milk shipment from the producer identified as the source of milk testing positive for drug residue shall ~~[cease]~~ stop

immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

[7-](g) Enforcement. A penalty sanctioned by the department shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.

[8-](h) The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within 30 days after each occurrence of shipping milk testing positive for drug residue. A signed copy of a certificate confirming that the "Milk and Dairy Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian and forwarded to the department.

[9-](i) If a producer ships milk testing positive for drug residue three times within a 12-month period, the department shall initiate administrative procedures to suspend the producer's milk shipping privileges[~~according to state policy~~].

[10-](j) Record of tests.

(i) Accurate records listing the results of drug residue tests for each load and individual producer shall be kept on file at the plant.

(ii) Drug residue test results are to be ~~retained~~ kept for 12-[-]months.

(iii) Notifications to the department of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue are to be ~~retained~~ kept for 12 months.

[G-](7) Pesticides.

(a) Composite milk samples shall be sampled and tested for pesticides at a frequency ~~which~~ that the department determines is adequate to protect the consumer.

(b) The test results from the samples shall not exceed established FDA limits.

(c) If a pesticide test is positive, an investigation shall be made to determine the cause and the cause shall be corrected.

(d) Milk and milk products containing residues in excess of actionable levels shall not be offered for sale.

R70-320-[7]6. Animal Health.

[A-](1) Health of Herd.

[4-](a) General Health. ~~[A-]Each~~ animal[s] in the herd shall be maintained in a healthy condition, and shall be properly fed and kept.

[2-](b) Tuberculin Test.

(i) The herd shall be located in an area within the ~~[State which]~~state that meets the requirements of a modified accredited area.

(ii) If the herd is not located in ~~[such an]~~a modified accredited area, it shall be tested annually under the jurisdiction of ~~[the aforesaid program]~~this rule.

(iii) ~~[A-]Each~~ addition[s] to the herd shall be from an area or from herds meeting these ~~[same]~~requirements.

[3-](c) Brucellosis Test.

(i) The herd shall be located in an area within the ~~[State which]~~state that meets the requirements of a modified accredited area.

(ii) If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk ring tested semi-annually.

(iii) ~~[A-]Each~~ addition[s] to the herd shall be from an area or from herds meeting the requirements of Plan A for the eradication of brucellosis in accordance with the ~~[above Uniform Methods and Rules]~~U.S. Department of Agriculture Brucellosis Eradication: Uniform Methods and Rules.

[4-](d) Mastitis and Drug Residues. Milk from cows known to be infected with mastitis or milk containing residues of drugs used in treating mastitis or any other infection shall not be sold or offered for sale for human food.

R70-320-[8]7. Rejected Milk.

[A-](1) A plant shall ~~[reject specific]~~not accept reject milk from a producer,~~[if it fails to meet the requirements for sight and odor, as required by Subsection R70-320-6(B) or if it is classified No. 4 for sediment content, as required by Subsection R70-320-6(C) or if it fails to meet the provisions of Subsection R70-320-6(E), relating to abnormal milk.]~~

[B-](2) Reject milk shall be identified with a reject tag, and harmless food coloring may be added.

[C-](3) ~~[Field Service.]~~A fieldman shall visit each producer of probational status or reject milk within seven days from the date of the second consecutive substandard test to inspect equipment, utensils and methods of handling the milk and to make suggestions and recommendations for improving milk quality.

R70-320-[9]8. Suspended Milk for Manufacturing.

[A-](1) The department may suspend the permit of a producer if~~[one of the following occurs]:~~

[4-](a) ~~[A-]a~~ new producer's milk does not meet the requirements for acceptable milk~~[as required by Subsections R70-320-6(C) and R70-320-6(D)].~~

[2-](b) ~~[F-]the~~ milk has been in ~~[a probational- (C)No. 3-]~~sediment content classification for more than ten calendar days~~[as required by Subsection R70-320-6(C)].~~

[3-](c) ~~[F-]the~~ milk has been classified "undergrade" for bacterial estimate for more than four successive weeks~~[as required by Subsection R70-320-6(D)].~~

[4-](d) ~~[F-]three~~ out of the last five samples tested for somatic cells exceed the allowable limit~~[as required by Subsection R70-320-6(E)].~~

[5-](e) ~~[A-]a~~ growth inhibitor or pesticide residue exceeds actionable level~~[as required by Subsection R70-320-6(F)].~~ or

[6-](f) ~~[F-]if~~ the producer refuses to permit farm inspection.

[B-](2) When a plant discontinues receiving milk from a producer for any of the reasons listed in this section, it shall notify the ~~[D-]department~~ immediately and confirm~~[such act]~~, in writing, that the plant has discontinued receiving milk from a producer for any of the reasons listed in this section.

[C-](3) Milk from a producer whose milk has been excluded from the market may be re-accepted by a plant when the cause for exclusions has been corrected and the milk classified as acceptable.

R70-320-[10]9. Testing of Milk.

[A-](1) Testing.

(a) An examination shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment.

(b) The milk shall meet the requirements for acceptable milk.

(c) Thereafter milk shall be tested in accordance with the rule.

[B-](2) Transfer producers.

[4-](a) When a producer discontinues milk delivery to one plant and begins delivery to a different plant, the dairy farm shall be inspected by the ~~[D-]department~~ and shall have a passing score before milk is shipped.

~~[2-]~~(b) Quality control records may be obtained from the previous buyer for the previous six-~~[]~~month period. The new buyer shall examine and classify each transfer producer's first shipment of milk and shall subsequently examine shipment in accordance with this rule.

R70-320-~~[44]~~10. Record of Tests.

Accurate records listing the results of quality tests of each producer shall be kept on file at the receiving plant for not less than ~~[twelve]~~12 months and shall be available for examination by the ~~[D]~~department.

R70-320-~~[42]~~11. Farms Producing Milk for Manufacturing.

~~[A-]~~(1) Milking Facility and Housing.

~~[4-]~~(a) A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations.

(i) ~~[H]~~The milking barn or milking parlor shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material.

(ii) The ~~[facility]~~milking barn or milking parlor shall be kept clean, the manure removed daily, and no swine, fowl, or other animals shall be permitted in any part of the milking area.

(iii) Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin.

~~[2-]~~(b) Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be clearly labeled and used in accordance with label instructions, and shall be stored in a manner ~~[which]~~that will prevent accidental contact with milk and milk contact surfaces.

(i) Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered.

(ii) When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be stored in a closed, tight-fitting storage unit.

(iii) Drugs shall be segregated in ~~[such]~~a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals.

~~[3-]~~(c) The yard or loafing area shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean.

~~[B-]~~(2) Milking Procedure.

~~[4-]~~(a) The udders and flanks of ~~[all]~~each milking cow[s] shall be kept clean.

(i) The udders and teats shall be washed, sanitized, and wiped dry with a clean damp cloth, paper towel, or any other sanitary method.

(ii) The milker's clothing shall be clean and ~~[his]~~the milker's hands shall be clean and dry.

(iii) No person with an infected cut or open sore on the person's hands or arms shall milk cows, or handle milk or milk containers, utensils or equipment.

~~[2-]~~(b) Milk stools and surcingles shall be kept clean and properly stored. Dusty operations shall not be conducted immediately before or during milking.

~~[3-]~~(c) Milk must be protected against contamination while straining.

~~[C-]~~(3) Cooling.

~~[4-]~~ Milk shall be cooled to 45 degrees Fahrenheit (F) or lower within two hours after each milking and maintained at 45 degrees F or lower until transferred to the transport tank.

~~[D-]~~(4) Milkhouse or ~~[M]~~milkroom.

~~[4-]~~(a) A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and storing the utensils and equipment.

(i) ~~[H]~~The milkhouse or milkroom shall not be used for any other purpose, and shall be equipped with hot water, two compartment wash vat, utensil rack and cooling facilities for the milk.

(ii) ~~[H]~~The milkhouse or milkroom shall be partitioned, sealed, and screened to prevent the entrance of dust, flies, or other contamination.

(iii) The floor of the ~~[building]~~milkhouse or milkroom shall be of concrete or other impervious material and graded to a drain.

(iv) The walls and ceilings of the milkhouse or milkroom shall be constructed of smooth easily cleaned material.

(v) ~~[A-]~~Any outside doors of the milkhouse or milkroom shall be self-closing.

(vi) The milkhouse or milkroom shall have ~~[A-]~~at least 20-~~[]~~foot candles of light ~~[shall be]~~provided in ~~[all]~~each working area[s].

~~[2-]~~(b) The farm tank shall be properly located in the milkroom.

(i) There shall ~~[not be less than]~~be at least 18 inches clearance with 24-~~[]~~inches recommended on three sides of the tank and ~~[a minimum of]~~at least 36-~~[]~~inches on the outlet side of the tank for access to ~~[all]~~each area[s] for cleaning and servicing.

(ii) ~~[H]~~The farm tank may not be located over a floor drain, under a ventilator or under a light fixture.

~~[3-]~~(c) An adequate platform or slab constructed of concrete or other impervious material shall be provided outside the milk house, properly centered under a suitable port opening in the wall of the milkhouse.

(i) The opening shall be fitted with a tight self-closing door.

(ii) The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading.

~~[4-]~~(d) Building plan approval. Plans for new dairy building construction or remodeling shall be submitted to the ~~[D]~~department for approval before construction begins.

~~[E-]~~(5) Utensils and Equipment.

~~[4-]~~(a) Utensils, milk coolers, milking machines~~[-]~~, including pipeline systems~~[]~~, and other equipment used in the handling of milk shall be maintained in good repair, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use.

(b) Farm bulk tanks shall meet 3-A ~~[S]~~sanitary ~~[S]~~standards and accepted practice for construction ~~[at the time of installation]~~when installed, and shall be properly installed.

~~[F-]~~(6) Water Supply.

~~[4-]~~(a) The dairy farm water supply shall be approved, properly protected and of safe, sanitary quality, and have ample water and pressure for the cleaning of dairy utensils and equipment.

~~[2-]~~(b) An automatic hot water storage tank~~[-]~~pressure type~~[]~~, of adequate size shall be provided but shall not be less than 30-~~[]~~gallon capacity and equipped with a thermostat capable of maintaining water temperature at least 140 degrees F. Gas water heaters, if used, shall be properly ventilated.

~~[G.](7)~~ Sewage Disposal. Sewage shall be disposed of in a manner that complies with ~~[the State Health and EPA]~~state and federal requirements.

~~[H.](8)~~ There shall be available in the milkhouse or room a dairy type thermometer, accurate within two degrees F~~[°]~~, integral with the tank construction or operation.

~~(a)~~ The driver shall ~~[possess]~~have an accurate approved type thermometer.

~~(b)~~ The driver shall ~~[check periodically]~~periodically check the thermometer by a qualified method to determine its accuracy.

~~(c)~~ Thermometers ~~[must]~~shall be properly sanitized before each use.

~~[I.](9)~~ Qualifications for Farm Certification. Farm certification requires compliance with the items listed on the Farm Certification Report Form as follows:

~~[4.](a)~~ ~~[A.]~~a rating of satisfactory for ~~[all]~~any items in ~~[A-Facilities]~~Subsection R70-320-11(1); and

~~[2.](b)~~ ~~[A.]~~a total rating of ~~[not less than]~~at least 85~~percent~~% for the applicable items in ~~[B-Methods]~~Subsection R70-320-11(2), [provided] with no individual item [is] rated less than 75percent% of its maximum score.

R70-320-~~13~~12. Minimum Specifications for Licensed Dairy Plants.

~~[A.](1)~~ Building, Facilities, Equipment, and Utensils.

~~[1.](a)~~ Premises.

~~(i)~~ The plant area and surroundings shall be kept clean.

~~(ii)~~ A drainage system shall be provided for rapid drainage of ~~[all]~~any water from plant buildings, including surface water around the plant and on the premises.

~~[a.](iii)~~ ~~[There shall be provided a]~~An area properly designed and constructed shall be provided for the unloading and washing of bulk milk transport trucks.

~~(A)~~ ~~[It will]~~The area shall have a concrete floor sloped to a trapped drain.

~~(+)(B)~~ If the area is completely enclosed~~[+]~~, enclosed walls and ceiling with the doors closed~~[+]~~, during the unloading process and the dust cover or dome and the manhole cover is opened slightly and held in this position by the metal clamps used to close the cover then a filter is not required. However, if the dust covers~~[and/or]~~, manhole cover, or both ~~[is]~~are open in excess of that provided by the metal clamps or the covers have been removed, a suitable filter is required for the manhole.

~~(2)(C)~~ If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole~~[and/or]~~, air inlet vent, or both and suitable protection ~~[must]~~shall be provided over the filter material either by design of the filter holding apparatus or a roof or ceiling over the area. Direct connections from milk tank truck to milk tank truck ~~[must]~~shall be made from valve to valve and not through the manhole and the dust cover dome of the milk tank truck.

~~[2.](b)~~ Buildings.

~~[a.](i)~~ Construction and Maintenance.

~~(A)~~ Buildings shall be of sound construction, and the exterior and interior shall be kept clean and in good repair to protect against dust, dirt, and mold, and to prevent the entrance or harboring of insects, rodents, vermin, and other animals.

~~(+)(B)~~ Outside doors, windows, skylights, and transoms shall be screened or otherwise covered.

~~(C)~~ Outside doors shall open outward and be self-closing or be protected against the entrance of rodents and flies.

~~(D)~~ ~~[Those]~~Outside doors leading to processing rooms shall be of metal construction.

~~(E)~~ Window sills on new construction shall be sloping.

~~(F)~~ Outside conveyor openings and other special type outside openings shall be protected by doors, screens, flaps, fans, or tunnels.

~~(G)~~ Outside openings for sanitary pipelines shall be covered when not in use~~[+]~~ and service-pipe openings shall be completely cemented or have tight metal collars.

~~(2)(H)~~ ~~[All]~~Each room~~[s]~~, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be ~~[so]~~designed and constructed [as] to assure clean and orderly operations.

~~(I)~~ Rooms for receiving milk shall be separated from the processing rooms by a partition or suitable arrangement of equipment or facilities to avoid contamination of milk or dairy products.

~~(J)~~ Boiler and tool rooms shall be separated from other rooms.

~~(K)~~ Toilet and dressing rooms shall be conveniently located and shall not open directly into any room in which milk, dairy products, or ingredients are handled, processed, packaged, or stored.

~~(L)~~ Doors of ~~[all]~~any toilet rooms shall be self-closing, and fixtures shall be kept clean and in good repair.

~~(3)(M)~~ Plans for new plant construction or remodeling of existing plants shall be submitted to the ~~[D]~~department for approval ~~[prior to such]~~before new construction or remodeling.

~~[b.](ii)~~ Interior Finishing.

~~(A)~~ In ~~[all]~~each room~~[s]~~, in which milk or dairy products are received, handled, processed, manufactured, packaged, or stored, except dry storage of packaged finished products, or in which equipment or utensils are washed~~[+]~~:

~~(I)~~ the walls, ceilings, partitions, and posts shall be smoothly finished with a washable material of light color that is impervious to moisture~~[+]~~;

~~(II)~~ ~~[The]~~the floors ~~[in these rooms]~~shall be of concrete or other impervious material and shall be smooth, properly graded to drain, and have drains trapped~~[+]~~; and

~~(B)~~ The plumbing shall be so installed as to prevent back-up sewage into the plant.

~~(C)~~ On new construction or extensive remodeling, the floors shall be joined and coved with the walls to form watertight joints.

~~(D)~~ Sound, smooth, wood floors may be used in certain packaging rooms where the nature of the product permits.

~~(E)~~ Toilet and dressing rooms shall have impervious floors and smooth walls.

~~[e.](iii)~~ Ventilation. ~~[All]~~Each room~~[s]~~ and compartment~~[s]~~ ~~[+]~~, including storage space and toilet and dressing rooms~~[+]~~, shall be ventilated to maintain sanitary conditions, prevent undue condensation of water vapor, and minimize or eliminate objectionable odors.

~~[d.](iv)~~ Lighting.

~~(A)~~ Lighting, whether natural or artificial, shall be of good quality and well distributed in ~~[all]~~each room~~[s]~~ and compartment~~[s]~~.

~~(B)~~ ~~[All]~~Each room~~[s]~~ where milk or dairy products are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 foot~~[+]~~-candles of light intensity on ~~[all]~~each working surface~~[+]~~.

~~(C)~~ ~~[a]~~Areas where dairy products are examined for condition and quality~~[+]~~ shall have at least 50~~[+]~~-foot~~[+]~~-candles of light intensity~~[+]~~ and~~[+]~~.

(D) ~~[aH]~~Any other rooms~~[-]~~ shall have at least 5~~[-]~~foot~~[-]~~ candles of light intensity measured 30~~[-]~~inches above the floor.

(E) Light bulbs and fluorescent tubes shall be protected against shattering~~[-and/or]~~, falling into the product if broken, or both.

~~[e-]~~(v) Laboratory.

(A) Consistent with the size of the plant and the volume and variety of products manufactured, an adequate laboratory shall be provided, maintained, and properly staffed with qualified and trained personnel for quality control and analytical purposes.

(B) ~~[4]~~The laboratory shall be located reasonably close to the processing activity in a well li~~ghted~~ghted and ventilated room of sufficient size to permit proper performance of the tests necessary to evaluate the quality of raw and finished products.

(C) A central or commercial laboratory that serves more than one plant and that ~~[provides the same services]~~properly performs tests necessary to evaluate the quality of raw and finished products may be ~~[utilized]~~used.

~~[3-]~~(c) Facilities.

~~[a-]~~(i) Water Supply.

(A) Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for ~~[aH]~~any plant operations and facilities.

(B) Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if ~~[such]~~the water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of any milk product or milk product contact surface.

(C) There shall be no cross connections between safe and unsafe water lines.

(D) Culinary water in the plant is to be from an approved source.

~~[(4)]~~(E) Bacteriological examination shall be made of the plant sanitary water supply at least once ~~[every]~~each six months by the ~~[appropriate regulatory agency]~~department to determine purity and safety for use in processing or manufacturing dairy products.

~~[b-]~~(ii) Employee Facilities.

(A) ~~[In addition to toilet and dressing rooms, t]~~The plant shall provide [the following employee facilities]employees:

(I) toilet and dressing rooms;

(II) conveniently located sanitary drinking water;

(III) a locker or other suitable facility for each employee; and

(IV) handwashing facilities, including hot and cold running water, soap or other detergents and sanitary towels or air [driers]dryers, in or adjacent to toilet and dressing rooms and at other places where necessary for the cleanliness of [aH]any personnel handling products and self-closing containers for used towels and other wastes.

~~[(4)]~~(B) A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

~~[e-]~~(iii) Steam.

(A) Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment.

(B) Steam that may come into direct contact with milk or dairy products shall be conducted through a steam strainer and purifier equipped with a steam trap and shall be free from any compounds that may contribute flavors or endanger health.

(C) Only non-toxic boiler compounds shall be used.

~~[d-]~~(iv) Disposal of Wastes.

(A) The plant sewage system shall have sufficient slope and capacity to ~~[remove readily all]~~readily remove any waste from processing operations.

(B) Where a public sewer is not available, wastes shall be disposed of by methods approved by the appropriate government agency.

(C) Containers for the collection and holding of wastes shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack at least 12~~[-]~~inches above the ground.

(D) Solid wastes shall be disposed of regularly and the containers cleaned before reuse, and dry waste paper shall be properly disposed of.

~~[4-]~~(d) Equipment and Utensils.

~~[a-]~~(i) Construction and Installation.

(A) New equipment shall meet 3-A [S]sanitary [S]standards and accepted practice designed for the intended use.

(B) Equipment and utensils coming in contact with milk or dairy products, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or equally corrosion resistant material~~[-]~~, except ~~[that, -]~~where the use of stainless steel is not practicable.

(C) Copper kettles for swiss cheese and copper evaporators and brass fillers for evaporated milk may be approved if free from corroded surfaces and kept in good condition.

(D) Wooden churns in use may be approved temporarily if maintained in good condition.

(E) Nonmetallic parts having product contact surfaces shall be of material that is resistant to abrasion, scratching, scoring and distortion, is non-toxic, fat-resistant, and relatively inert or non-absorbent or insoluble, and that will not adversely affect the flavor of the products.

~~[(4)]~~(F) ~~[A]~~Any equipment and piping shall be ~~[se]~~designed and installed [as]to be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces.

(G) Milk pumps shall be of a sanitary type and easily dismantled for cleaning.

(H) New or rearranged equipment shall be set out at least 24 inches from any wall or spaced at least 24 inches between pieces of equipment that measure more than 48 inches on the parallel sides~~[-]~~ ~~(This shall not apply), except~~ between storage tanks when the face of the tanks extends through the wall into the processing room.~~[-]~~

(I) ~~[A]~~Each part~~[s]~~ or interior surface~~[s]~~ of equipment, pipes~~[-]~~, except certain piping that is [cleaned in place]C-I-P, or fittings, including valves and connections, shall be accessible for inspection.

(J) ~~[Cleaned in place]~~C-I-P sanitary piping shall be properly installed and self-draining.

(K) Welded sanitary pipeline systems when used with C-I-P cleaning will be acceptable if properly engineered and installed.

~~[b-]~~(ii) Pasteurization Equipment.

(A) Where pasteurization is intended or required, an automatic flow-diversion valve and holding tube, or its equivalent if not part of the existing equipment, shall be installed on ~~[aH]~~any high-temperature short-time ~~[pasteurizing]~~pasteurization equipment to assure complete pasteurization.

(B) Pasteurization [E]equipment and operation shall be in accordance with 3-A [Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High Temperature Short Time Pasteurizers]sanitary standards and accepted practice.

~~(4)~~(C) Long stem indicating thermometers that are accurate within plus or minus 0.5 degrees F, for the applicable temperature range, shall be provided for determining temperatures of pasteurization of products in vats and for verifying the accuracy of recording thermometers.

(D) Short-stem indicating thermometers that are accurate within plus or minus 0.5 degrees for the applicable temperature range shall be installed in the proper stationary position in ~~at~~each high-temperature short-time and dome-type pasteurizers and ~~at~~each storage tank[s] where temperature readings are required.

~~(2)~~(E) Recording thermometers that are accurate within plus or minus 1 degree F ~~plus or minus~~, between 142 degrees and 145 degrees F or ~~in the case of~~ for 15-second pasteurization between 160 degrees and 163 degrees F shall be used on each pasteurizer to record pasteurization temperature.

~~(e)~~(iii) Cleaning and Sanitizing.

(A) Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling of milk or dairy products, and ~~at~~any product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean and sanitary.

(B) Stacks, elevators, conveyors, and the packing glands on ~~at~~each agitator[s], pump[s], and vat[s] shall be inspected at regular intervals and kept clean.

(C) Equipment coming in contact with milk or dairy products shall have effective bactericidal or sanitizing treatment immediately before use.

~~(4)~~(D) Equipment not designed for C-I-P cleaning shall be disassembled daily and thoroughly cleaned and sanitized.

(I) Dairy cleansers, wetting agents, detergents, sanitizing agents, or other similar material ~~may be used~~ that will not contaminate or adversely affect dairy products may be used to clean equipment not designed for C-I-P cleaning.

(II) Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

~~(2)~~(E) C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose.

(F) C-I-P cleaning system ~~[F]~~installation and cleaning procedures shall be in accordance with 3-A ~~[Method for the Installation and Cleaning of Cleaned in Place Sanitary Milk Pipelines for Milk and Milk Products Plants]~~ sanitary standards and accepted practice.

~~(3)~~(G) Areas and equipment which ~~can't~~cannot be cleaned with water in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner and the material picked up shall be disposed of to destroy any insects present.

~~B~~.(2) Plant Operations.

~~4~~.(a) Milk and Milk Products.

(i) ~~At~~Any milk and milk products, including concentrated milk and milk products, shall be packaged at the plant where final pasteurization is performed.

(ii) ~~Such~~packaging of milk and milk products, including concentrated milk and milk products, shall be done without undue delay ~~following~~after final pasteurization.

~~a~~.(iii) Pasteurization.

(A) When pasteurization is intended or required, or when a product is designated "pasteurized," ~~the~~ pasteurization shall be accomplished by heating:

(I) ~~every~~each particle of milk or skim milk to a temperature of not less than 145 degrees F and cream and other milk products to at least 150 degrees F and ice cream mix to at least 155

degrees F and holding them at those temperatures continuously for not less than 30 minutes~~;~~;

(II) ~~or~~ milk or skim milk to a temperature of 161 degrees F and cream and other milk products to at least 166 degrees F for not less than 15 seconds, and ice cream mix to at least 175 degrees F for not less than 25 seconds~~;~~;

(III) by any other combination of temperature and time giving equivalent results.

(B) The phenol value of the pasteurized product shall be no greater than the maximum specified for the particular product, as determined by the phosphatase test, Method II, of the ~~latest edition of~~ "Official Methods of Analysis of the Association of Official Analytical Chemists,"~~[-]~~

~~b. Cream for Buttermaking.~~(C) Cream for buttermaking shall be pasteurized by heat treating the cream:

(I) at a temperature of not less than 165 degrees F and held continuously in a vat at ~~such temperature~~not less than 165 degrees F for not less than 30 minutes~~;~~;

(II) at a temperature of not less than 185 degrees F for not less than 15 seconds~~;~~;

(III) ~~at~~ any other temperature and holding time approved by the ~~the~~ department that will assure pasteurization and comparable keeping quality characteristics.

(C) If the vat method of pasteurization is used, vat covers shall be kept closed during the holding and cooling periods.

~~2~~.(b) Cooling.

~~Processed~~ fluid milk products shall be cooled promptly after heat treatment to ~~such~~ a temperature as will adequately inhibit development or other deterioration of quality.

~~3~~.(c) Storage.

~~a~~.(i) Utensils and portable equipment.

~~Utensils and portable equipment~~ used in processing operations shall be stored above the floor, in clean, dry locations, and in self-draining positions on racks constructed of impervious, corrosion resistant material.

~~b~~.(ii) Raw product storage.

(A) ~~At~~Any milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration.

(B) Drip milk from can washers or any other source shall not be used for the manufacture of dairy products.

(C) Bulk milk in storage tanks within the dairy plant shall be handled in ~~such~~ a manner as to minimize bacterial increase and shall be maintained at 45 degrees F~~;~~ or lower until processing begins.

(D) ~~This does not preclude holding milk~~Milk may be held at higher temperatures for a period~~of time~~, where applicable to particular manufacturing or processing practices.

(E) The bacteriological estimate of commingled milk in storage tanks shall be 1 million per mL~~;~~ or lower.

~~e~~.(iii) Non~~-~~Refrigerated Products.

(A) Dairy products in dry storage shall be arranged in aisles, rows, sections, or lots or in ~~such~~ a manner as to be orderly and easily accessible for inspection and as to permit adequate cleaning of the room.

(B) Dunnage or pallets shall be used when applicable.

(C) Dairy products shall not be stored with any product that would damage them or impair their quality.

(D) Open containers shall be carefully protected from contamination.

~~d~~.(iv) Refrigerated Products.

~~(A) [All]Any~~ products requiring refrigeration shall be stored under ~~[such]~~ optimum temperatures and humidity as will maintain their quality and condition.

~~(B)~~ Products shall not be placed directly on the floors or be exposed to foreign odors or conditions ~~[such as]~~ including dripping or condensation that might cause package or product damage.

~~[e-](v)~~ Supplies.

~~(A)~~ Items in supply rooms shall be kept clean and protected and be so arranged as to permit inspection of supplies and cleaning and spraying of the room.

~~(B)~~ Insecticides and rodenticides shall be properly labeled, segregated, and stored in a separate room or cabinet away from milk or dairy products or packaging supplies.

~~[4-](d)~~ Laboratory Control Tests.

~~(i)~~ Quality control tests shall be made on flow samples as often as necessary to check the effectiveness of processing ~~[in order]~~ to correct processing deficiencies.

~~(ii)~~ Routine analyses shall be made on raw materials and finished products to assure adequate composition control.

~~(iii)~~ When applicable, keeping quality tests shall be made to determine product stability.

~~[5-](c)~~ Packaging and General Identification.

~~[a- Packaging-](i)~~ Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade.

~~(ii) [Prior to]Before~~ use, packaging materials shall be protected against dust, mold and other possible contamination.

~~[b-](iii)~~ Butter liners shall be of approved plastic or waxed covered parchment or other material that may be approved by the ~~[D]~~department.

~~[e-]~~General Identification.

~~(A)~~ Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer or distributor, and plant license number.

~~(B)~~ Consumer-packaged products shall be legibly marked with the name of the product, net weight, or content, and name and address of the packer or distributor.

~~[C. Plant Licensing-]~~

~~1. Qualifications.~~

~~Plant licensing requires compliance to specifications in Section 8a through 8e. In addition, licensing requires that~~

~~a. not more than 10 percent of the cans (including lids) shall show open seams, cracks, rust, milkstone, or any unsanitary condition;~~

~~b. where pasteurization is intended or required, and a high-temperature short time unit is used, it shall be equipped with a flow-diversion valve and holding tube or its equivalent; and~~

~~c. a safe water line shall be provided with no cross-connections between safe and unsafe lines.]~~

R70-320-[44]13. Licensing Plant, Milk Graders, and Bulk Milk Collectors.

~~[A. Necessity for Plant License-]~~

~~Every plant receiving or processing milk for the manufacture of dairy products shall be inspected and licensed as provided in Section R70-320-13. A new plant shall be inspected and licensed as provided in Section R70-320-13 before buying or processing any milk for the manufacture of dairy products. No unlicensed plant shall handle, purchase or receive milk or manufacture dairy products therefrom.~~

~~1. All licensed plants shall be evaluated at least semi-annually after issuance of the initial license to determine eligibility for license renewal. The inspection procedure for license renewal shall be the same as that for initial licensing.]~~

~~[B-](1)~~ Application for License.

Applications to the ~~[D]~~department for a new or renewal license for dairy plants, milk graders, and bulk milk haulers shall contain the name and address of the applicant and ~~[such]~~ other pertinent information as may be required.

~~[C-](2)~~ Plant Inspection.

~~(a) Each plant shall be inspected by a compliance officer to determine if the plant meets the requirements for licensing. [If, upon initial inspection, the compliance officer finds that the plant meets the requirements for licensing described in Subsections R70-320-8(A) and R70-320-8(C) and Sections R70-320-15 and R70-320-16, as indicated by the Plant Inspection Report Form, a license shall be issued to the plant as described in Section R70-320-13.]~~

~~(b)~~ If the plant does not meet the requirements for licensing, the plant shall be re-inspected by a compliance officer within 30 days of the initial inspection.

~~(i)~~ A ~~[longer time]~~period longer than 30 days may be allowed if major changes or new equipment is required.

~~(ii)~~ If ~~[at this time]~~after the re-inspection the plant meets the requirements for licensing, a license shall be issued.

~~(iii)~~ If after the re-inspection the plant does not meet the requirements for licensing, it shall not be licensed, and its authorization to handle, ~~[purchase]~~buy, or receive milk or to manufacture dairy products therefrom shall be withheld until ~~[such]~~a time as the plant qualifies for a license.

~~(c)~~ The plant will be charged for mileage ~~[expended]~~spent by the ~~[D]~~department for any subsequent visits required for certification of the plant.

~~(d)~~ The compliance officer shall show the results of each inspection on a Plant Inspection Report Form.

~~(e)~~ Each completed Plant Inspection Report Form shall be left at the plant and a copy shall be kept by the ~~[D]~~department.

~~[D-](3)~~ Issuance of License.

~~[4-](a)~~ Dairy Plants.

~~(i)~~ The ~~[D]~~department shall license each dairy plant[s] that meets the ~~[specifications of Sections R70-320-13, R70-320-15 and R70-320-16 based upon the inspection procedure described in Section R70-320-13]~~requirements of this rule.

~~(ii)~~ The department shall license each new plant before the plant may buy, receive, or process any milk for the manufacture of dairy products.

~~(iii)~~ The license certification shall be posted conspicuously at the plant.

~~(iv)~~ The license shall authorize the plant to test, ~~[purchase]~~buy, and receive milk for manufacturing purposes and to manufacture dairy products therefrom, in compliance with ~~[the applicable provisions of]~~Title 4, Chapter 3, the Utah Dairy Act and ~~[the rules and regulations issued pursuant thereto]~~this rule.

~~[2-](b)~~ Milk Graders and Bulk Milk Haulers.

~~(i)~~ The ~~[D]~~department shall license milk graders and bulk milk haulers who meet the requirements prescribed by the ~~[D]~~department.

~~(ii)~~ The licenses of milk graders and bulk milk haulers shall authorize them to grade, accept, and reject raw milk in accordance with ~~[the provisions of]~~Section R70-320-[6]5.

~~[E-](4)~~ Expiration, Suspension, and Revocation of License.

(a) Licenses shall expire and become renewable each year the 31st of December, unless revoked earlier, and no license shall be transferable.

(b) If at any time an inspector determines that a licensed plant does not meet the requirements for licensing, ~~he~~ the inspector may allow a reasonable probationary period for the operator to bring ~~his~~ the plant within the requirements for licensing.

(c) If at the end of ~~this time~~ the probationary period the plant does not meet the licensing requirements, the ~~D~~ department may revoke the plant license. The ~~D~~ department may suspend or revoke licenses of bulk milk haulers for any violation of ~~these~~ this rule[s] or Title 4, Chapter 3, the Utah Dairy Act.

(d) An opportunity for a hearing shall be provided to any licensee before suspension or revocation of this license.

~~F~~(5) Reinstatement.

(a) If, after a period of withholding, probation, or revocation of a plant license, the operator makes the necessary corrections at the plant, ~~he~~ the plant operator may apply to the ~~D~~ department for re-inspection and reinstatement.

(b) When the compliance officer determines that requirements for licensing have been met, the ~~D~~ department shall issue a license to the plant.

(c) The reinstatement of licenses for milk graders and bulk milk haulers ~~which~~ that have been suspended or revoked shall be made only after satisfying the ~~D~~ department of their qualifications.

R70-320-~~15~~14. Records Required to be Kept by Plants.

~~A~~(1) Availability.[

~~All F~~ Records required to be kept by plants shall be available for examination by the ~~D~~ department at ~~all~~ any reasonable times.

~~B~~(2) Farm Certification Report Forms.[

~~A~~ A copy of completed Farm Certification Report Forms shall be kept on file at the plant for at least 24-[-]months.

~~C~~(3) Milk Quality Test Records.[

~~A~~ Accurate records listing the results of quality tests on each producer's milk shall be kept on file at the plant for at least 12 months.

~~D~~(4) Water Supply Test Records.[

~~A~~ The results of ~~all~~ each plant water supply test[s] shall be kept on file at the plant for at least 12-[-]months.

~~E~~(5) Laboratory Control Test Records.[

~~A~~ Records of ~~all~~ each laboratory control test[s] shall be kept on file at the plant for at least 12-[-]months.

~~F~~(6) Pasteurization Recorder Charts.[

~~A~~ Recorder charts showing the pasteurization record for each day shall be appropriately marked with the name of the product, date, and signature of the operator. The charts shall be kept on file at the plant for at least three months.

R70-320-~~16~~15. Personnel Cleanliness and Health.

~~A~~(1) Cleanliness.

(a) Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands.

(b) ~~They~~ Plant employees shall keep their hands clean and follow good hygienic practices while on duty.

(c) Expectorating or use of tobacco in any form shall be prohibited in rooms and compartments where milk or dairy products are unpacked or exposed.

(d) Clean white or light colored washable outer garments and caps~~[-]~~ paper caps or hairnets are acceptable~~[-]~~, shall be worn by ~~all~~ each person[s] engaged in handling milk or dairy products.

~~B~~(2) Health.

~~(4)~~(a) No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, processed, or otherwise handled.

(b) No person who has a discharging or infected wound or sore, or lesion on hands, arm or other exposed portions of the body shall work in any plant processing or packaging rooms or in any capacity resulting in contact with milk or dairy products including dairy farms and bulk milk haulers.

~~(2)~~(c) An employee returning to work ~~following~~ after illness from a communicable disease shall have a certificate from ~~his~~ the employee's attending physician to establish proof of complete recovery.

R70-320-~~17~~16. Transportation of ~~Raw~~ Milk.

~~A~~(1) ~~Transportation of Milk.~~

~~A~~ Vehicles used for the transportation of milk shall be of the enclosed type, constructed and operated to protect the product from extreme temperatures, dust, or other adverse conditions, and they shall be kept clean.

~~B~~(2) Transport Trucks.

~~(4)~~(a) Construction.

(i) Transport tanks shall be stainless steel lined and so constructed that the lining will not buckle, sag, or prevent complete drainage.

(ii) ~~All~~ Each milk contact surface[s] shall be smooth, easily cleaned, and maintained in good repair.

(iii) The pump and hose cabinet shall be fully enclosed with tight-fitting doors.

(iv) New and replacement transport tanks shall meet the applicable 3-A ~~Sanitary Standards for Milk Transport Tanks~~ sanitary standards and accepted practice.

~~(2)~~(b) Transfer of Milk to a Transport Tank.

(i) Milk shall be transferred from farm bulk tanks to transport tanks through stainless steel piping or approved tubing under sanitary conditions.

(ii) ~~This~~ Sanitary piping and tubing used to transfer from farm bulk tanks to transport tanks shall be clean and capped when not in use.

~~(3)~~(c) Cleaning and Sanitizing.

(i) A covered or enclosed washing dock and other facilities shall be available for ~~all~~ any plants that receive or ship milk in tanks.

(ii) Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use; provided that, if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment immediately before use.

(iii) When ~~ever~~ a milk tank truck has been cleaned and sanitized as required by the ~~regulatory agency~~ department, it shall bear a tag, or a record shall be made showing the date, time, place, and signature of the employee or contract hauler doing the work unless the truck delivers to only one receiving unit where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag shall not be removed until the tank is again washed and sanitized.

~~(4)~~(d) Transportation Trucks, Tanks, and Accessories.[

~~A~~ The transportation truck, tank and accessories shall be used for no other purpose than the handling of milk unless ~~such~~ the use is approved by the ~~D~~ department.

R70-320-~~18~~17. Transport Tanks, Operators.

~~[A-](1)~~ ~~[AH]Each~~ milk hauler[s] must ~~[possess]have~~ a ~~[permit]license~~ issued by the ~~[D]department~~.

~~(a)~~ A candidate or substitute milk hauler ~~[is required to obtain]shall get~~ a ~~[permit]license~~ within ten days from the date they ~~[commence]begin~~ hauling operations.

~~(b)~~ The ~~[ten]10-[-]day~~ period is for training and observation to provide the ~~[D]department~~ and company officials with an opportunity to check the hauler's pickup technique and observe the degree to which ~~[he]the~~ hauler is following required pickup practices.

~~(c)~~ Training may take the form of instruction in pickup technique or may include a required period of observation apprenticeship in which the candidate accompanies a ~~[permittee]licensee~~ in the performance of ~~[his]the~~ licensee's duties.

~~(d)~~ A ~~[P]person[s]~~ whose milk hauling responsibility is limited to transporting properly collected and packaged milk samples to a laboratory ~~[are]is~~ not required to ~~[obtain]get~~ or ~~[possess]have~~ a milk hauler ~~[permit]license~~.

~~[1-](e)~~ An examination may be administered at the conclusion of the ~~[ten]10-[-]day~~ period and candidates failing the test will be denied ~~[permits]licenses~~ until ~~[indicated]the~~ deficiencies are corrected.

~~[2-](f)~~ Drivers shall be qualified to efficiently carry out the procedures necessary for the sanitary transfer of milk from the farm tank to the dairy plant.

~~(g)~~ ~~[AH]Each~~ milk hauler[s] shall be subject to ~~[such]examination~~ as the ~~[D]department~~ may prescribe by rule ~~[in order]to receive and [retain such]keep~~ a ~~[permit]license~~.

~~(h)~~ The fee for the ~~[permit]license~~ shall be established in accordance with ~~[title]Section~~ 4-2-~~[2 UCU]103~~ and renewed annually.

~~[B-](2)~~ The milk line shall be passed through a special port opening through the milkhouse wall with care to prevent contact with the ground. The port opening shall be closed when not in use.

~~[C-](3)~~ It shall be the responsibility of the milk hauler to assure ~~[himself]themselves~~ that, ~~[in the event]if~~ the processor washes and sanitizes the truck, the operation has been adequately performed, and that ~~[prior to]before~~ use, the truck tank has been properly sanitized with an approved sanitizer. ~~[In the event]If~~ it is ~~[his]the~~ milk hauler's responsibility to sanitize the truck tank, ~~[he]the~~ milk hauler shall do so with a solution of proper strength.

~~[D-](4)~~ The milk hauler shall wash ~~[his]their~~ hands immediately before taking a measurement~~[and/or]~~, sample, or both of the milk.

~~[E-](5)~~ The milk shall be observed and checked for abnormalities or adulterations, and ~~[all]any~~ abnormal or adulterated milk shall be rejected.

~~[F-](6)~~ Drivers shall maintain a clean, neat, personal appearance and take measurements and collect milk samples for analysis in a sanitary manner using properly identified clean containers. ~~[AH]Each~~ sampling procedure[s] shall follow ~~[standard methods]"the Standard Methods for the Examination of Dairy Products."[-]~~

~~[G-](7)~~ ~~[The following are the p]P~~rocedures for picking up bulk milk.

~~[4-](a)~~ Take and record the tank reading.

~~(i)~~ ~~[4]If~~ the tank is agitating when the hauler arrives, let it continue for five minutes before taking the butterfat sample.

~~(ii)~~ Then turn off the agitator and wait until the milk is quiescent before taking measurement.~~[3]~~

~~(iii)~~ Note: Cleanliness and dryness are essential to accurate readings.

~~(iv)~~ The rod ~~[must]shall~~ be warm enough so that moisture from the atmosphere will not condense on the rod after it has been dried or dusted, ~~[prior to]before~~ inserting it into a tank to make a reading of the liquid level.

~~[2-](b)~~ Turn on the agitator and agitate at least five minutes before taking a sample.

~~[3-](c)~~ While ~~the~~ tank is agitating, record temperature and time and hook up the hose and electricity to the truck.

~~[4-](d)~~ While ~~the~~ agitator is running, take samples from three positions in ~~the~~ tank center and ~~at~~ both ends. Collect quality samples ~~[in same manner]from three positions in the tank center and at both ends~~.

~~[5-](e)~~ Shut off ~~the~~ agitator and pump out ~~the~~ tank.

~~[6-](f)~~ Rinse tank and accessories free of milk with clean water immediately after emptying and disconnecting tubing.

~~[H-](8)~~ After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent contamination of the milk tubing.

R70-320-~~19~~18. Supervision.

~~[A-]Regulatory Agency. The Department to insure compliance with the provisions of these rules shall:~~

~~[4-](1)~~ The department shall ~~[M]make~~ periodic examinations of milk from a representative number of producers at each plant to determine whether the milk is being graded and tested in accordance with ~~[the applicable provisions of]Section~~ R70-320-~~[6]5~~.

~~[2-](2)~~ The department shall ~~[E]examine~~ the quality records of transfer producers at each plant periodically and when necessary determine the acceptability of ~~[such]the~~ producer's milk.

~~[3-](3)~~ The department shall ~~[M]make~~ periodic farm inspections and compare the results of ~~[such]inspections~~ with the completed Farm Certification Report Forms on file at the plant to determine whether the fieldmen are making proper inspections and reports.

~~[4-](4)~~ The department shall ~~[P]periodically~~ examine the completed Farm Certification Report Forms and milk quality test records on individual producers at each plant.

~~[5-](5)~~ The department shall ~~[P]periodically~~ inspect plant premises, buildings, equipment, facilities, operations, and sanitary practices.

~~[6-](6)~~ The department shall ~~[A]assist~~ plant management, laboratory and field staff[s] with educational programs among producers relating to quality improvements of milk.

~~[7-](7)~~ The department shall ~~[P]perform~~ ~~[such]other~~ services and ~~[institute such other]supervisory~~ procedures as may be necessary to ensure compliance with ~~[the provisions of these rules]this rule~~.

R70-320-19. Violations.

~~(1)~~ The commissioner may for good cause, after notice and opportunity for hearing, suspend or revoke certification and licenses issued under this rule.

~~(2)~~ No person, firm, or corporation shall produce, sell, offer for sale, or process milk for the manufacture of human food except in accordance with this rule.

~~(3)~~ No unlicensed plant shall handle, buy, or receive milk or manufacture dairy products from the received or processed milk.

~~(4)~~ Each dairy plant shall furnish the department with a current list of their producers semi-annually. These lists shall be received no later than January 15th and July 15th of the current year.

(5) Violation of any portion of this rule may result in civil or criminal action, pursuant to Section 4-2-304.

KEY: dairy inspections, raw milk

Date of Last Change: ~~January 29, 2013~~ 2022

Notice of Continuation: December 20, 2021

Authorizing, and Implemented or Interpreted Law: 4-2-~~2~~103(1)(~~g~~)(~~g~~) through (i); 4-3-201

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R70-410 | Filing ID 54677 |
|--------------------------------------|----------------|----------------------------------|

Agency Information

| | | |
|--|--|----------------------|
| 1. Department: | Agriculture and Food | |
| Agency: | Regulatory Services | |
| Street address: | 4315 S 2700 W, TSOB, South Bldg, Floor 2 | |
| City, state and zip: | Taylorsville, UT 84129-2128 | |
| Mailing address: | PO Box 146500 | |
| City, state and zip: | Salt Lake City, UT 84114-6500 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| 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

| |
|--|
| 2. Rule or section catchline: |
| R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The changes are needed to make the text consistent with Utah Rulewriting Manual requirements. |
| 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 changed to make the text consistent with Utah Rulewriting Manual requirements.

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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| B) Department head approval of regulatory impact analysis: | | | |
| The Commissioner of the Utah Department of Agriculture and Food, Craig W. Butters, 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 4-4-102 | | |

Incorporations by Reference Information

| | |
|---|----------------------------|
| 8. A) This rule adds, updates, or removes the following title of materials incorporated by references: | |
| | First Incorporation |
| Official Title of Materials Incorporated (from title page) | 7 CFR 57 |
| Publisher | Government Printing Office |

| | |
|--------------------------|-----------------|
| Date Issued | January 1, 2021 |
| Issue, or version | January 1, 2021 |

B) This rule adds, updates, or removes the following title of materials incorporated by references:

| | |
|---|-----------------------------|
| | Second Incorporation |
| Official Title of Materials Incorporated (from title page) | 9 CFR 590 |
| Publisher | Government Printing Office |
| Date Issued | January 1, 2021 |
| Issue, or version | January 1, 2021 |

C) This rule adds, updates, or removes the following title of materials incorporated by references:

| | |
|---|----------------------------|
| | Third Incorporation |
| Official Title of Materials Incorporated (from title page) | 21 CFR 160 |
| Publisher | Government Printing Office |
| Date Issued | April 1, 2021 |
| Issue, or version | April 1, 2021 |

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: | 08/01/2022 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Craig W. Butters, Commissioner | Date: | 06/23/2022 |
|--|--------------------------------|--------------|------------|

R70. Agriculture and Food, Regulatory Services.**R70-410. Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes.****R70-410-1. Purpose and Authority.**

(1) Promulgated under authority of Section 4-4-102.

(2) The standards and inspection requirements, for large egg producers, of the January 1, 2021 versions of 7 CFR 57, 9 CFR 590, and the April 1, 2021 version of 21 CFR 160, are incorporated by reference into this rule.

([2]3) Large [E]egg [P]roducers [with more than 3,000 laying hens] shall adhere to Sections R70-410-[2]3 [and R70-410-3] and R70-410-4[rules and], 7 CFR 57, 9 CFR 590 and 21 CFR 160.

(a) Adopt by reference: The Utah Department of Agriculture and Food hereby adopts and incorporates by reference the applicable provisions of the regulations issued by the United States Department of Agriculture for grading and inspection of shell eggs and the Standards, 7 CFR Part 56, January 1, 2005 edition, 21 CFR, 1 through 200, April 1, 2003 edition; 9 CFR 590, January 1, 2005 edition; and 7 CFR 59, January 1, 2005 edition.

([3]4) Small [E]egg [P]roducers [with less than 3,000 laying hens] shall adhere to Section R70-410[-sections 2-4 rules]-5.

R70-410-2. Definitions.

(1) "Case" means an egg container, as used in commercial practice in the United States, holding 30 dozen shell eggs.

(2) "Check" means an individual egg that has a broken shell or a crack in the shell, but its shell membranes are intact and its contents do not leak.

(3) "Best by date" means a date that shows when a product will be of best flavor or quality. It is not a purchase or safety date.

(3) "Department" or "UDAF" means the Utah Department of Agriculture and Food.

(4) "Dirty" means an individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or one-sixteenth of the shell surface if scattered.

(5) "FD and C color" means the color additives approved for use in human food stated in 21 CFR 73 and 74.

(6) "Large egg producer" means a producer with at least 3,000 laying hens.

(7) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(8) "Loss" means an egg that is inedible, cooked, frozen, contaminated, sour, musty, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, stuck yolk, blood ring, embryo chick at or beyond the blood ring state, free yolk in the white, or other foreign material.

(9) "Plant" means any building, machinery, apparatus or fixture, used for the storing, grading, or packing of shell eggs.

(10) "Potable water" means water that has been approved by the Utah Department of Health, or any agency or laboratory acceptable to the department as safe for drinking and food processing.

(11) "Premises" means a tract of land with building or part of building with its grounds or appurtenances.

(12) "Producer" means a person who owns, operates, or both a poultry house containing laying hens which produce shell eggs for human consumption.

(13) "Product" or "products" means shell eggs of domesticated chicken.

(15) "Pull date" means a date placed on the egg container label after which the eggs should not be sold.

(14) "Restricted" means eggs classified as checks, dirties, incubator rejects, inedibles, leakers, and loss.

(15) "Shell eggs" means intact shell eggs of domesticated chickens.

(16) "Shell protected" means eggs which have had a protective covering, including oil applied to the shell surface.

(17) "Small egg producer" means a producer that:

(a) intends to wholesale eggs;

(b) has at most 3,000 laying hens; and

(b) is U.S. Department of Agriculture (USDA) exempt.

R70-410-[2]3. Handling and Disposition of Restricted Eggs.

(1) Restricted eggs shall be disposed of [by one of the following methods] at point and time of segregation[?].

(a) Checks and dirties.

(i) Checks and dirties [must] shall be shipped to an official egg breaking plant for further processing to egg products.

(ii) Dirties may be shipped to a shell egg plant for cleaning.

(iii) Checks and dirties [may] shall not be sold to consumers, restaurants, bakeries, and food manufacturers[; not to consumers,] unless [such] the sales are specifically exempted by [Section 15 of the Federal] the Egg Products Inspection Act, 21 U.S.C. Sec. 1033, et seq., and not prohibited by [S] state [L] law.

(b) Leakers, loss, and inedible eggs must be destroyed for human food purposes at the grading station or point of segregation by [one of the methods listed below] being:

(i) [D] discarded and intermingled with refuse[; such as], including shells, papers, or trash[; etc.];

(ii) [P] processed into an industrial product or animal food at the grading station[?]; or

(iii) [D] denatured or de-characterized with an approved denaturant.

(A) [(Such product)] Leakers, loss, and inedible eggs shipped under government supervision and received under government supervision at a plant making industrial products or animal food need not be denatured or de-characterized [prior to] before shipment.[?]

[(iv)] (B) Leakers, loss and inedible eggs may be shipped in shell form [provided] if they are properly labeled and denatured by adding FD and C color to the shell or by applying a substance that will penetrate the shell and de-characterize the egg meat.

(c) Incubator rejects, [f] eggs which have been subjected to incubation[?] may not be moved in shell form and must be crushed and denatured or de-characterized at point and time of removal from incubation.

(d) Blood type loss which has not diffused into the albumen may be moved to an official egg products plant in shell form without adding FD and C color to the shell provided they are properly labeled and moved directly to the egg products plant.

(e) Containers used for eggs not intended for human consumption must be labeled with the word "inedible" on the outside of the container.

(f) Other methods of disposition may be used only when approved by the [Commissioner] department.

R70-410-[3]4. Packaging.

(1) [It is unlawful for anyone to] Any person shall not pack eggs into a master container which does not bear [all required] each needed labeling, including responsible party, or to transport or sell eggs in [such] a master container.

(2) Any person who, without ~~[prior]~~earlier authorization, acquires possession of a master container which bears a brand belonging to someone else shall, at ~~[his]~~their own expense, return ~~[such]~~the container to the registered owner within 30 days.

R70-410-~~[4]~~5. Small Egg Producer Rules.

~~[]~~(1) SCOPE

~~(a) This Section is for Shell Egg Producers who intend to wholesale eggs and are USDA Exempt (flocks of 3,000 or fewer hens). The requirements are basic in design and cost in order enable the 3,000 or fewer hen egg producers to put shell eggs into commerce while maintaining Good Manufacturing Practices. It is understood that as the egg production increases, the complexity of the operation may increase and require additional facilities and/or equipment to maintain Good Manufacturing Practices.]~~

~~[]~~(2) DEFINITIONS

~~(a) "Case" means when referring to containers, an egg case as used in commercial practice in the United States, holding thirty dozen shell eggs.~~

~~(b) "Plant" means any building, machinery, apparatus or fixture, used for the storing, grading or packing of shell eggs.~~

~~(c) "Potable water" means water that has been approved by the State Department of Health, or any agency or laboratory acceptable to the Commissioner of Agriculture as safe for drinking and food processing.~~

~~(d) "Premises" means a tract of land with building or part of building with its grounds or appurtenances.~~

~~(e) "Product" or "products" means shell eggs of domesticated chicken.~~

~~(f) "Shell eggs" means intact shell eggs of domesticated chickens.~~

~~(g) "Shell protected" means eggs which have had a protective covering such as oil applied to the shell surface.~~

~~(h) "Dirty" means an individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than one thirty second of the shell surface if localized, or one sixteenth of the shell surface if scattered.~~

~~(i) "Check" means an individual egg that has a broken shell or a crack in the shell, but its shell membranes are intact and its contents do not leak.~~

~~(j) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.~~

~~(k) "Loss" means an egg that is inedible, cooked, frozen, contaminated, sour, musty, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material.~~

~~(l) "Restricted" means eggs classified as checks, dirties, incubator rejects, inedibles, leakers and loss.]~~

~~[3]~~1 [LICENSE]License.

~~(a) Small [E]egg [P]roducers [who intend to wholesale eggs] shall [obtain]get a small egg producer license from the department in accordance with the fee schedule determined by the department and approved by the legislature pursuant to [U.C.A.4-2-2(2)]Subsection 4-2-103(2).~~

~~[4]~~2 [FACILITIES]Facilities.

~~(a) Small egg producers shall [E]establish a designated work area separate from domestic living areas.~~

~~(i) Acceptable designated work areas may be an area in the basement, garage, or outbuilding.~~

~~(ii) Unacceptable work areas are domestic living areas, kitchens, laundry rooms, and bathrooms.~~

~~(b) The designated work area [requires]needs a sanitary work surface that is smooth, durable, and easily cleanable.~~

~~(i) [This.]The work surface must be cleaned and sanitized before each use.~~

~~(ii) Any sinks, drain boards, or other equipment used for the egg handling operation must be cleaned and sanitized before each use.~~

~~(c) The premises shall be kept clean and free of rodent harborage areas.~~

~~(d) Designated storage areas are [required]needed for new packaging materials, utensils, and equipment that may be used for the egg handling practices. These items must be protected from contamination[~~(e.g., including~~ moisture, strong odors, dust, ~~[or]~~and insects~~)]~~.~~

~~(e) Potable water is [required]needed for egg handling practices. Individual water wells [require]need an annual bacteriological test[~~(i.e., including~~ coliform bacteria~~)]~~. Commercial bottled water may be used.~~

~~(f) Hand washing stations must be conveniently located in the egg handling work area and provided with soap and paper towels.~~

~~(g) Toilet rooms must be accessible to employees.~~

~~(h) A designated refrigerator is [required]needed. The refrigerator is not [required]needed to be new or of a commercial type and may be placed in the [garage, etc]designated work area. The refrigerator must be equipped with a suitable thermometer to routinely verify that the 40 degrees Fahrenheit (F) to 45 degrees F egg storage temperature is maintained.~~

~~[(5)]3 [EGG QUALITY ASSURANCE]Egg quality assurance.~~

~~(a) Each small egg producer [will]shall develop an egg quality assurance plan that, at [a minimum]least, includes[~~the following~~]:~~

~~(i) [C]hicks[~~/~~] and pullets [will]shall be [purchased]bought from hatcheries that are National Poultry Improvement Plan (NPIP) [(National Poultry Improvement Plan)]"US Salmonella Enteritidis Clean" status or equivalent state plan[~~]~~.~~

~~(ii) [F]testing the flock for Salmonella [Enteritidis]enteritidis with environmental drag swab sampling once per year per flock[~~]~~.~~

~~(iii) [A]a plan on how eggs will be handled if a Salmonella [Enteritidis]enteritidis positive test is identified[~~]~~.~~

~~(iv) [B]basic bio-security protocols for the chicken houses[~~]~~; and~~

~~(v) [R]records shall be kept and monitored on a regular basis[in regards to]for newly received chicks.~~

~~(b) Small egg [P]roducers must immediately report positive Salmonella and Avian Influenza tests to the office of the State Veterinarian.~~

~~(c) Small egg [P]roducers may have their flocks participate in the NPIP program by contacting the [Utah Department of Agriculture and Food]department, Division of Animal Industry.~~

~~[(6)]4 [EGG HANDLING]Egg handling.~~

~~(a) Hands must be thoroughly washed before starting egg handling and during egg handling to minimize cross-contamination of cleaned eggs.~~

~~(b) Maintain clean and dry nest boxes, change nest material as needed to reduce dirty eggs. Gather eggs at least once daily.~~

~~(c) Clean eggs as needed soon after collecting.~~

(i) ~~[(C)]~~ Cleaning eggs refrigerated below 55 degrees F may cause shells to crack or check.~~[(J)]~~

(ii) Minimal cleaning protects the natural protective covering on the shell.

(iii) Acceptable egg cleaning methods include:

(~~[(i)]~~~~A~~) dry cleaning by lightly sanding the stains or minimal dirty areas with sand paper;

(~~[(ii)]~~~~B~~) using potable water in a hand spray bottle and immediately wiping dry with a single service paper towel~~[-, and/or]; or~~

(~~[(iii)]~~~~C~~) briefly rinsing with running water spray and immediately wiping dry with a single service paper towel. The wash water shall be ~~[a minimum of]~~ at least 90 degrees F, which is warm to the touch, and shall be at least ~~[twenty]~~ 20 degrees warmer than the temperature of the eggs to be washed.

(d) Unacceptable cleaning methods include~~[-]~~ submerging shell eggs in water or any other solution or using cleaners that are not food grade and approved for shell egg cleaning. The porous egg shell is not impervious to odors, chemicals, and off flavors.

(e) Refrigerate the cleaned eggs immediately to 45 degrees F or less.

(i) The cleaned eggs can be packaged later.

(ii) Store packaged ~~[at]~~ eggs at 45 degrees F or less.

(~~[(7)]~~~~5~~) ~~[PACKAGING AND LABELING]~~ Packaging and labeling.

(a) Small egg producers shall ~~[(U)]~~ use clean new packaging~~[(pulp cartons, etc.)]~~. Packaging may be ~~[purchased]~~ bought online, through group buying, small farm co-operatives, ~~[etc]~~ or similar methods.

(b) Small egg producers shall use ~~[(S)]~~ self-adhesive attractive labels~~[-may be easily produced on a computer]~~. The labels ~~[must]~~ shall include:

(i) UDAF ~~[(Permit L)]~~ license number~~[-];~~

(ii) ~~[(C)]~~ common name of the food~~[-];~~

(iii) ~~[(Q)]~~ quantity, the number of eggs.

(iv) ~~[(N)]~~ name and ~~[(A)]~~ address of the egg producer;

(v) ~~[(F)]~~ the statement "Keep Refrigerated"; and

(vi) ~~[(F)]~~ the statement "SAFE HANDLING

INSTRUCTIONS: To prevent illness from bacteria: Keep eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly."

(~~[(viii)]~~~~c~~) Domesticated chicken hen eggs are subject to ~~[(G)]~~ grading. Quality designations and sizing weight ranges are determined by candling and weighing~~[-(C)]~~ in accordance with the USDA Egg Grading Manual~~[(J)]~~.

(~~[(viii)]~~~~d~~) If the eggs are ungraded and not weighed, the packages~~[(J)]~~, cartons, or both shall not be labeled with a grade or size.

(~~[(ix)]~~~~e~~) The labels may include ~~[(A)]~~ a ~~[(P)]~~ pull ~~[(D)]~~ date or ~~[(B)]~~ best ~~[(B)]~~ by date~~[-may be stated]~~.

(i) ~~[(H)]~~ The date may be hand written on the end of the carton or in a conspicuous location that is clearly discernible.~~[-Shell eggs are a perishable food item.]~~

(ii) The ~~[(P)]~~ pull ~~[(D)]~~ date ~~[must]~~ shall first show the month then the day of the month~~[-(e.g. Jun 14 or 06 14)]~~. Recommended dates are 30 days after production, and not ~~[to exceed]~~ more than 45 days after production.

(~~[(8)]~~~~6~~) ~~[DISTRIBUTION]~~ Distribution.

Small egg producers shall ~~[(F)]~~ transport refrigerated egg packages~~[(J)]~~, cartons, or both in an easily cleanable, portable cooler with frozen gel packs to maintain 45 degrees F or less temperature until eggs are distributed to retail outlet or sold to consumers.

~~[(9)]~~ EXEMPTIONS

~~[(Producers)]~~ Producer packer with 3,000 or more birds who is registered with USDA under the Egg Products Inspection Act.

(~~[(10)]~~~~7~~) ~~[INSPECTION]~~ Inspection.

~~[(All Egg Handlers and Producer Packers are)]~~ Each small egg producer is subject to ~~[(F)]~~ inspections by the ~~[(Utah Department of Agriculture and Food)]~~ department.

KEY: food inspections, eggs, chickens

Date of Last Change: ~~[(May 8, 2014)]~~ 2022

Notice of Continuation: January 11, 2021

Authorizing, and Implemented or Interpreted Law: 4-4-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R152-23

Filing ID
54688

Agency Information

| | | |
|-----------------------------|-------------------------------|-------------------|
| 1. Department: | Commerce | |
| Agency: | Consumer Protection | |
| Building: | Heber Wells Bldg | |
| Street address: | 160 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 146704 | |
| City, state and zip: | Salt Lake City, UT 84114-6704 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Daniel Larsen | 801-530-6145 | dblarsen@utah.gov |

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

General Information

2. Rule or section catchline:

R152-23. Health Spa Services Protection Act Rule

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

This amendment is being submitted as a result of H.B. 436, passed in the 2022 General Session. The purpose of the amendment is to ensure this rule reflects changes made to whether a health spa must maintain a surety as a result of offering a health spa service. If the health spa is required to maintain a surety, the amendment establishes how the amount of the surety is calculated.

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):

This amendment alters the process for establishing whether a health spa must maintain a surety in connection with its offer of health spa service. The amendment reflects that certain contracts for health spa services may be excluded from calculation when determining the amount of any surety a health spa must maintain. This amendment also makes includes changes to conform this rule to Utah Rulewriting Manual standards.

Fiscal Information

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

A) State budget:

This rule is not expected to have any fiscal impact on state government revenues or expenditures. Any fiscal impact on state government was addressed in the Fiscal Note to H.B. 436 (2022).

B) Local governments:

This rule is not expected to have any fiscal impact on local governments' revenues or expenditures because it does not create any new requirement local government must follow, nor does it otherwise constrain local government.

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

This rule is not expected to have any fiscal impact on small businesses because it does not impose requirements upon small businesses beyond what is required by Title 13, Chapter 23, Health Spa Services Protection Act. Any fiscal impact on small businesses was addressed by the Fiscal Note to H.B. 436 (2022).

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

This rule is not expected to have any fiscal impact on non-small businesses because it does not impose requirements upon non-small businesses beyond what is required by Title 13, Chapter 23. Any fiscal impact on non-small businesses was addressed by the Fiscal Note to H.B. 436 (2022).

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 is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, state, or local government entities because it does not impose requirements upon them beyond what is required by Title 13, Chapter 23.

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 impose compliance costs upon affected persons beyond what is required by Title 13, Chapter 23, and what was contemplated in the Fiscal Note to H.B. 436 (2022).

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 Division of Consumer Protection (Division) proposes amendments to update Rule R152-23. This amendment is being submitted to comport this rule to H.B. 436 (2022). The purpose of the amendment is to ensure that this rule reflects changes made to the calculation of the health spa surety. Also, the Division has made formatting changes throughout this rule to conform this rule to the Office of Administrative Rules' requirements in accordance with Executive Orders No. 2021-1 and 2021-12.

The Division does not foresee any impact on small businesses or non-small businesses beyond the fiscal note to H.B. 436 (2022). Any costs are either inestimable, or there is no fiscal impact. 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.)

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

| | | | |
|---|------------|------------|------------|
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| B) Department head approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Commerce, 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: | | |
| Subsection 13-2-5(1) | Subsections 13-23-5(1)(a)(iv) (A) through (C) | Subsection 13-23-5(1)(h) |

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: | 08/01/2022 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|------------------------------------|--------------|------------|
| Agency head or designee, and title: | Margaret Busse, Executive Director | Date: | 06/06/2022 |
|--|------------------------------------|--------------|------------|

R152. Commerce, Consumer Protection.**R152-23. Health Spa Services Protection Act Rule.****R152-23-1. Purpose.**

~~[(1)]~~—The purpose of this rule is to:

~~[(a)]~~(1) establish the process for:

~~[(i)]~~(a) initial registration of a health spa facility;

~~[(ii)]~~(b) renewal of a health spa facility registration;

~~[(iii)]~~(c) establishing a health spa facility surety exemption;

(d) establishing a contract for health spa services should be excluded from surety calculation; and

~~[(iv)]~~(e) notifying the division of any change to an applicant's registration information, ~~and~~

~~[(b)]~~(2) aid the division's administration and enforcement of Title 13, Chapter 23, Health Spa Services Protection Act.

R152-23-2. Authority.

This rule is promulgated in accordance with Subsections 13-2-5(1), 13-23-5(1)(a)(iv)(A) through (C), and 13-23-5(1)(h).

R152-23-3. Definitions.

~~[(1)]~~—As used in Subsection 13-23-5(1)(a)(i), "operate" means:

~~[(a)]~~(1) to offer for sale or advertise a health spa service; or

~~[(b)]~~(2) to enter a contract for any health spa service.

R152-23-4. Application for Registration or Renewal of Registration.

~~[(1)]~~—An application for registration or renewal of registration of a health spa facility shall be submitted on a form approved by the division, and include:

~~[(a)]~~(1) the applicant's:

~~[(i)]~~(a) name, and any alternate name that it uses to do business as a health spa facility;

~~[(ii)]~~(b) street address;

~~[(iii)]~~(c) mailing address;

~~[(iv)]~~(d) telephone number, and if applicable, facsimile number;

~~[(v)]~~(e) email address;

~~[(vi)]~~(f) web address, if it maintains a website;

~~[(b)]~~(2) a person designated by the applicant to be its contact person with whom the division will communicate regarding the application, and that person's:

~~[(i)]~~(a) name;

~~[(ii)]~~(b) street address;

~~[(iii)]~~(c) mailing address;

~~[(iv)]~~(d) telephone number;

~~[(v)]~~(e) email address;

~~[(c)]~~(3) the applicant's registered agent for service of process in the state, and the registered agent's:

~~[(i)]~~(a) name;

~~[(ii)]~~(b) street address;

~~[(iii)]~~(c) mailing address; and

~~[(iv)]~~(d) telephone number;

~~[(e)]~~(4) a copy of any contract;

~~[(f)]~~(a) used by the applicant in connection with the sale of a health spa service;

~~[(g)]~~(b) that is drafted in accordance with Title 13, Chapter 23, Health Spa Services Protection Act;

~~[(e)]~~(5) the number of unexpired contracts for a health spa service that:

~~[(i)]~~(a) designate the health spa facility as a consumer's primary location; or

~~[(ii)]~~(b) for a health spa facility's first year of registration, the number of contracts for a health spa service designating the health spa facility as a consumer's primary location the applicant reasonably expects to execute;

~~[(f)]~~(6) a copy of the applicant's:

~~[(i)]~~(a) bond, letter of credit, or certificate of deposit obtained in accordance with Subsection 13-23-5(2) and on a form approved by the division; or

~~[(ii)]~~(b) a surety exemption claim ~~[form]~~ completed in accordance with Section R152-23-5;

~~[(g)]~~(7) a copy of the applicant's liability insurance policy, in accordance with Subsections 13-23-5(1)(g)(i) and (ii);

~~[(h)]~~(8) a list of each health spa service or combination of health spa services offered by the applicant at the health spa facility,

including the price and duration of each service or combination of services; and

~~[(4)]~~(9) the application fee and any applicable late fee.

R152-23-5. Surety Exemption Process.

~~[(1)]~~ A health spa that claims a health spa facility or a health spa facility's contract is exempt~~[exemption]~~ from Subsections 13-23-5(2) through (5) shall submit a claim of exemption in the form approved by the division that shall include:

~~[(a) the applicant's:~~

~~(i) name, and any alternate name that it uses to do business as a health spa;~~

~~(ii) street address;~~

~~(iii) mailing address;~~

~~(iv) telephone number, and if applicable, facsimile number; and~~

~~(v) email address;]~~

~~[(b)]~~(1) a statement that identifies the exemption claimed in accordance with Subsections 13-23-6(1)(a) through (c);~~and~~

~~(2) the number of unexpired contracts the health spa claims should be excluded from surety calculation in accordance with Subsection 13-23-6(3); and~~

~~[(c)]~~(3) any information necessary to prove the health spa facility or the health spa facility's contract qualifies for a claimed exemption, in accordance with Subsection 13-23-6(2).

R152-23-6. Notification of Closure, Relocation, or Change to Information Required by Registration Application.

(1) A notification made to the division in accordance with Subsection 13-23-5(1)(h) shall be in writing.

(2) A notification made to the division in accordance with Subsection 13-23-5(7) shall be in writing.

R152-23-7. Contract for Health Spa Services.

A statement made in accordance with Subsection 13-23-3(6)(a) shall be capitalized and in bold text that is no smaller than 12-point size.

KEY: consumer protection, health spas

Date of Last Change: 2022~~[December 30, 2021]~~

Notice of Continuation: November 24, 2021

Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-23-5(1)(a)(iv)(A) through (C); 13-23-5(1)(h)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R152-32a | Filing ID 54691 |
|--------------------------------------|-----------------|------------------------|

Agency Information

| | |
|-----------------------------|--------------------------|
| 1. Department: | Commerce |
| Agency: | Consumer Protection |
| Building: | Heber Wells Bldg |
| Street address: | 160 E 300 S |
| City, state and zip: | Salt Lake City, UT 84111 |
| Mailing address: | PO Box 146704 |

| | | |
|--|-------------------------------|------------------|
| City, state and zip: | Salt Lake City, UT 84114-6704 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Blake Young | 801-530-6606 | bdyoung@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

2. Rule or section catchline:

R152-32a. Pawnshop, Secondhand Merchandise Transaction Information Act Rule

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

This rule is being changed as a result of H.B. 38, passed in the 2022 General Session, codified as Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act (Act). The purpose of this rule change to correct references within this rule to reflect changes in the Act, to update the title of the Act where it is referenced in this rule, and to indicate the types of information capable of being electronically submitted to the central database with respect to a catalytic converter purchase.

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):

This amendment changes the title of this rule to mirror the new title of the statute, and makes nonsubstantive changes to the numbering of certain sections to reflect the Utah Rulewriting Manual guidance. The change also indicates the types of information capable of being electronically submitted to the central database with respect to a catalytic converter purchase.

Fiscal Information

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

A) State budget:

This rule is anticipated to have no fiscal impact on the state budget beyond the impact identified in the Fiscal Note to H.B. 38 (2022).

B) Local governments:

This rule is not expected to have any fiscal impact on local governments because it does not impose requirements upon local governments beyond what is required by Title 13, Chapter 32a. Any fiscal impact on local government was addressed in the Fiscal Note to H.B. 38 (2022).

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

This rule is not expected to have any fiscal impact on small businesses because it does not impose requirements upon small businesses beyond what is required by Title 13, Chapter 32a. Any fiscal impact on small businesses was addressed in the Fiscal Note to H.B. 38 (2022).

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

This rule is not expected to have any fiscal impact on non-small businesses because it does not impose requirements upon non-small businesses beyond what is required by Title 13, Chapter 32a. Any fiscal impact on non-small businesses was addressed in the Fiscal Note to H.B. 38 (2022).

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 is not expected to have any fiscal impact on persons other than small businesses, non-small businesses, or state or local government entities because it does not impose requirements upon persons other than small businesses beyond what is required by Title 13, Chapter 32a.

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 impose compliance costs upon affected persons beyond what is required by Title 13, Chapter 32a. Any fiscal impact was addressed in the Fiscal Note to H.B. 38 (2022).

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 Division of Consumer Protection (Division) proposes amendments to update Rule R152-31a. This amendment is being submitted to comport this rule to H.B. 38 (2022). The purpose of the amendment is to change the title to include the recent changes. Also, there are formatting changes throughout this rule to conform this rule to the Office of Administrative Rules' requirements in accordance with Executive Order No. 2021-1 and 2021-12.

The Division does not foresee any foreseeable impact on small businesses beyond the fiscal note to H.B. 38 (2022). Also, the other amendments are made to make this rule comport to the Utah Rulewriting Manual.

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

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, 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:**

| | | |
|----------------------------|-----------------------------|----------------------------|
| Subsection 13-2-5(1) | Subsection 13-32a-104(8) | Subsection 13-32a-104.5(6) |
| Subsection 13-32a-104.6(3) | Subsection 13-32a-106(1)(b) | Subsection 13-32a-104.7(5) |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|-------------------------------|--------------|------------|
| Agency head or designee, and title: | Blake Young, Commerce Analyst | Date: | 06/15/2022 |
|--|-------------------------------|--------------|------------|

R152. Commerce, Consumer Protection.

R152-32a. Pawnshop, ~~and~~ Secondhand Merchandise, and Catalytic Converter Transaction Information Act Rule.

R152-32a-1. Purpose.

The purpose of this rule is to specify the information capable of being transmitted electronically to the central database, and to aid the division's administration and enforcement of Title 13, Chapter 32a, Pawnshop, ~~and~~ Secondhand Merchandise, and Catalytic Converter Transaction Information Act.

R152-32a-2. Authority.

This rule is enacted in accordance with Subsections 13-2-5(1), 13-32a-104~~(7)~~(8), 13-32a-104.5(6), 13-32a-104.6(3), ~~and~~ 13-32a-106(1)(b)~~(7)~~, and 13-32a-104.7(5).

R152-32a-3. Definitions.

~~(1)~~ "Electronically extract" means to obtain an identifying mark described by Subsection 13-32a-104(1)(h) using an electronic system that:

~~(a)~~ does not alter the identifying mark;

~~(b)~~ does not allow the identifying mark to be altered by a person after it is obtained by the electronic system; and

~~(c)~~ accurately documents the identifying mark on the ticket.

R152-32a-4. Information Capable of Being Transmitted Electronically in Accordance with Subsection 13-32a-106(1)(a).

~~(1)~~ The following information is capable of being transmitted electronically to the central database:

~~(a)~~ ~~any~~ information described by:

~~(i)~~ Subsections 13-32a-104(1)(a) through 13-32a-104(1)(c);

~~(ii)~~ Subsections 13-32a-104(1)(e)(i) and (ii);

~~(iii)~~ Subsection 13-32a-104(1)(f);

~~(iv)~~ Subsections 13-32a-104(1)(h)(i) and (ii);

~~(v)~~ Subsections 13-32a-104.5(2)(a) through 13-32a-104.5(2)(c)(ii);

~~(vi)~~ Subsection 13-32a-104.5(2)(d);

~~(vii)~~ Subsections 13-32a-104.5(2)(f)(i) through 13-32a-104.5(2)(f)(vi);

~~(viii)~~ Subsections 13-32a-104.5(3)(a) through 13-32a-104.5(3)(b)(vi);

~~(ix)~~ Subsection 13-32a-104.5(4)(a);

~~(x)~~ Subsections 13-32a-104.5(4)(d) through 13-32a-104.5(4)(f);

~~(xi)~~ Subsections 13-32a-104.5(4)(h) and (i)~~(j)~~; and

~~(xii)~~ Subsections 13-32a-104.6(1)(a) through 13-32a-104.6(1)(g)~~(h)~~;

~~(m)~~ Subsections 13-32a-104.7(2)(a) through 13-32a-104.7(2)(b)(i)(C);

~~(n)~~ Subsection 13-32a-104.7(2)(b)(ii); and

~~(o)~~ Subsections 13-32a-104.7(2)(c) through 13-32a-104.7(2)(e)(iv).

~~(b)~~ an individual's electronic legible fingerprint, in accordance with Subsections 13-32a-104(1)(e)(iv)(A), 13-32a-104.5(2)(c)(iv), ~~and~~ 13-32a-104.6(1)(v), and 13-32a-104.7(2)(b)(iv); and

~~(c)~~ any color digital photograph required by Subsection 13-32a-104~~(8)~~(9)(b), 13-32a-104.7(2)(b)(iii), and 13-32a-104.7(2)(f).

R152-32a-5. Electronic Extraction of an Identifying Mark from a Wireless Communication Device.

(1) A pawn or secondhand business is deemed to have obtained a color digital photograph of an identifying mark in accordance with Subsection 13-32a-104~~(8)~~(9)(b)(ii)(A) if the pawn or secondhand business electronically extracts the identifying mark from a wireless communication device.

(2) Nothing in this rule relieves a pawn or secondhand business from obtaining a color digital photograph of any identifying mark that is not electronically extracted from a wireless communication device.

R152-32a-6. Fingerprint Legibility Standards and Criteria.

(1) This rule incorporates by reference:

(a) Electronic Biometric Transmission Specification, version 11.0, Appendix F: Image Quality Specifications, promulgated by the United States Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, April 16, 2021 (EBTS 11.0 Appendix F); and

(b) Personal Identity Verification Image Quality Specifications for Single Finger Capture Devices, Federal Bureau of Investigation Criminal Justice Information Services Division Biometric Specifications, July 10, 2006 (PIV-071006).

(2) A tangible fingerprint is legible if the fingerprint:

(a) captures the complete print of an individual's right index finger pressed flat, or other finger if the right index finger is unavailable;

(b) is not smudged or otherwise obscured; and

(c) is made using ink and paper that contrast sufficiently to make the fingerprint's details clearly visible.

(3) An electronic fingerprint is legible if the fingerprint:

(a) captures the complete print of an individual's right index finger pressed flat, or other finger if the right index finger is unavailable; and

(b) is made using a device that satisfies standards established by the Federal Bureau of Investigation, including:

(i) EBTS 11.0 Appendix F; or

(ii) PIV-071006.

KEY: pawnshops, secondhand merchandise dealers, consumer protection, central database
Date of Last Change: 2022~~December 23, 2021~~
Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-32a-104(7); 13-32a-104.5(6); 13-32a-104.6(3); 13-32a-104.7(5); 13-32a-106(1)(b)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R162-2g | Filing ID 54608 |
|--------------------------------------|----------------|----------------------------------|

Agency Information

| | | |
|--|-------------------------------|-----------------------|
| 1. Department: | Commerce | |
| Agency: | Real Estate | |
| Room no.: | 2nd Floor | |
| Building: | Heber M. Wells Bldg | |
| Street address: | 160 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 146711 | |
| City, state and zip: | Salt Lake City, UT 84114-6711 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Justin Barney | 801-530-6603 | Justinbarney@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|--|
| 2. Rule or section catchline: |
| R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| One purpose of the proposed rule amendment is to implement the Governor's policy to reduce barriers to obtain a registration, license, or certification to practice in the appraisal industry and to reduce unnecessary regulation. These changes include the elimination of certain fees and alternative means for an appraiser to obtain experience, pre-license education, and continuing education. These changes will save time and expense to appraisers and education providers. They will also save time for Division of Real Estate (Division) staff, members of the Appraiser Experience Review Committee and the Appraiser Licensing and Certification Board. |
| Another purpose is to make corrections and changes to the rule including technical and stylistic changes as |

described in the Rulewriting Manual 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:

- a. provides an alternative means for an appraiser applicant or an appraiser to acquire some or all of the required experience to qualify for registration, licensure, or certification by successfully completing an Appraiser Qualifications Board (AQB) approved practical application course of simulated experience training;
- b. provides virtual-live education as an alternative to other approved forms of pre-licensing education and continuing education delivery methods;
- c. eliminates outdated reference dates;
- d. eliminates the processing fee for change forms;
- e. eliminates the requirement for in-class instruction experience for an individual seeking certification as a pre-licensing education instructor;
- f. eliminates a reference to moral character;
- g. reformats the tables in the appendices and adds additional types of experience approved for appraisers in the General Experience Table in Appendix 2; and
- h. 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. The substantive changes in the proposed amendment either eliminate requirements for appraisers or provide alternatives to current education and experience requirements. Other proposed changes are technical or stylistic in nature. None of the proposed changes is expected to impact the state's budget by either increasing costs or generating savings. The elimination of the processing fee in Section R162-2g-306b will likewise have no impact on the state's budget as the Division has not charged this fee 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) Local governments: |
| Local governments are not required to comply with or enforce the Real Estate Appraiser Licensing and Certification Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments. |
| C) Small businesses ("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. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| The proposed amendments do not create new obligations for non-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 non-small businesses. There is no practical way to determine with precision the amount of savings that will result from these amendments. |
| 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): |
| 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, non-small businesses, or state or local entities. |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| The proposed rule amendment would allow practical application courses of simulated experience training and virtual-live education as alternatives to current experience and education requirements. This could result in a fiscal impact to affected persons. These proposed changes would provide alternatives to appraiser applicants. However, it is not possible to determine the amount of the financial impact of these alternatives. Practical courses of simulated experience training are in the development stage by national education providers but the AQB has not yet approved any courses and the cost of these courses to an appraiser or an appraiser applicant has not been established. The Division is not able to determine how many applicants will chose this alternative experience when it becomes available or what the cost would be as compared to the costs associated with the current |

experience process with a designated supervisor providing actual appraiser experience.

The Division estimates that a large number of appraiser applicants and appraisers will chose the option of virtual-live education. This form of education was temporarily approved as an alternative during the Covid-19 pandemic. Some providers provide free education as a promotion of their services. Some providers charge a fee for their courses, whether traditional classroom courses or virtual-live classes. Appraiser applicants and appraisers may choose between providers. The choice involves decisions including course content, cost, value, and convenience.

The proposed rule does not mandate more or less education or experience. Rather, it provides another option available for affected persons.

After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in any cost or savings to affected persons or the costs or savings cannot be determined with precision.

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 that the rule may have on businesses. 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.)

| 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |

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

B) Department head approval of regulatory impact analysis:

The Executive Director of the Department of Commerce, 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 61-2g-201 | Section 61-2g-205 | Section 61-2g-302 |
| Section 61-2g-306 | Section 61-2g-306 | Section 61-2g-308 |
| Section 61-2g-311 | Section 61-2g-313 | Section 61-2g-314 |

Incorporations by Reference Information

8. A) This rule adds, updates, or removes the following title of materials incorporated by references:

| | First Incorporation |
|---|--|
| Official Title of Materials Incorporated (from title page) | 2020-2021 Uniform Standards of Professional Appraisal Practice (USPAP) |
| Publisher | The Appraisal Foundation |
| Date Issued | April 5, 2019 |
| Issue, or version | USPAP 2020-2021 Edition (extended through December 31, 2022) |

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: | 08/01/2022 |
|--|------------|

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
|--|------------|

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

| | | | |
|--|----------------------------|--------------|------------|
| Agency head or designee, and title: | Jonathan Stewart, Director | Date: | 05/09/2022 |
|--|----------------------------|--------------|------------|

R162. Commerce, Real Estate.

R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.

R162-2g-101. Authority.

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201[(2)(b)].

(2) The authority to establish and collect fees is granted by Section 61-2g-202[(4)].

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205[(5)(e)] within certain limitations as imposed by Section 61-2g-403[(4)(e)].

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:

(a) between:

(i) two individuals registered, licensed, or certified under

Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act[Section 61-2g]; or

(ii) an individual registered, licensed, or certified under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act[Section 61-2g] and:

(A) an appraisal entity; or

(B) a government agency;

(b) for [the purpose of] providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(5) The acronym "CAMA" stands for Computer Assisted Mass Appraisal.

(6) "Classification" means the type of license or certification held by an appraiser.

(7) "Day" means calendar day unless specified as "business day."

(8) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in Section R162-2g-306a.

(9) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(10) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;

(b) satellite teleconferencing;
(c) interactive audio;
(d) interactive computer software;
(e) Internet-based instruction; and
(f) other interactive online courses.

(11) "Division" means the Division of Real Estate of the Department of Commerce.

(12) "Draft report" means an appraisal report that is distributed ~~before it is~~~~[prior to being]~~ completed, as provided in Subsection R162-2g-502b(1).

(13) "Entity" means:
(a) a corporation;
(b) a partnership;
(c) a sole proprietorship;
(d) a limited liability company;
(e) another business entity; or
(f) a subsidiary or unit of an entity described in this [S]subsection~~[(13)]~~.

(14) "Field review" means review of an appraisal, including:
(a) a physical inspection of the property; and
(b) verification of the data.

(15) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2g-307d(4).

(16) The acronym "PAREA" stands for Practical Applications of Real Estate Appraisal approved by the AQB as an alternative to the supervisor trainee model for gaining appraisal experience.

~~(17) [(16)]~~ "Person" means an individual or an entity.

~~(18) [(17)]~~ "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but ~~before~~~~[prior to]~~ 12 months after the expiration date.

~~(19) [(18)]~~ The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

~~(20) [(19)]~~ "Renewal" means reissuing a license or certification upon its expiration for an additional period.

~~(21) [(20)]~~ "School" means:
(a) an accredited college, university, junior college, or community college;
(b) any state or federal agency or commission;
(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or
(d) any school or organization approved by the board.

~~(22) [(21)]~~ "School director" means an authorized individual in charge of the educational program at a school.

~~(23) [(22)]~~ "Supervisory Appraiser" means a state-certified residential appraiser or a ~~state-certified~~~~[state-certified]~~ general appraiser that directly supervises a trainee.

~~(24) [(23)]~~ "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of S~~ub~~section R162-2g-302.

~~(25) [(24)]~~ "Transaction value" means:
(a) for loans or other extensions of credit, the amount of the loan or extension of credit;
(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

~~(26) [(25)]~~ The acronym "USPAP" stands for the ~~2020-2021 edition~~ ~~[current edition]~~ of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation, effective through December 31, 2022. This rule ~~incorporates by reference the 2020-2021 edition of USPAP~~.

~~(27)~~ "Virtual-live education" also described as synchronous education, means education that is presented in a live, video conferencing format, using interactive instructional methods where instructor and student may be separated by distance but not by time. Approved courses may include either pre-licensing or continuing education courses. An instructor of a virtual-live course can interact, and does interact with students in real time.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) Except for an individual who successfully completes an AQB-approved Licensed Residential PAREA module, an~~[An]~~ individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee. An individual who successfully completes an AQB-approved Licensed Residential PAREA module need not register as a trainee before making application to sit for the state-licensed appraiser exam.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period~~[of time]~~ when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time ~~before~~~~[prior to]~~ the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty~~[or moral character]~~, with particular consideration given to any such acts involving the appraisal business;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and
 (ix) failure to pay taxes or child support obligations.

(3) ~~[Competency.]~~ An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraisal;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4) Pre-licensing education.

(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 81 ~~[75 classroom]~~ hours:

(i) approved by the AQB; and

(ii)(A) certified by the division pursuant to Subsections R162-2g-307c(1) through ~~[-](3)~~; or

(B) not required to be certified by the division pursuant to Subsection R162-2g-307c(6).

(b) The 81 ~~[75]~~ hours of required education shall include:

(i) 30 hours of appraisal principles;

(ii) 30 hours of appraisal procedures; ~~[-and]~~

(iii) the 15-hour National USPAP course, or its equivalent; and

(iv) the six-hour Utah appraiser supervisor and trainee course.

(c) The 15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:

(i) taught by an instructor who:

(A) is a state-certified residential or state-certified general appraiser; and

(B) has been certified by the AQB; or

(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.

(d) A person who applies for trainee registration ~~[on or after January 1, 2015]~~ shall have successfully completed the division ~~[-]~~ approved Supervisory Appraiser and Appraiser Trainee Course:

(i) as taught by a division-approved instructor; and

(ii) within the two-year period preceding the date of application.

(e) ~~[Examination.]~~ An applicant shall evidence having passed the final examination in required ~~[all]~~ pre-licensing courses.

(5) ~~[Application to the division.]~~ An applicant shall submit the following to the division:

(a) a completed application as provided by the division;

(b) course completion certificates for the 75 hours of pre-licensing education;

(c) a course completion certificate for the six-hour Utah appraiser supervisor and trainee course;

(d) ~~[(e)]~~ (i) two fingerprint cards in a form acceptable to the division; or

(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;

~~(e) [(d)]~~ the ~~[all]~~ court documents related to any past criminal proceeding;

~~(f) [(e)]~~ complete documentation of any sanction taken against any license in any jurisdiction;

~~(g) [(f)]~~ a signed letter of waiver authorizing the division to:

(i) obtain the fingerprints of the applicant;

(ii) review past and present employment records;

(iii) review education records; and

(iv) conduct a criminal background check;

~~(h) [(g)]~~ the fee for the criminal background check;

~~(i) [(h)]~~ the name of the state-certified appraisers ~~[(s)]~~ with whom the trainee is affiliated;

~~(j) [(i)]~~ the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and
~~(k) [(j)]~~ the nonrefundable application fee.

(6) ~~[Affiliation with certified appraiser(s).]~~ A trainee applicant ~~[Applicants]~~ shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:

(a) identifying each supervising certified appraiser on a form supplied by the division; and

(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.

(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:

(a) an application signed by the applicant and by each supervising certified appraiser with whom the applicant is affiliated;

(b) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum of 156 hours of qualifying education as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Section R162-2g-307c;

(c) evidence of having completed the required experience; and

(d) a nonrefundable application fee.

(2) Evidence of the experience required in Subsection (1)(c) shall include:

(a) the successful completion of an AQB-approved PAREA Licensed Residential Module; or

(b) division-approved experience forms documenting the total number of experience hours completed by the applicant from the date of trainee registration to the date of application for licensure under the supervision of one or more certified appraisers with whom the trainee is affiliated; and

(c) at least 1,000 hours of appraisal experience;

(i) completed pursuant to Section R162-2g-304d;

(ii) completed during the time when the applicant was registered with the division as a trainee; and

(iii) accrued in no fewer than:

(A) six months for applicants submitting experience primarily from Appendices 1 and 2; or

(B) 12 months for applicants submitting experience primarily from Appendix 3.

~~[(a) completed experience forms, as required by the division;~~

~~(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and~~

~~(ii) evidencing at least 1,000 hours of appraisal experience:~~

~~(A) pursuant to Subsection R162-2g-304d;~~

~~(B) completed during the time when the applicant was registered with the division as a trainee; and~~

~~(C) accrued in no fewer than:~~

~~(i) 6 months for applicants submitting experience primarily from Appendices 1 and 2; or~~

~~(ii) 12 months for applicants submitting experience primarily from appendix 3;~~

~~(b) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307e; and~~

~~(c) a nonrefundable application fee.]~~

~~(3) PAREA participants must complete, as a prerequisite before beginning an AQB-approved PAREA training module, 156 hours of qualifying education as specified in the Required Core Curriculum for the Licensed Appraiser classification.~~

~~(4)(2)] The pre-licensing curriculum required by Subsection (1)(b) shall be conducted by:~~

~~(a) a college or university;~~

~~(b) a community or junior college;~~

~~(c) a real estate appraisal or real estate related organization;~~

~~(d) a state or federal agency or commission;~~

~~(e) a proprietary school;~~

~~(f) a provider approved by a state certification and licensing agency; or~~

~~(g) the Appraisal Foundation or its boards.~~

~~(5)(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.~~

~~(b) Upon being approved to register for the examination pursuant to [this] Subsection (5)(a)(3)(a), an applicant shall:~~

~~(i) return the examination application form to the testing service designated by the division; and~~

~~(ii) pay a nonrefundable examination fee to the testing service designated by the division.~~

~~(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.~~

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 1,500 hours of [total] appraisal experience, at least 500 of which:

(i) meet the requirements of [Subsection] Section R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state ~~when [at the time]~~ the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) for applicants submitting experience primarily from ~~A[a]~~ppendices 1 and 2, ~~six [6-]~~months from the date the applicant received the state-licensed appraiser credential; or

(B) for applicants submitting experience primarily from ~~A[a]~~ppendix 3, 12 months from the date the applicant received the state-licensed appraiser credential; or

(b) evidence of having obtained:

(i) 1,500 experience hours by successfully completing the AQB-approved PAREA modules for both the Licensed Residential Module and the Certified Residential Module;

(ii) 1,000 experience hours by successfully completing the AQB-approved Licensed Appraiser PAREA Module, plus at least 500 hours of supervised appraisal experience that meets the requirements of Subsections (a)(i), (ii), and (iii); or

(iii) 500 experience hours by successfully completing the AQB-approved Certified Residential Appraiser PAREA Module, plus at least 1,000 hours of supervised appraisal experience, at least 500 of which meet the requirements as described in Subsections (a)(i), (ii), and (iii);

~~(c)(b)]~~ evidence of having completed at least one of the following six education options:

(i) option 1: received a Bachelor's degree or higher in any field of study from an accredited college or university;

(ii) option 2: received an Associate's degree from an accredited college or university in a field of study related to:

(A) Business Administration;

(B) Accounting;

(C) Finance;

(D) Economics; or

(E) Real Estate;

(iii) option 3: successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours:

(A) English composition: three semester hours~~[(3 semester hours)];~~

(B) micro economics: three semester hours~~[(3 semester hours)];~~

(C) macro economics: three semester hours~~[(3 semester hours)];~~

(D) finance: three semester hours~~[(3 semester hours)];~~

(E) algebra, geometry, or higher mathematics: three semester hours~~[(3 semester hours)];~~

(F) statistics: three semester hours~~[(3 semester hours)];~~

(G) computer science: three semester hours~~[(3 semester hours)];~~

(H) business law or real estate law: three semester hours~~[(3 semester hours)];~~ and

(I) two elective courses in: accounting, geography, agricultural economics, business management, or real estate: three semester hours each~~[(3 semester hours each)];~~

(iv) option 4: successful completion of at least 30 hours of College Level Examination Program 7 (CLEP7) examinations from the following subject matter areas:

(A) College Algebra;

(B) College Composition;

(C) College Composition Modular;

(D) College Mathematics;

(E) Principals of Macroeconomics;

(F) Principals of Microeconomics;

(G) Introductory Business Law; and

(H) Principals of Management.

(v) option 5: any combination of option 3 and option 4 that includes ~~[all of]~~ the topics identified in option 3; or

(vi) option 6: no college-level education is required for appraisers who have held a state-licensed appraiser credential for a

minimum of five years and have no record of any adverse, final, and non-appealable disciplinary action affecting the state-licensed appraiser's legal eligibility to engage in appraisal practice within the five years immediately preceding the date of application for a state-certified residential credential;

~~(d)[(e)]~~ evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to ~~[Subsection]~~Section R162-2g-307c; and

~~(e)[(4)]~~ except as provided in ~~[this Subsection]~~ (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1)(d)~~[Subsection(1)(e)]~~ shall be provided by:

- (a) a college or university;
- (b) a community or junior college;
- (c) a real estate appraisal or real estate related organization;
- (d) a state or federal agency or commission;
- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or
- (g) the Appraisal Foundation or its boards.

(3) PAREA participants must complete, as a prerequisite before beginning an AQB-approved PAREA training module, 206 hours of qualifying education as specified in the Required Core Curriculum for the Certified Residential Real Property Appraiser classification.

~~(4)(a)[(3)(a)]~~ Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to ~~[this] Subsection (4)(a)[(3)(a)]~~, an applicant shall:

- (i) return the examination application form to the testing service designated by the division; and
- (ii) pay a nonrefundable examination fee to the testing service designated by the division.

~~[(e)]~~The permission to register to sit for the examination shall be valid for 24 months after issuance.

~~(5)(a)[(4)(a)]~~ A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under Subsection (5)(a)~~[this Subsection (4)(a)]~~ shall expire on the ~~[same]~~date that the license was due to expire ~~before[prior to]~~ the granting of certification.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, at least 1,000 of which:

- (i) meet the requirements of ~~[Subsection]~~Section R162-2g-304d;
- (ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state ~~when[at the time]~~ the appraisal was performed;

(iii) are accrued in no fewer than:

(A) 12 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from appendices 1 and 2, or

(B) 18 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from ~~A[a]~~appendix 3; and

(iv) evidence that at least 1,500 experience hours are derived from non-residential appraisal experience~~[-]; or~~

(b) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience;

(i) at least 1,000 hours of which meet either the requirements of Subsections (1)(a)(i), (ii), and (iii);

(ii) up to 1,500 hours of which may be derived from the successful completion of AQB-approved PAREA program modules; and

(iii) evidence that at least 1,500 experience hours are derived from non-residential appraisal experience;

~~(c)[(b)]~~ evidence of having received a bachelor's degree or higher degree from an accredited college or university;

~~(d)[(e)]~~ evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to ~~[Subsection]~~Section R162-2g-307c; and

~~(e)[(4)]~~ except as provided in ~~[this]~~Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection[s] (1)(c) shall be provided by:

- (a) a college or university;
- (b) a community or junior college;
- (c) a real estate appraisal or real estate related organization;
- (d) a state or federal agency or commission;
- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or
- (g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to ~~[this] Subsection (3)(a)~~, an applicant shall:

- (i) return the examination application form to the testing service designated by the division; and
- (ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser or a state-certified residential appraiser who, within six months of renewing the license or certification, submits an application and consequently qualifies for certified general status shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under ~~[this]~~Subsection (4)(a) shall expire on the ~~[same]~~date that the license was due to expire ~~before[prior to]~~ the granting of certified general status.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in ~~[this]~~Subsection (1)(b), appraisal experience shall be measured in hours according to the

appraisal experience hours schedules found in Appendices 1 through 3 or according to AQB-approved experience hours for PAREA modules.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules~~[-]~~ or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) ~~[General restrictions.]~~ Appraisal experience obtained pursuant to Appendices 1 through 3 are restricted as follows:

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years ~~before~~~~[prior to]~~ the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) the performance of an evaluation as defined in the Real Estate Appraiser and Certification Act that ~~[which]~~ does not comply with USPAP;

(v) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(vi) personal property appraisals; or

(vii) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2, no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 50% of required experience hours may be earned from appraisal of vacant land.

(f) Experience gained through the successful completion of an AQB-approved PAREA module may, when approved, exceed 50% of the total experience requirement. Except for AQB-approved PAREA modules, experience ~~[Experience]~~ gained for work without a traditional client may qualify for experience hours but may not ~~[cannot]~~ exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB course approval program ~~[Course Approval Program]~~ and, if the course is taught in Utah either live or by distance education, also approved by the division.

(g) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) Except for AQB-approved PAREA module experience hours, a ~~[A-]~~ registered trainee may not claim experience hours for any appraisal work ~~[performed after January 1, 2015]~~ unless the trainee and the trainee's supervisor~~[(s)]~~ have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course ~~before~~~~[prior to]~~ performing the work to be claimed.

(ii) Except for AQB-approved PAREA module experience hours, a ~~[A-]~~ trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) Except for AQB-approved PAREA module experience hours, for ~~[For]~~ each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to ~~[this]~~ Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; ~~and~~

(I) participation in report preparation: 20% of total hours; ~~and~~ ~~[-]~~

~~[(iii)]~~~~[(4)]~~ The applicant may claim up to 100% of the total hours allowed for the tasks listed in ~~[this]~~ Subsections (A) through (I).

(c) For ~~[In order for]~~ a trainee to claim credit for an inspection pursuant to ~~[this]~~ Subsection (3)(b)(ii)(C):

(i) as to the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy the ~~[all]~~ scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in ~~[this]~~ Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division the ~~[all]~~ records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:
 (i) for any appraisal where the applicant cannot prove more than 50% participation in the:
 (A) data collection;
 (B) verification of data;
 (C) reconciliation;
 (D) analysis;
 (E) identification of property and property interests;
 (F) compliance with USPAP standards; and
 (G) preparation and development of the appraisal report;
 or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in ~~[this]~~ Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document 1,500 experience hours, including:

(A) up to 1,500 hours of AQB-approved experience hours for PAREA modules: or

(B) at least 75% of the hours submitted from:

(I) ~~(A)~~ the residential experience hours schedule found in Appendix 1; or

(II) ~~(B)~~ the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to ~~[this]~~ Subsections (6)(b) and ~~[-]~~(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standards 5 and 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2 equaling at least 65 experience hours;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit

proof of having performed at least eight residential appraisals equaling at least 110 experience hours:

(A) conforming to USPAP Standards 1 and 2; and

(B) including at least two of each of the following property types:

(I) vacant residential or agricultural land;

(II) two- to four-unit dwelling;

(III) single-family unit; and

(IV) complex one- to four-unit ~~[four-unit]~~ residential dwellings; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2 equaling at least 300 experience hours.

(e) No more than 200 hours for qualification for a state-licensed credential, 500 hours for a state-certified residential credential, or 1,800 hours for a certified general credential may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation ~~[-(division)]~~;

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to ~~[this]~~ Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards 3 and 4 when the appraiser is required to comply with the rule.

(ii) Except as provided in ~~[this]~~ Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in ~~[this]~~ Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

- (A) preliminary valuation estimates;
- (B) range of value estimates or similar studies;
- (C) other real estate ~~related~~ ~~[related]~~ experience gained by:
 - (I) bankers;
 - (II) builders;
 - (III) city planners and managers; or
 - (IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act [Section 61-2f et seq.] may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in ~~[this]~~ Subsection (6)(e)(i), or except for AQB-approved PAREA module experience hours, no more than 50% of the total experience required for certification may be earned through any combination of experience described in [this] Subsections (6)(b) through (6)(d). ~~[(6)(b)-(d)].~~

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of ~~[this]~~ Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

- (a) verification with the clients;
- (b) submission of selected reports to the board; and
- (c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) Experience hours obtained through completion of an AQB-approved PAREA module does not require review by the experience review committee.

~~(3)~~ ~~(2)~~ The committee shall:

(a) review each application for completion of the non-PAREA experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

~~(4)~~ ~~(3)~~ The committee shall be composed of appraisers selected from among the following categories:

- (a) residential appraisers;
- (b) commercial appraisers;
- (c) farm and ranch appraisers;
- (d) right-of-way appraisers; and
- (e) mass appraisers.

~~(5)~~ ~~(4)~~ The chair ~~[person]~~ of the committee shall be appointed by the board.

~~(6)~~ ~~(5)~~ Meetings may be called upon:

- (a) the request of the chair ~~[person]~~; or
- (b) the written request of a quorum of committee members.

~~(7)~~ ~~(6)~~ If the board denies the application on the recommendation of an experience review committee member, the applicant may, within 30 ~~[thirty]~~ days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall ~~[thereafter]~~ consider the request and issue a written decision.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this ~~[Sub]section [R162-2g-306a]~~ before the expiration date of [printed on] the registration, license, or certificate.

(b) It is ~~[shall be]~~ grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, before ~~[prior to]~~ the expiration date of the registration, license, or certification, submit to the division:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in ~~[this]~~ Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the division ~~[Division]~~, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

- (I) assigned to active military duty; or
- (II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-~~[]~~ refundable renewal fee.

(b) The continuing education required under ~~[this]~~ Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor who ~~[or instructors, at least one of whom]~~ is a state-~~[]~~ certified appraiser in good standing and is USPAP certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry ~~when[at the time] the courses are taught[~~(see Appendix 4, Table 2 for a list of continuing education topics)~~]; or~~

(II) not required to be certified, pursuant to Subsection R162-2g-307d(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(iii) A list of continuing education topics may be found in Appendix 4, Table 2.

~~(iv)[~~(iii)~~]~~ An appraiser may earn continuing education credit for attendance at one meeting of the ~~board~~Board in each continuing education two-year cycle provided:

(A) the meeting is open to the public;

(B) the meeting is a minimum of two hours in length;

(C) the total credit for attendance at the meeting is limited to a maximum of seven hours; and

(D) the division verifies attendance to ensure that the appraiser attends the meeting for the required period~~[of time]~~.

~~(c)[~~(i)~~ A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.~~

~~(ii)~~ A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of ~~[this]~~ Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

~~(d)[~~(i)~~ An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.~~

~~(ii)~~ A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) ~~To~~In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with ~~[this]~~ Subsection (3)(a), but whose credits are not banked by the education provider~~[pursuant to Subsection R162-2g-502a(5)(e)]~~, may obtain credit for the courses~~[~~(s)~~]~~ taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of ~~[this]~~ Subsection (2).

(5)(a) After the 30-day period described in ~~[this]~~ Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with ~~[this]~~ Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in ~~[this]~~ Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with ~~[this]~~ Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee~~[~~and~~]~~

~~(iv) completing 24 hours of additional continuing education as approved by the division].~~

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under ~~[this]~~ Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period ~~before~~prior to the date of reapplication; and

(B) it was ~~[either]~~

~~(I) completed after January 1, 2008; or~~

~~(II) [certified by the division and the AQB [prior to January 1, 2008,] as approved, qualified pre-licensing education.~~

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who ~~cannot~~is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to ~~[this]~~ Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in ~~[this]~~ Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e~~[l]~~-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

~~(3) [Notification procedure.]~~

~~(a)~~ To report a change of name, an individual shall complete a ~~[paper]~~ change form and attach to it official documentation such as a:

- (i) marriage certificate;
- (ii) divorce decree; or
- (iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

~~[(c) All change forms shall be accompanied by a nonrefundable processing fee.]~~

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification requirements outlined in this [Sub]section [R162-2g-306b] within ten business days of the [making a] status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the division.

R162-2g-307a. General Education Criteria Applicable to [All] Pre-Licensing Education and Continuing Education.

(1) A class hour is 60 minutes of which at least 50 minutes are instruction attended by the student.

(2) The prescribed number of class hours includes time for examinations.

(3) Experience may not be substituted for education, and education may not be substituted for experience.

R162-2g-307b. School Certification.

(1) ~~[Application.]~~ A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

- (i) name, telephone number, email address, and address of:
 - (A) the school;
 - (B) the school director; and
 - (C) ~~the [all]~~ owners of the school; and
- (ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;

(b) provide a description of:

- (i) the type of school; and
- (ii) the school's physical facilities or method for delivery of course instruction;

(c) provide a statement outlining the:

(i) number of quizzes and examinations in each course offered;

(ii) grading system, including methods of testing and standards of grading;

(iii) requirements for attendance; and

(iv) school's refund policy.

(2) Standards for operation.

(a) ~~The [All]~~ courses shall be taught in an appropriate ~~[classroom]~~ environment or facility and not in a private residence, except for a course approved for distance education.

(b) A school shall teach the approved course of study as outlined in the state-approved outline.

(c) At the time of registration, a school shall provide to each student:

- (i) the statement described in ~~[this]~~ Subsection (1)(c);

(ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and

(iii) a criminal history disclosure statement.

(d) For a student to earn credit for a course, the school shall require that the student ~~[A school shall require each student to]~~ attend 100% of the scheduled class time ~~[in order to earn credit for the course]~~.

(e)(i) A school may not award credit to any student who fails the final examination.

(ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.

(iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.

(iv) A student who fails a final exam a third time shall fail the course.

(f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.

(g) Credit hours.

(i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.

(ii) For a course that is taught in a college or university setting:

(A) ~~one-quarter~~ ~~[one-quarter]~~ hour is equivalent to ~~ten~~ ~~[10]~~ credit hours; and

(B) one semester hour is equivalent to 15 credit hours.

(iii) A school may not award more than eight credit hours per day per student.

(3) A school shall report to the division within ~~ten~~ ~~[10]~~ calendar days of:

(a) any change in the information provided pursuant to ~~[this]~~ Subsection (1)(a)(i); and

(b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.

(4)(a) A school certification is valid for two years from the date of issuance.

(b) To renew a school certification, an individual shall, before ~~[prior to]~~ the date of expiration:

(i) submit a properly completed application as provided by the division; and

(ii) pay a nonrefundable applicable fee.

R162-2g-307c. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days before ~~[prior to]~~ the course is ~~[being]~~ taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used ~~[other than lecture method]~~, including:

~~[(i) webinar;~~

~~[(ii) satellite broadcast; or~~

~~[(iii) other form of distance education;]~~

~~(i) traditional classroom education;~~
~~(ii) virtual-live education, also designated as synchronous education by the AQB, or~~
~~(iii) distance education;~~
 (c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;
 (d) the school procedure for maintaining the security of the final exams and answer keys;
 (e) the titles, authors, and publishers of ~~all~~ required textbooks;
 (f)(i) the instructor~~(s)~~ who will teach each class; and
 (ii) evidence that each instructor is:
 (A) certified by the division;
 (B) qualified to serve as a guest lecturer; or
 (C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;
 (g) a nonrefundable applicable fee; and
 (h) a signed statement agreeing that the course provider will, within ~~ten~~~~[40]~~ business days of completing the class, upload to the division the following information:
 (i) course name;
 (ii) course certificate number assigned by the division;
 (iii) date the course was taught;
 (iv) number of credit hours; and
 (v) name and license number of each student receiving education credit.
 (2) ~~[Standards for approval of traditional classroom courses. Each]~~ A traditional classroom course shall:
 (a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;
 (b) be approved through the AQB course approval program;
 (c) allow a maximum of 10% of the required class time for testing, including review test and final examination;
 (d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.
 (3) A virtual-live course using a synchronous delivery method shall:
 (a) comply with Subsection (2);
 (b) provide verbal or written interaction between the student and instructor;
 (c) include a written examination personally proctored by an official approved by the presenting entity, or, with the prior approval of the division, remote proctoring, including bio-metric proctoring, pursuant to Subsection (5); and
 (d) meet the course delivery requirements established by the AQB;
 (4)(a) A distance education course shall:
 (i) comply with Subsection (2);
 (ii) provide interaction between the student and instructor in a reciprocal environment where the student has verbal or written communication with the instructor;
 (iii) include a written examination:
 (A) personally proctored by an official approved by the presenting entity; or
 (B) with the prior approval of the division, proctored remotely, including bio-metric proctoring, pursuant to Subsection (5); and

~~(iv) offer at least 15 credit hours.~~
 (b) A distance education course shall obtain content approval from:
 (i) the AQB the division; or
 (ii) for an academic credit college course, content approval from an accredited college, community college, or university that offers a distance education program and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the US Secretary of Education.
 (c) Content for a non-academic credit college course provided by a college shall be approved by the AQB and a state appraiser regulatory jurisdiction.
 (d) A distance education course shall obtain course delivery mechanism approval from one of the following sources:
 (i) an AQB-approved organization that provides approval of course design and delivery;
 (ii) a college or university that qualifies for content approval in Subsection (b) and awards academic credit for the distance education course; or
 (iii) a qualifying college or university that qualifies for content approval in Subsection (b) and that has a distance education delivery program that approves the course design and delivery that incorporate interactivity.
 [~~(3) Standards for approval of distance education~~
~~(a) A distance education course shall:~~
~~(i) comply with this Subsection (2);~~
~~(ii) provide interaction between the student and instructor;~~
~~(iii) include a written examination personally proctored by an official approved by the presenting entity;~~
~~(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and~~
~~(v) offer at least 15 credit hours.~~
~~(b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:~~
~~(i) the AQB;~~
~~(ii) a state licensing jurisdiction; or~~
~~(iii) a college or university that:~~
~~(A) offers distance education programs in other disciplines; and~~
~~(B) is approved or accredited by:~~
~~(I) the Commission on Colleges;~~
~~(II) a regional or national accreditation association; or~~
~~(III) an accrediting agency that is recognized by the United States Secretary of Education.]~~
 (5) Subject to division approval, either a synchronous course or an asynchronous course may use remote proctoring, including bio-metric proctoring.
 (6)~~(4)~~ Within ~~ten~~~~[40]~~ business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.
 (7)~~(5)~~ A course certification is valid for no more than 24 months.
 (8)~~(6)~~ Credit for non-certified pre-licensing education.
 (a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection ~~R162-2g-102(21)~~~~[R162-2g-102(17)]~~ as long as:
 (i) the course content:
 (A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examinations~~[(s)]~~;

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) ~~[in order]~~to receive credit, a student ~~shall~~~~[is required to]~~:

(A) attend 100% of the scheduled class hours;

(B) complete~~[all]~~ required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division-approved~~[division approved]~~ list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division ~~[a list of]~~the name of the course ~~[course(s)]~~taken, including:

(A) the course title~~[(s)]~~;

(B) the name~~[(s)]~~ of the sponsoring organization~~[(s)]~~;

(C) the number of classroom hours completed;

(D) the date ~~[date(s)]~~ of course completion; and

(E) evidence that the course meets ~~[course(s) meet]~~ the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in ~~[this]~~Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the course has ~~[courses have]~~been completed as documented; and

(v) if requested by the division, provide proof of completion of the course~~[s]~~ in the form of a certificate~~[s]~~, transcript~~[s]~~, report card~~[s]~~, letter~~[s]~~ of verification, or similar proof.

~~(9)(7) Supervisory Appraiser and Appraiser Trainee Course.]~~ To~~[In order to]~~ obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with ~~[this]~~Subsection (1); and

(b) sign a written attestation agreeing to provide a ~~[paper]~~ copy of the course manual to each attendee.

RI62-2g-307d. Continuing Education Course Registration and Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is registered or certified before it is~~[prior to its being]~~ taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days before the course is~~[prior to the course being]~~ taught, submit a completed application as required by the division, including:

(a) the name and contact information of the course sponsor and the entity through which the course will be provided;

(b)(i) if the application is for a course using the traditional classroom education, a description of the physical facility where the course will be taught; and

(ii) if the application is for a course using live-virtual or distance education, the delivery method for the course;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be~~[traditional education or distance education]~~;

(i) traditional education;

(ii) virtual-live education, including synchronous education as designated by the by the AQB;

(iii) distance education, including asynchronous education as designated by the AQB; or

(iv) a hybrid form of education that employs both synchronous and asynchronous delivery methods of education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of~~[all]~~ materials that will be distributed to the participants;

(j) the procedure for pre~~[registration]~~;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) ~~[except for courses approved for distance education,]~~the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within ~~ten~~10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of~~[all]~~ students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(3) Standards for approval of a certified course.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

- (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) course certification number and expiration date;
- (viii) credit hours awarded; and
- (ix) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) ~~[Non-certified continuing education credit.]~~ Except as provided in Subsection R162-2g-307d(1), the board may award non-certified continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

- (i) participation, other than as a student, in appraisal educational processes and programs; or
- (ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

- (i) practicum course under ~~[this]~~ Subsection (3)(a); or
- (ii) course under ~~[this]~~ Subsection (3)(b); and
- (c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

(ii) is taught outside ~~[the state]~~ of Utah.

(5) Standards for approval of a registered course.

(a) A professional appraisal education organization may register a special event for continuing education, subject to the following conditions:

(i) the professional appraisal education organization shall submit a one-time application and registration fee to the division to register the organization as a qualified continuing education course provider and the special event for continuing education;

(ii) the division may grant approval of the special event based on the demonstrated experience of the professional appraisal education organization in providing, monitoring, and supervising quality professional course offerings.

(b) The registered organization is solely responsible for and accountable to the division:

(i) for the selection of appraisal instructors who are subject matter experts and industry qualified in the course~~[(s)]~~ or segment of the course~~[(s)]~~ they teach;

(ii) to ensure that:

(A) course instructors have subject matter expertise in the content area they are instructing; and

(B) the course content of classes taught by both appraiser and non-appraiser course instructors is directly industry pertinent, relevant, and beneficial to and enhances the professional skills of the attending appraisers, and promotes the protection and wellbeing of the industry and the general public;

(iii) to monitor the attendance of each appraiser during the presentation of the course by taking and maintaining a list of attendees actually present during the presentation to ensure that an appraiser actually attends each CE course segment before providing a CE certificate or CE credit to the appraiser; and

(iv) to ensure that the registered course complies with the general criteria applicable to continuing education set forth in S~~[s]~~ections R162-2g-307a and R162-2g-307b.

(6)(a) The special event registered course may last for a maximum of seven consecutive days.

(b) The special event registered course is a single, one-time event and may not be repeated unless the professional appraisal education organization submits to the division an application and registration fee and receives division approval for a subsequent, single, one-time event.

(c) A professional appraisal education organization shall submit a separate course application for each course taught at the special event, however, only a single application fee is required to be paid to the division for each special event.

(d) The division maintains a fee schedule based on the total number of CE hours awarded for a CE course. The application and registration fee for a special event course is the fee from the division fee schedule.

R162-2g-307e. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsections R~~[s]~~162-2g-302(2)~~[(3)]~~ and (3);

(b) submit a completed application as provided by the division;

(c) demonstrate knowledge of the subject matter to be taught as evidenced by:

(i) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;

(ii) a minimum of five years active experience in appraising; and

(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or

(B) other experience acceptable to the board in the topic proposed to be taught;

(d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and

(e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

(a) submit a completed application, as provided by the division;

(b) evidence having taught at least 20 hours of ~~[in-class]~~ instruction in a certified course~~[(s)]~~ during the preceding term of certification;

(c) evidence having attended a real estate instructor development workshop sponsored or approved by the division during the preceding two years; and

(d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an individual shall:

- (i) comply with ~~this~~ Subsection (3); and
- (ii) pay a nonrefundable late fee.

(b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:

- (i) comply with ~~this~~ Subsection (3);
- (ii) pay a nonrefundable reinstatement fee; and
- (iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.

(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306~~(3)~~.

R162-2g-307f. Instructor Certification for Continuing Education.

(1) Except for the limited circumstances provided for in Section R162-2g-307d for special continuing education events conducted by a professional appraisal education organization, a continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, ~~an~~ ~~and~~ individual shall, at least 30 days ~~before~~ ~~prior to~~ the date on which instruction is proposed to begin:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsections R162-2g-302(2) ~~and~~ ~~(-)~~(3);

(b) submit a completed application form, as provided by the division;

(c) evidence:

(i) at least three years of full-time experience in the course subject;

(ii) college-level education related to the course subject; or

(iii) a combination of experience and education acceptable to the division;

(d) evidence:

(i) at least 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 the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(f) provide a signed statement agreeing not to market personal sales products;

(g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, ~~before~~ ~~prior to~~ the date of expiration:

(a) submit a completed renewal application, as provided by the division;

(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or

(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and

(c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable reinstatement fee;

(c) After a continuing instructor certification has been expired for six months, an individual ~~shall~~ ~~is required to~~ apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.

(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal assignments in Utah shall:

(a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;

(b) submit an application as provided by the division and including the following:

(i) name of the client;

(ii) specific property ~~addresses~~ ~~address(es)~~ to be appraised;

(iii) types ~~(s)~~ of property being appraised; and

(iv) estimated time to complete each assignment;

(c) complete and submit a qualifying questionnaire as provided by the division;

(d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;

(e) pay a nonrefundable application fee in the amount established by the division; and

(f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.

(2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignments ~~(s)~~ for which the permit is issued have not been completed within the original six-month term of the temporary permit.

(b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.

An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

(1) The applicant shall provide evidence that:

(a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:

(i) approved by that state; and

(ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;

(b) the applicant's pre-licensing education included either:

(i) the 15-hour National USPAP Course; or

(ii) equivalent education as determined through the course approval program of the AQB; and

(c) the applicant has passed an examination that has been approved by the AQB for the license or certification for which the applicant is applying.

(2) The applicant shall:

(a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and

(b) sign an attestation that the applicant understands and will abide by both the statute and the rules.

(3) If the applicant resides outside ~~[of the state]~~ of Utah, the applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state.

~~[(4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.]~~

R162-2g-311. Scope of Authority.

(1) Trainees.

(a) An individual who has properly qualified as a trainee pursuant to Section R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

(i) participating in property inspections;

(ii) measuring or assisting in the measurement of properties;

(iii) performing appraisal-related calculations;

(iv) participating in the selection of comparable properties for an appraisal assignment;

(v) making adjustments to comparable properties; and

(vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in ~~[this]~~ Subsection (1)(a), within the following limitations:

(i) As to a minimum of the trainee's first 35 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.

(iii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) discuss an appraisal assignment with anyone other than:

(A) the supervisory appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) an ~~[duly]~~ authorized professional peer review committee.

(e) The following persons are not subject to the scope of authority limitations of this subsection ~~[Subsection (1)]~~:

(i) full-time elected county assessors; and

(ii) any person performing an appraisal to establish ~~[for the purposes of establishing]~~ the fair market value of real estate for the assessment roll.

(2) ~~[State-licensed appraisers.]~~ In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than \$1,000,000;

(b) complex one- to four- residential units having a transaction value of less than \$250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis ~~[/appraisal]~~ is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment;

(b) vacant land, if the highest and best use of the land is for five or more one- to four-family units;

(c) commercial real property; or

(d) vacant land if the highest and best use of the vacant land is commercial use.

R162-2g-502a. Standards of Conduct and Practice.

(1) ~~[Affirmative duties in general.]~~ A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Section R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b) except as provided in Subsection (2):

(i) comply with ~~[the current edition of]~~ USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) ~~[in order]~~ to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to ~~[this]~~ Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the digital signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agents, property owner, or other verifiable sources;

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual; and

(i) immediately following the signature on the report in an appraisal report prepared and signed by a state-licensed or certified appraiser, state either:

(i) ~~(A)~~ the credential type of State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser; or

(ii) ~~(B)~~ the license or certification number assigned to the appraiser by the division.

(2) Exceptions.

(a) An individual is exempt from complying with ~~[the provisions of]~~ USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under ~~[this]~~ Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(c) When performing an evaluation as defined in the Real Estate Appraiser and Certification Act, an appraiser trainee or a licensed or certified appraiser is exempt from complying with Standards 1 through 4 of USPAP.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

- (i) file number;
- (ii) report date;
- (iii) subject address;
- (iv) client name;
- (v) type of property;
- (vi) report form number or type;
- (vii) number of work hours;
- (viii) description of work performed by the trainee; and
- (ix) scope of the review and supervision of the supervising appraiser.

(4) Unless there is a client assignment condition prohibiting an appraiser trainee from signing an appraisal report, when an appraiser trainee performs significant appraisal assistance on an appraisal, the trainee may sign the appraisal report if the appraisal report is also signed by the trainee's supervisory appraiser. The appraiser trainee shall state, immediately following the trainee's signature in the report, "Trainee" and include the registration number assigned to the appraiser trainee by the division

(5)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee may ~~[is authorized to]~~ perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing each aspect[s] of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 35 residential inspections as provided in Subsection R162-2g-311(1)(c)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) ~~[A supervisory appraiser shall]~~ An appraiser must be state-certified and in good standing with the division for a period of at least three years before the appraiser is ~~[prior to being]~~ eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date ~~[on which]~~ the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) Except for AQB-approved PAREA module experience hours, an [An] appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

(6) A school or continuing education provider shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of each continuing education course[s] in advertising and marketing;

(c) upload course completion information as to each student who provides the school or continuing education provider the student's name according to division records and the student's license number:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in Subsection R162-2g-307b(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under Subsection R162-2g-307b(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to the state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor[~~(s)~~] for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within ten[10] business days of the date of the request; and

(l) verify that the material is current in any course taught on:

(i) Utah statutes;

(ii) Utah administrative rules;

(iii) Federal laws; and

(iv) Federal regulations.

(7) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. ~~[Prohibited]~~Unprofessional Conduct.

(1) An individual registered, licensed, or certified by the division may not:

(a) release to a client a draft report of a one- to four-unit residential real property;

(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:

(i) the first page of the report prominently identifies the report as a draft;

(ii) the draft report is signed by the appraiser; and

(iii) the appraiser complies with USPAP in the preparation of the draft report;

(c) affix a signature to an appraisal report using[~~by means of~~] a signature stamp; or

(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;

(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or

(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.

(2) A trainee may not:

(a) solicit a client to address an engagement letter directly to the trainee; or

(b) accept payment for appraisal services from anyone other than:

(i) the trainee's supervisor; or

(ii) an appraisal or government entity with which the trainee is affiliated.

(3) A supervising appraiser may not:

(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;

(b) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.

(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

(5) A school may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;

(iii) disparage a competitor's services or methods of operation;

(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;

(c) accept payment from a student without first providing to that student the information outlined in Subsection R162-2g-307b(2)(c);

(d) continue to operate after the expiration date of the school certification without renewing;

(e) continue to offer a course after its expiration date without renewing;

(f) allow an instructor whose instructor certification has expired to continue teaching;

(g) allow an individual student to earn more than eight credit hours of education in a single day;

(h) award credit to a student who has not complied with the minimum attendance requirements;

(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(j) give valuable consideration to a person licensed with or certified by the division under the Real Estate Appraiser Licensing and Certification Act [Section 61-2g] for referring students to the school;

(k) accept valuable consideration from a person licensed with or certified by the division under the Real Estate Appraiser Licensing and Certification Act [Section 61-2g] for referring students to a licensed or certified appraiser; or

(l) require a student to attend any program organized for ~~the purpose of~~ solicitation.

(6) A continuing education provider may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession; or

(iii) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) continue to offer a course after its expiration date without renewing;

(c) allow an instructor whose instructor certification has expired to continue teaching;

(d) allow an individual student to earn more than eight credit hours of education in a single day;

(e) award credit to a student who has not complied with the minimum attendance requirements; or

(f) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course.

(7) An instructor may not:

(a) continue to teach any course after the course has expired and without renewing the course certification; or

(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted ~~after~~after the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.

(3)(a) A hearing before the board will be held in:

(i) a proceeding conducted ~~after~~after the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of ~~good moral character,~~ honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Section[s] 61-2g-501 and Section 61-2g-502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Subsection 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds of ~~that~~ the instructor's failure to evidence honesty, integrity or truthfulness~~attestation to upstanding moral character is false~~;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule, or order, when enforcement or implementation of the statute, rule, or order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as a trainee;

(ii) licensure or certification as an appraiser;

(iii) certification of a course, school, or instructor; and

(iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of ~~all~~ persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division ~~begin~~commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) ~~All~~ Informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) ~~Utah Administrative Code~~ Rule R151-4~~et seq.~~; and

(iii) the rules promulgated by the division.

(b) Except as provided in ~~this~~ Subsection (6)(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.

(c) In any proceeding under this section, ~~Subsection R162-2g-504,~~ the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) 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, to the respondent at the address last provided to the division pursuant to ~~S~~ ~~ubs~~ ~~ection~~ R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary 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.

(g) 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.

(h) Intervention is prohibited.

(i) Hearings shall be open to 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.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code ~~Subsection~~ ~~Section~~ R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for 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) At the time~~ (i) When 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 no later than 30 days following the mailing date of the notice of agency action pursuant to ~~this~~ Subsection (6)(a).

(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 agency action.

(ii) 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.

(iii) 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.

(iv)(A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(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.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. An applicant may submit experience for the successful completion of an AQB-approved PAREA program module including the Licensed Residential Module of 1,000 experience hours and the Certified Residential Module of 500 experience hours. Alternatively, the hours shown in the following schedule shall be awarded for form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

| TABLE 1 | |
|--|--|
| Property Type | Hours that may be earned |
| (a) one-unit dwelling, above-grade; (i) living area less than 4,000 square feet, including a site | Up to 10 hours (Expected avg hrs 7.5) |
| PART 1 | |
| Task | Hours |
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 |
| Interior Inspection | 0.5 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.5 |
| Improvement Cost Estimate | 0.5 |
| Income Value Estimate | 2.5 |
| Sales Comparison Value Estimate | 2.5 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 1.75 |
| Restricted Appraisal Report Preparation | 0.5 |
| (ii) living area 4,000 square feet or more, including a site | Up to 10 hours |
| PART 2 | |
| Task | Hours |
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.75 |
| Interior Inspection | 0.75 |
| Market Conditions | 0.75 |

| | |
|--|---|
| <u>Land Value Estimate</u> | <u>0.75</u> |
| <u>Improvement Cost Estimate</u> | <u>0.75</u> |
| <u>Income Value Estimate</u> | <u>3.0</u> |
| <u>Sales Comparison Value Estimate</u> | <u>3.0</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (b) multiple one-unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar: | 7 hours per dwelling, up to a maximum of 42 hours |
| (ii) over 25 dwellings | |
| (c) two to four-unit dwelling | 70 hours maximum |
| (i) 1-25 dwellings | |
| <u>PART 3</u> | |
| <u>Task</u> | <u>Hours</u> |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Exterior Inspection</u> | <u>0.5</u> |
| <u>Interior Inspection</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Land Value Estimate</u> | <u>0.5</u> |
| <u>Improvement Cost Estimate</u> | <u>0.5</u> |
| <u>Income Value Estimate</u> | <u>3.0</u> |
| <u>Sales Comparison Value Estimate</u> | <u>3.0</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form | Up to 10 hours |
| (e) residential lot, 1-4 unit | Up to 7 hours |
| <u>PART 4</u> | |
| <u>Task</u> | <u>Hours</u> |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Site Inspection</u> | <u>0.25</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Sales Comparison Value Estimate</u> | <u>1-3</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (f) multiple lots in the same subdivision, which lots are substantially similar | 5 hours per lot, up to a maximum of 30 hours |
| (i) 1-25 lots | |
| (ii) Over 25 maximum lots | 50 hours |
| (g) small parcel of less than 20 acres | Up to 6.5 hours |
| <u>PART 5</u> | |
| <u>Task</u> | <u>Hours</u> |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Site Inspection</u> | <u>0.25</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Sales Comparison Value Estimate</u> | <u>1-3</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |

| | |
|---|---------------------------------|
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (h) vacant land, 20-640 acres | 20-40 hours, per board decision |
| (k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies | 10-50 hours |
| (i) recreational, farm, or timber acreage suitable for a house site: | |
| (i) up to 10 acres | 10 hours |
| (ii) 10 acres or more | 15 hours |
| (j) other unusual structures or acreage that are much larger or more complex than typical properties | 5-35 hours, per board decision |
| (k) review of residential appraisals with no opinion of value developed as part of there view performed in conjunction with investigations by government agencies | 10-50 hours |

Appendix 2. General Experience Hours Schedule. Appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

| <u>TABLE 2</u> | |
|--|---------------------------------|
| <u>Property Type</u> | <u>Hours that may be earned</u> |
| (a) Apartment buildings: | 40 hours |
| (i) 5-100 units | |
| (ii) over 100 units | 50 hours |
| (b) hotel or motels: | 30 hours |
| (i) 50 units or fewer | |
| (ii) 51-150 units | 40 hours |
| (iii) over 150 units | 50 hours |
| (c) nursing home, rest home, care facilities: | 40 hours |
| (i) fewer than 80 beds | |
| (ii) 80 beds or more | 50 hours |
| (d) industrial or warehouse building: | 30 hours |
| (i) smaller than 20,000 square feet | |
| (ii) 20,000 square feet or more, single tenant | 40 hours |
| (iii) 20,000 square feet or more, multiple tenants | 50 hours |
| e) office buildings: | 30 hours |
| (i) smaller than 10,000 square feet | |
| (ii) 10,000 square feet or more, single tenant | 40 hours |
| (iii) 10,000 square feet or more, multiple tenants | 50 hours |

| | | |
|--|---|-----------|
| (f) entire condominium projects, using income approach to value: | | |
| (i) 5- to 30-unit project | 30 hours | |
| (ii) 31- or more-unit project | 50 hours | |
| (g) retail buildings: | 30 hours | |
| (i) smaller than 10,000 square feet | | |
| (ii) 10,000 square feet or more, single tenant | 40 hours | |
| (iii) 10,000 square feet or more, multiple tenants | 50 hours | |
| (ii) 10,000 square feet or more, single tenant | 40 hours | |
| (iii) 10,000 square feet or more, multiple tenants | 50 hours | |
| (f) entire condominium projects, using income approach to value: | 30 hours | |
| (i) 5- to 30-unit project | | |
| (ii) 31- or more-unit project | 50 hours | |
| (h) commercial, multi-unit, industrial, or other non-residential use acreage: | 20-40 hours | |
| (i) 1 to less than 100 acres | | |
| (ii) 100 acres or more, income approach to value | 50-60 hours | |
| (i) other unusual structures or assignments that are much larger or more complex than the properties described in Subsection (a) through (h) | 5 to 100 hours per board decision | |
| (i) entire subdivisions or planned unit developments (PUDs): | 30 hours | |
| (i) 1- to 25-unit subdivision or | | |
| (ii) over 25-unit subdivision or PUD | 50 hours | |
| (k) feasibility or market analysis | 5 to 100 hours, each per board decision, up to a maximum of 500 hours | |
| | Form | Narrative |
| (l) farm and ranch appraisals: | | |
| (i) irrigated cropland, pasture other than rangeland: | | |
| (A) 1 to less than 11 acres | 10 hrs | 15 hrs |
| (B) 11-less than 40 acres | 12.5 hrs | 20 hrs |
| (C) 40-less than 160 acres | 15 hrs | 25 hrs |
| (D) 160-less than 1,280 acres | 25 hrs | 40 hrs |
| (E) 1,280 acres or more | 40 hrs | 50 hrs |
| (ii) dry farm: | | |
| (A) 1 to less than 1,280 acres | 15 hrs | 25 hrs |
| (B) 1,280 acres or more | 20 hrs | 40 hrs |
| (m) Improvements on properties other than a rural residence, maximum 10 hours: | | |
| (i) dwelling | 5 hrs | 5 hrs |
| (ii) shed | 2.5 hrs | 2.5 hrs |
| (n) cattle ranches | 15 hrs | 20 hrs |
| (i) 0-200 head | | |
| (ii) 201-500 head | 25 hrs | 30 hrs |
| (iii) 501-1,000 head | 30 hrs | 40 hrs |
| (iv) more than 1,000 head | 40 hrs | 50 hrs |
| (o) sheep ranches | 25 hrs | 30 hrs |

| | | |
|---|---------------------|--------|
| (i) 0-2,000 head | | |
| (ii) more than 2,000 head | 35 hrs | 45 hrs |
| (ii) 101-300 head | 25 hrs | 30 hrs |
| (iii) more than 300 head | 30 hrs | 35 hrs |
| (q) orchards | 30 hrs | 40 hrs |
| (i) up to 50 acres | | |
| (ii) more than 50 acres | 40 hrs | 50 hrs |
| (r) rangeland or timber | 20 hrs | 25 hrs |
| (i) 0-640 acres | | |
| (ii) more than 640 acres | 30 hrs | 35 hrs |
| (s) poultry | 30 hrs | 40 hrs |
| (i) 0-100,000 birds | | |
| (ii) more than 100,000 birds | 40 hrs | 50 hrs |
| (t) mink | 30 hrs | 35 hrs |
| (i) 0-5,000 cages | | |
| (ii) more than 5,000 cages | 40 hrs | 50 hrs |
| (u) fish farm | 40 hrs | 50 hrs |
| (v) hog farm | 40 hrs | 50 hrs |
| (w) review of Appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies | 20-100 hours | |
| (x) natural resource properties, depending on complexity: | 1-20 hours per site | |
| (i) sand and gravel | | |
| (ii) mine | 1-110 hours | |
| (iii) oil and gas | 1-50 hours per site | |
| (y) pipelines and gas distribution properties, depending on complexity | 10-40 hours | |
| (z) telephone and electric properties, depending on complexity | 5-80 hours | |
| (aa) airline and railroad properties, depending on complexity | 10-80 hours | |
| (bb) appraisal review or audit, depending on complexity | 2.5-125 hours | |
| (cc) capitalization rate study | 10 to 100 hours | |
| (dd) mineral pricing study | 10 to 100 hours | |
| (ee) effective tax rate study | 10 to 100 hours | |
| (ff) Ad valorem centrally assessed property tax appeal preparation | 5 to 125 hours | |

Appendix 3. Mass Appraisal Experience Hours Schedule.

| TABLE 3 | |
|---|--------------------------|
| Property Type | Hours that may be earned |
| (a) one-unit dwelling, above-grade living area less than 4,000 square feet: | |
| PART 1 | |
| Task | Hours |
| Highest and Best Use Analysis | 0.25 |
| Income Value Estimate | 2.5 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 |
| Interior Inspection | 0.5 |

| | |
|---|-------------------|
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Land Value Estimate</u> | <u>0.5</u> |
| <u>Improvement Cost Estimate</u> | <u>0.5</u> |
| <u>Sales Comparison Value Estimate</u> | <u>2.5</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>1.75</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (b) one-unit dwelling, above-grade living area 4,000 square feet or more: | |
| <u>PART 2</u> | |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Exterior Inspection</u> | <u>0.75</u> |
| <u>Interior Inspection</u> | <u>0.75</u> |
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Land Value Estimate</u> | <u>0.75</u> |
| <u>Improvement Cost Estimate</u> | <u>0.75</u> |
| <u>Income Value Estimate</u> | <u>3.0</u> |
| <u>Sales Comparison Value Estimate</u> | <u>3.0</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (c) two- to four-unit dwelling: | |
| <u>PART 3</u> | |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Exterior Inspection</u> | <u>0.5</u> |
| <u>Interior Inspection</u> | <u>0.5</u> |
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Land Value Estimate</u> | <u>0.5</u> |
| <u>Improvement Cost Estimate</u> | <u>0.5</u> |
| <u>Income Value Estimate</u> | <u>3.0</u> |
| <u>Sales Comparison Value Estimate</u> | <u>3.0</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (d) commercial and industrial buildings, depending on complexity: | |
| <u>PART 4</u> | |
| <u>Highest and Best Use Analysis</u> | <u>0.25</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Exterior Inspection</u> | <u>0.5-4.5</u> |
| <u>Interior Inspection</u> | <u>0.5-9.5</u> |
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>1.5</u> |
| <u>Land Value Estimate</u> | <u>2.0</u> |
| <u>Improvement Cost Estimate</u> | <u>2.0</u> |
| <u>Income Value Estimate</u> | <u>2-15</u> |
| <u>Sales Comparison Value Estimate</u> | <u>2-15</u> |
| <u>Final Reconciliation</u> | <u>0.5</u> |
| <u>Appraisal Report Preparation</u> | <u>1-10</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (e) agricultural and other improvements, depending on complexity: | |
| <u>PART 5</u> | |
| <u>Highest and Best Use Analysis</u> | <u>0.25 - 0.5</u> |

| | |
|--|---|
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Exterior Inspection</u> | <u>0.25 - 0.5</u> |
| <u>Interior Inspection</u> | <u>0.5-1</u> |
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Land Value Estimate</u> | <u>0.5 - 1</u> |
| <u>Improvement Cost Estimate</u> | <u>0.5 - 1</u> |
| <u>Income Value Estimate</u> | <u>1 - 3</u> |
| <u>Sales Comparison Value Estimate</u> | <u>1 - 3</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| (f) vacant land, depending on complexity: | |
| <u>PART 6</u> | |
| <u>Highest and Best Use Analysis</u> | <u>0.25 - 0.5</u> |
| <u>Neighborhood Description</u> | <u>0.5</u> |
| <u>Site Inspection</u> | <u>0.25</u> |
| <u>Land Segregation</u> | <u>0.25</u> |
| <u>CAMA Data Input and Review</u> | <u>0.5</u> |
| <u>Inspection</u> | <u>0.25 - 2.25</u> |
| <u>Market Conditions</u> | <u>0.75</u> |
| <u>Income Value Estimate</u> | <u>1-3</u> |
| <u>Sales Comparison Value Estimate</u> | <u>1-3</u> |
| <u>Final Reconciliation</u> | <u>0.25</u> |
| <u>Appraisal Report Preparation</u> | <u>2.0</u> |
| <u>Restricted Appraisal Report Preparation</u> | <u>0.5</u> |
| g) land valuation guideline for development: | |
| (i) 25 or fewer parcels | <u>10 hours</u> |
| (ii) 26 to 500 parcels | <u>30 hours</u> |
| (iii) over 500 parcels | <u>25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline</u> |
| (h) land valuation guideline update: (i) 25 or fewer parcels | <u>1 hour</u> |
| (ii) 26 to 500 parcels | <u>3 hours</u> |
| (iii) over 500 parcels | <u>2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline</u> |
| (i) assessment or sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation: | |
| (i) base study of 100 reviewed sales | <u>125 hours</u> |
| (ii) additional increments of 100 sales | <u>25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study</u> |
| (j) multiple regression model, development and implementation: | <u>100 hours</u> |
| (i) fewer than 5,000 parcels | |

| | |
|---|--|
| (ii) additional increments of 500 parcels | 5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model |
| (k) industry depreciation study and analysis | 5 to 40 hours |
| (l) reviews of "land value in use" in accordance with Section 59-2-505: | |
| (i) office review only | 0.25 hours |
| (ii) field review | 0.5 hours |
| (m) natural resource properties, depending on complexity: | |
| (i) sand and gravel | 1-20 hours per site |
| (ii) mine | 1-110 hours |
| (iii) oil and gas | 1-50 hours per site |
| (n) pipelines and gas distribution properties, depending on complexity | 10-40 hours |
| (o) telephone and electrics properties, depending on complexity | 5-80 hours |
| (p) airline and railroad properties, depending on complexity | 10-80 hours |
| (q) appraisal review or audit, depending on complexity | 2.5-125 hours |
| (r) capitalization rate study | 10 to 100 hours |
| (s) mineral pricing study | 10 to 100 hours |
| (t) effective tax rate study | 10 to 100 hours |
| (u) Ad valorem centrally assessed property tax appeal preparation | 5 to 125 hours |

Appendix 4. Appraiser Education.

| TABLE 4 Required Core Curriculum | |
|--|----------------|
| Trainee Appraiser | Hours |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15-Hour national USPAP Course or its Equivalent | 15 Hours |
| Utah Appraiser and Trainee Course | 6 Hours |
| Trainee Appraiser Education Requirements | 81 Total Hours |
| Licensed Appraiser | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15-Hour national USPAP Course or its Equivalent | 15 Hours |
| Utah Appraiser and Trainee Course | 6 Hours |
| Residential Market Analysis and Highest and Best Use | 15 Hours |
| Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| Residential Sales Comparison and Income Approaches | 30 Hours |

| | |
|---|-----------------|
| Residential Report Writing and Case Studies | 15 Hours |
| Licensed Residential Education Requirements | 156 Total Hours |
| Certified Residential | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15-Hour national USPAP Course or its Equivalent | 15 Hours |
| Utah Appraiser and Trainee Course | 6 Hours |
| Residential Market Analysis and Highest and Best Use | 15 Hours |
| Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| Residential Sales Comparison and Income Approaches | 30 Hours |
| Residential Report Writing and Case Studies | 15 Hours |
| Statistics, Modeling and Finance | 15 Hours |
| Advanced Residential Applications and Case Studies | 15 Hours |
| Appraisal Subject Matter Electives (May include hours over the minimum shown in other modules) | 20 Hours |
| Certified Residential Education Requirements | 206 Total Hours |
| Certified General* | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15-Hour national USPAP Course or its Equivalent | 15 Hours |
| Utah Appraiser and Trainee Course | 6 Hours |
| *General Appraiser Market Analysis and Highest and Best Use | 30 Hours |
| Statistics, Modeling and Finance | 15 Hours |
| *General Sales Comparison and Income Approaches | 30 Hours |
| *General Appraiser Site Valuation and Cost Approach | 30 Hours |
| General Appraiser Income Approach | 60 Hours |
| *General Appraiser Report Writing and Case Studies | 30 Hours |
| Appraisal Subject Matter Electives (May include hours over the minimum shown in other modules) | 30 Hours |
| Certified General Education Requirements | 306 Total Hours |
| *The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential. | |

| TABLE 5 Continuing Education Topics (Division Certification Required) | |
|---|--|
| (1) Ad valorem taxation | |
| (2) Arbitration, dispute resolution | |

| |
|---|
| (3) Courses related to the practice of real estate appraisal or Consulting |
| (4) Development cost estimating |
| (5) Ethics and standards of professional practice, USPAP |
| (6) Land use planning, zoning |
| (7) Management, leasing, timesharing |
| (8) Property development, partial interests |
| (9) Real estate law, easements, and legal interests |
| (10) Real estate litigation, damages, condemnation |
| (11) Real estate financing and investment |
| (12) Real estate appraisal-related computer applications |
| (13) Real estate securities and syndication |
| (14) Developing opinions of real property value in appraisals that also include personal property or business value |
| (15) Seller concessions and impact on value |
| (16) Energy efficient items and "green building" appraisals |

[R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

| TABLE | |
|---|--|
| Property Type | Hours that may be earned |
| (a) one unit dwelling, above grade: | |
| — (i) living area less than 4,000 square feet, including a site | Up to 10 hours (Expected avg hrs 7.5) |

Part 1

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 |
| Interior Inspection | 0.5 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.5 |
| Improvement Cost Estimate | 0.5 |
| Income Value Estimate | 2.5 |
| Sales Comparison Value Estimate | 2.5 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 1.75 |
| Restricted Appraisal Report Preparation | 0.5 |

— (ii) living area 4,000 square feet or more, including a site Up to 10 hours

Part 2

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.75 |
| Interior Inspection | 0.75 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.75 |
| Improvement Cost Estimate | 0.75 |
| Income Value Estimate | 3.0 |
| Sales Comparison Value Estimate | 3.0 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(b) multiple one unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar

— (i) 1-25 dwellings 7 hours per dwelling, up to a maximum of 42 hours
 — (ii) over 25 dwellings 70 hours maximum
 (c) two to four unit dwelling

Part 3

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 |
| Interior Inspection | 0.5 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.5 |
| Improvement Cost Estimate | 0.5 |
| Income Value Estimate | 3.0 |
| Sales Comparison Value Estimate | 3.0 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form Up to 10 hours
 (e) residential lot, 1-4 unit Up to 7 hours

Part 4

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Site Inspection | 0.25 |
| Market Conditions | 0.75 |
| Sales Comparison Value Estimate | 1-3 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(f) multiple lots in the same subdivision, which lots are substantially similar
 — (i) 1-25 lots 5 hours per lot, up to a maximum of 30 hours
 — (ii) Over 25 lots 50 hours maximum
 (g) small parcel of less than 20 acres up to 6.5 hours

Part 5

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Site Inspection | 0.25 |
| Market Conditions | 0.75 |
| Sales Comparison Value Estimate | 1-3 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(h) vacant land, 20-640 acres 20-40 hours, per board decision

(i) recreational, farm, or timber acreage suitable for a house site:
 — (i) up to 10 acres 10 hours
 — (ii) 10 acres or more 15 hours
 (j) all other unusual structures or acreage which are much larger or more complex than typical properties 5-35 hours, per board decision
 (k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies 10-50 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal

reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE

| Property Type | Hours that may be earned | |
|--|--|-----------|
| (a) apartment buildings+ | | |
| — (i) 5-100 units | 40 hours | |
| — (ii) over 100 units | 50 hours | |
| (b) hotel or motels+ | | |
| — (i) 50 units or fewer | 30 hours | |
| — (ii) 51-150 units | 40 hours | |
| — (iii) over 150 units | 50 hours | |
| (c) nursing home, rest home, care facilities+ | | |
| — (i) fewer than 80 beds | 40 hours | |
| — (ii) 80 beds or more | 50 hours | |
| (d) industrial or warehouse building+ | | |
| — (i) smaller than 20,000 square feet | 30 hours | |
| — (ii) 20,000 square feet or more, single tenant | 40 hours | |
| — (iii) 20,000 square feet or more, multiple tenants | 50 hours | |
| (e) office buildings+ | | |
| — (i) smaller than 10,000 square feet | 30 hours | |
| — (ii) 10,000 square feet or more, single tenant | 40 hours | |
| — (iii) 10,000 square feet or more, multiple tenants | 50 hours | |
| (f) entire condominium projects, using income approach to value+ | | |
| — (i) 5- to 30-unit project | 30 hours | |
| — (ii) 31- or more unit project | 50 hours | |
| (g) retail buildings+ | | |
| — (i) smaller than 10,000 square feet | 30 hours | |
| — (ii) 10,000 square feet or more, single tenant | 40 hours | |
| — (iii) 10,000 square feet or more, multiple tenants | 50 hours | |
| (h) commercial, multi-unit, industrial, or other nonresidential use acreage+ | | |
| — (i) 1- to less than 100 acres | 20-40 hours | |
| — (ii) 100 acres or more, income approach to value | 50-60 hours | |
| (i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein+ | 5-100 hours per board decision | |
| (j) entire subdivisions or planned unit developments (PUDs)+ | | |
| — (i) 1- to 25-unit subdivision or PUD | 30 hours | |
| — (ii) over 25-unit subdivision or PUD | 50 hours | |
| (k) feasibility or market analysis | 5-100 hours, each per board decision, up to a maximum of 500 hours | |
| (l) farm and ranch appraisals: | Form | Narrative |
| — (i) irrigated cropland, pasture other than rangeland+ | | |
| — (A) 1- to less than 11 acres | 10 hrs | 15 hrs |
| — (B) 11- less than 40 acres | 12.5 hrs | 20 hrs |
| — (C) 40- less than 160 acres | 15 hrs | 25 hrs |
| — (D) 160- less than 1280 acres | 25 hrs | 40 hrs |
| — (E) 1280- acres or more | 40 hrs | 50 hrs |
| — (ii) dry farm+ | | |
| — (A) 1- to less than 1280 acres | 15 hrs | 25 hrs |
| — (B) 1280- acres or more | 20 hrs | 40 hrs |
| (m) improvements on properties other than a rural residence, maximum 10 hours+ | | |
| — (i) dwelling | 5 hrs | 5 hrs |

| | | |
|---|--------------|---------|
| — (ii) shed | 2.5 hrs | 2.5 hrs |
| (n) cattle ranches | | |
| — (i) 0-200 head | 15 hrs | 20 hrs |
| — (ii) 201-500 head | 25 hrs | 30 hrs |
| — (iii) 501-1000 head | 30 hrs | 40 hrs |
| — (iv) more than 1000 head | 40 hrs | 50 hrs |
| (o) sheep ranches | | |
| — (i) 0-2000 head | 25 hrs | 30 hrs |
| — (ii) more than 2000 head | 35 hrs | 45 hrs |
| (p) dairy, including all improvements except a dwelling | | |
| — (i) 0-100 head | 20 hrs | 25 hrs |
| — (ii) 101-300 head | 25 hrs | 30 hrs |
| — (iii) more than 300 head | 30 hrs | 35 hrs |
| (q) orchards | | |
| — (i) up to 50 acres | 30 hrs | 40 hrs |
| — (ii) more than 50 acres | 40 hrs | 50 hrs |
| (r) rangeland/timber | | |
| — (i) 0-640 acres | 20 hrs | 25 hrs |
| — (ii) more than 640 acres | 30 hrs | 35 hrs |
| (s) poultry | | |
| — (i) 0-100,000 birds | 30 hrs | 40 hrs |
| — (ii) more than 100,000 birds | 40 hrs | 50 hrs |
| (t) mink | | |
| — (i) 0-5000 cages | 30 hrs | 35 hrs |
| — (ii) more than 5000 cages | 40 hrs | 50 hrs |
| (u) fish farm | 40 hrs | 50 hrs |
| (v) hog farm | 40 hrs | 50 hrs |
| (w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies | 20-100 hours | |

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE

| Property Type | Hours that may be earned | |
|---|--------------------------|--|
| (a) one unit dwelling, above grade living area less than 4,000 square feet+ | | |
| Part 1 | | |
| Task | Hours | |
| Highest and Best Use Analysis | 0.25 | |
| Neighborhood Description | 0.5 | |
| Exterior Inspection | 0.5 | |
| Interior Inspection | 0.5 | |
| CAMA Data Input and Review | 0.5 | |
| Market Conditions | 0.75 | |
| Land Value Estimate | 0.5 | |
| Improvement Cost Estimate | 0.5 | |
| Income Value Estimate | 2.5 | |
| Sales Comparison Value Estimate | 2.5 | |
| Final Reconciliation | 0.25 | |
| Appraisal Report Preparation | 1.75 | |
| Restricted Appraisal Report Preparation | 0.5 | |
| (b) one unit dwelling, above grade living area 4,000 square feet or more+ | | |
| Part 2 | | |
| Task | Hours | |
| Highest and Best Use Analysis | 0.25 | |
| Neighborhood Description | 0.5 | |
| Exterior Inspection | 0.75 | |
| Interior Inspection | 0.75 | |
| CAMA Data Input and Review | 0.5 | |
| Market Conditions | 0.75 | |
| Land Value Estimate | 0.75 | |
| Improvement Cost Estimate | 0.75 | |
| Income Value Estimate | 3.0 | |
| Sales Comparison Value Estimate | 3.0 | |
| Final Reconciliation | 0.25 | |
| Appraisal Report Preparation | 2.0 | |

Restricted Appraisal Report Preparation 0.5

(c) two to four unit dwellings+

Part 3

| Task | Hours |
|---|-------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 |
| Interior Inspection | 0.5 |
| CAMA Data Input and Review | 0.5 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.5 |
| Improvement Cost Estimate | 0.5 |
| Income Value Estimate | 3.0 |
| Sales Comparison Value Estimate | 3.0 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(d) commercial and industrial buildings,
—depending on complexity+

Part 4

| Task | Hours |
|---|---------|
| Highest and Best Use Analysis | 0.25 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.5 4.5 |
| Interior Inspection | 0.5 0.5 |
| CAMA Data Input and Review | 0.5 |
| Market Conditions | 1.5 |
| Land Value Estimate | 2.0 |
| Improvement Cost Estimate | 2.0 |
| Income Value Estimate | 2.15 |
| Sales Comparison Value Estimate | 2.15 |
| Final Reconciliation | 0.5 |
| Appraisal Report Preparation | 1.10 |
| Restricted Appraisal Report Preparation | 0.5 |

(e) agricultural and other improvements,
—depending on complexity+

Part 5

| Task | Hours |
|---|----------|
| Highest and Best Use Analysis | 0.25 0.5 |
| Neighborhood Description | 0.5 |
| Exterior Inspection | 0.25 0.5 |
| Interior Inspection | 0.5 1 |
| CAMA Data Input and Review | 0.5 |
| Market Conditions | 0.75 |
| Land Value Estimate | 0.5 1 |
| Improvement Cost Estimate | 0.5 1 |
| Income Value Estimate | 1.3 |
| Sales Comparison Value Estimate | 1.3 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(f) vacant land, depending on complexity+

Part 6

| Task | Hours |
|---|-----------|
| Highest and Best Use Analysis | 0.25 0.5 |
| Neighborhood Description | 0.5 |
| Site Inspection | 0.25 |
| Land Segregation | 0.25 |
| CAMA Data Input and Review | 0.5 |
| Inspection | 0.25 2.25 |
| Market Conditions | 0.75 |
| Income Value Estimate | 1.3 |
| Sales Comparison Value Estimate | 1.3 |
| Final Reconciliation | 0.25 |
| Appraisal Report Preparation | 2.0 |
| Restricted Appraisal Report Preparation | 0.5 |

(g) land valuation guideline (development)+

| | |
|-------------------------|--|
| (i) 25 or fewer parcels | 10 hours |
| (ii) 26 to 500 parcels | 30 hours |
| (iii) over 500 parcels | 25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline |

(h) land valuation guideline (update)+

| | |
|-------------------------|--|
| (i) 25 or fewer parcels | 1 hour |
| (ii) 26 to 500 parcels | 3 hours |
| (iii) over 500 parcels | 2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline |

(i) assessment/sales ratio study, data
collection, verification, sample inspection,
analysis, conclusion, and implementation+

| | |
|---|---|
| (i) base study of 100 reviewed sales | 125 hours |
| (ii) additional increments of 100 sales | 25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study |

(j) multiple regression model,
—development and implementation+

| | |
|---|--|
| (i) fewer than 5,000 parcels | 100 hours |
| (ii) additional increments of 500 parcels | 5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model |

(k) industry depreciation study and analysis 5 to 40 hours

(l) reviews of "land value in use" in
—accordance with U.C.A. Section 59-2-505+

| | |
|------------------------|------------|
| (i) office review only | 0.25 hours |
| (ii) field review | 0.5 hours |

(m) natural resource properties,
—depending on complexity+

| | |
|---------------------|------------------------|
| (i) sand and gravel | 1-20 hours per site |
| (ii) mine | 1-110 hours |
| (iii) oil and gas | 1-50 hours per site |

(n) pipelines and gas distribution
—properties, depending on complexity 10-40 hours

(o) telephone and electric properties,
—depending on complexity 5-80 hours

(p) airline and railroad properties,
—depending on complexity 10-80 hours

(q) appraisal review/audit, depending
—on complexity 2.5-125 hours

(r) capitalization rate study 10 to 100 hours

(s) mineral pricing study 10 to 100 hours

(t) effective tax rate study 10 to 100 hours

(u) Ad valorem centrally assessed
property tax appeal preparation 5 to 125 hours

Appendix 4. Appraiser Education.

TABLE 1
Required Core Curriculum

| | |
|--|----------------|
| Trainee Appraiser | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15 Hour national USPAP Course or its Equivalent | 15 Hours |
| Trainee Appraiser Education Requirements | 75 Total Hours |

| | |
|--|-----------------|
| Licensed Appraiser | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15 Hour national USPAP Course or its Equivalent | 15 Hours |
| Residential Market Analysis and Highest and Best Use | 15 Hours |
| Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| Residential Sales Comparison and Income Approaches | 30 Hours |
| Residential Report Writing and Case Studies | 15 Hours |
| Licensed Residential Education Requirements | 150 Total Hours |

| | |
|---|-----------------|
| Certified Residential | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15 Hour national USPAP Course or its Equivalent | 15 Hours |
| Residential Market Analysis and Highest and Best Use | 15 Hours |
| Residential Appraiser Site Valuation and Cost Approach | 15 Hours |
| Residential Sales Comparison and Income Approaches | 30 Hours |
| Residential Report Writing and Case Studies | 15 Hours |
| Statistics, Modeling and Finance | 15 Hours |
| Advanced Residential Applications and Case Studies | 15 Hours |
| Appraisal Subject Matter Electives | 20 Hours |
| (May include hours over minimum shown above in other modules) | |
| Certified Residential Education Requirements | 200 Total Hours |

| | |
|---|-----------------|
| Certified General* | |
| Basic Appraisal Principles | 30 Hours |
| Basic Appraisal Procedures | 30 Hours |
| 15 Hour national USPAP Course or its Equivalent | 15 Hours |
| *General Appraiser Market Analysis and Highest and Best Use | 30 Hours |
| Statistics, Modeling and Finance | 15 Hours |
| *General Sales Comparison and Income Approaches | 30 Hours |
| *General Appraiser Site Valuation and Cost Approach | 30 Hours |
| General Appraiser Income Approach | 60 Hours |
| *General Appraiser Report Writing and Case Studies | 30 Hours |
| Appraisal Subject Matter Electives | 30 Hours |
| (May include hours over minimum shown above in other modules) | |
| Certified General Education Requirements | 300 Total Hours |

*The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential.

TABLE 2

Continuing Education Topics (Division Certification Required)

- (1) Ad valorem taxation
- (2) Arbitration, dispute resolution
- (3) Courses related to the practice of real estate appraisal or consulting
- (4) Development cost estimating
- (5) Ethics and standards of professional practice, USPAP
- (6) Land use planning, zoning
- (7) Management, leasing, timesharing
- (8) Property development, partial interests

- (9) Real estate law, easements, and legal interests
- (10) Real estate litigation, damages, condemnation
- (11) Real estate financing and investment
- (12) Real estate appraisal related computer applications
- (13) Real estate securities and syndication
- (14) Developing opinions of real property value in appraisals that also include personal property and/or business value
- (15) Seller concessions and impact on value
- (16) Energy efficient items and "green building" appraisals]

KEY: real estate appraisals, school certification, instructor certification, education options

Date of Last Change: 2022~~April 28, 2021~~

Notice of Continuation: April 28, 2021

Authorizing, and Implemented or Interpreted Law: 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

Utah Admin. Code Ref (R no.): **R356-3**

Filing ID
54690

Agency Information

| | | |
|-----------------------------|---|--------------------|
| 1. Department: | Governor | |
| Agency: | Criminal and Juvenile Justice (State Commission on) | |
| Room no.: | E330 | |
| Building: | Senate Building (at State Capitol) | |
| Street address: | 350 N. State Street | |
| City, state and zip: | Salt Lake City, Utah 84114 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Angelo Perillo | 801-538-1047 | aperillo@utah.gov |
| Ken Matthews | 801-538-1058 | kmatthews@utah.gov |

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

General Information**2. Rule or section catchline:**

R356-3. Electronic Meetings

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

The purpose of this rule is to establish procedures for conducting an electronic meeting of any public body created in Title 63M, Chapter 7. The purpose of this rule to repeal and reenact the Electronic Meetings to make it compliant with new requirements.

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 reenacted rule has a more descriptive list of procedures. Please refer to the rule text for the differences.

Fiscal Information

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

A) State budget:

This program will create no cost burden or savings for the state. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

B) Local governments:

This program will create no cost burden or savings for local government. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for small businesses. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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

This program will create no cost burden or savings for non-small businesses. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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 costs or saving for other persons as a result of this rule. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new costs.

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 costs or saving for any affected persons as a result of this rule. This reenacted rule will not change the way electronic meetings are being conducted today. It will not add any additional time or tasks that could lead to new 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):

This rule will have no fiscal impact on businesses. Tom Ross, 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

B) Department head approval of regulatory impact analysis:

The Executive Director of Criminal and Juvenile Justice (State Commission on), Tom Ross, 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 52-4-202

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|---------------------------------|--------------|------------|
| Agency head or designee, and title: | Tom Ross, Executive Director | Date: | 06/14/2022 |
|--|---------------------------------|--------------|------------|

R356. Governor, Criminal and Juvenile Justice (State Commission on).

R356-3. Electronic Meetings.**[R356-3-1. Authority and Purpose.**

(1) This rule is authorized by Section 52-4-207(2)(a) which requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings.

(2) The purpose of this rule is to establish procedures for the public bodies created in Title 63M, Chapter 7 and Title 77, Chapter 32 to hold open meetings by electronic means.

R356-3-2. Definitions.

(1) Terms used in this rule are found in Section 52-4-103.

(2) In addition:

(a) "CCJJ" means the Utah Commission on Criminal and Juvenile Justice; and

(b) "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.

R356-3-3. Procedures.

(1) If a member of the public body wishes to participate in a meeting through electronic means, the member shall contact the staff at CCJJ which assists the public body. The staff at CCJJ shall determine whether an electronic meeting is practical given the facility requirements needed to conduct the meeting electronically in a manner that allows for attendance, participation and monitoring as required by the Open and Public Meetings Act.

(2) If an electronic meeting is to be held, notice of the meeting shall indicate the anchor location and how members of the public body may participate in the meeting electronically. The anchor location shall have sufficient space and facilities so the public may attend, monitor and participate in the open portions of the meeting.

(3) Any member of a public body may participate electronically at an electronic meeting. On the record, the presiding officer shall identify all those who are participating electronically. A member of the public body who participates in the meeting electronically shall be counted as present at the meeting for purposes of establishing a quorum, participating in the meeting, and voting.]

R356-3-1. Authority.

(1) This rule is authorized by Section 52-4-207 which requires any public body that convenes or conducts an electronic meeting to establish written rules or procedures for such meetings.

(2) This rule is also authorized by the Utah Administrative Rulemaking Act at Section 63G-3-201 which requires an agency to make rules when agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

R356-3-2. Purpose.

The purpose of this rule is to establish procedures for conducting an electronic meeting of any public body created in Title 63M, Chapter 7, Criminal Justice and Substance Abuse.

R356-3-3. Procedures.

(1) A public body described in this rule may hold an open and public meeting where members of the public body or the general public are allowed to participate electronically or telephonically.

(2) When an electronic meeting is scheduled, the public notice required by Section 52-4-202 shall describe:

(a) the electronic or telephonic method by which members of the public body or the general public may participate; and

(b) the anchor location where members of the public body or the general public may attend, monitor, and participate in the open portions of the meeting.

(3)(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected.

(b) The anchor location shall have sufficient space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) At the commencement of the meeting the chair shall identify for the record all those who are appearing telephonically or electronically.

(5) A member who appears electronically or telephonically shall be counted as present for purposes of determining a quorum.

(6)(a) A member who appears electronically or telephonically may fully participate and vote on any matter before the public body.

(b) Votes by members who are appearing electronically or telephonically shall be confirmed by the chair.

KEY: electronic meetings, procedures

Date of Last Change: 2022 [March 13, 2017]

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

| NOTICE OF PROPOSED RULE | | |
|----------------------------------|---------|-----------------|
| TYPE OF RULE: Repeal and Reenact | | |
| Utah Admin. Code Ref (R no.): | R590-93 | Filing ID 54692 |

Agency Information

| | | |
|--|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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: |
| R590-93. Replacement of Life Insurance and Annuities |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| The 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 the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, the Enforcement Date section (the current Section R590-93-12) is not reenacted because this rule is already in force, and update the Severability section (the new Section R590-93-9) 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, Insurance 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| 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-22-429 | Section 31A-23a-402 |

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: | 08/01/2022 |

| | |
|---|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|--|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/15/2022 |
|--|--|--------------|------------|

R590. Insurance, Administration.**R590-93. Replacement of Life Insurance and Annuities.****~~R590-93-1. Authority.~~**

~~This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A, Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive, and Subsection 31A-22-429, which gives the commissioner authority to require statements regarding existing insurance and adopt the notice regarding replacement.~~

R590-93-2. Purpose and Scope.

- ~~(1) The purpose of this rule is:~~
- ~~(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and~~
 - ~~(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:~~
 - ~~(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;~~
 - ~~(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and~~
 - ~~(iii) establish penalties for failure to comply with requirements of Section 31A-22-429 and this rule.~~
 - ~~(2) This rule applies to all insurers and producers doing life insurance and annuity transactions in this state.~~
 - ~~(3) Unless otherwise specifically included, this rule shall not apply to transactions involving:~~
 - ~~(a) credit life insurance;~~
 - ~~(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;~~
 - ~~(c) group life insurance and annuities used to fund prearranged funeral contracts;~~
 - ~~(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner or when a term conversion privilege is exercised among corporate affiliates;~~
 - ~~(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;~~
 - ~~(f) policies or contracts used to fund:~~

~~_____ (A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);~~

~~_____ (B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;~~

~~_____ (C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or~~

~~_____ (D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.~~

~~_____ (ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;~~

~~_____ (g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;~~

~~_____ (h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;~~

~~_____ (i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or~~

~~_____ (j) structured settlements.~~

~~_____ (4) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.~~

R590-93-3. Definitions.

~~_____ In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.~~

~~_____ (1) "Direct response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.~~

~~_____ (2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."~~

~~_____ (3) "Existing policy or contract" means an individual life insurance policy, herein referred to as policy, or annuity contract, herein referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.~~

~~_____ (4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an~~

~~existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(e). A financed purchase is a replacement.~~

~~_____ (5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.~~

~~_____ (6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2006 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.~~

~~_____ (7)(a) "Policy summary" for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:~~

~~_____ (i) current death benefit;~~

~~_____ (ii) annual contract premium;~~

~~_____ (iii) current cash surrender value;~~

~~_____ (iv) current dividend;~~

~~_____ (v) application of current dividend; and~~

~~_____ (vi) amount of outstanding loan.~~

~~_____ (b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:~~

~~_____ (i) the beginning and end date of the current report period;~~

~~_____ (ii) the policy value at the end of the previous report period and at the end of the current report period;~~

~~_____ (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;~~

~~_____ (iv) the current death benefit at the end of the current report period on each life covered by the policy;~~

~~_____ (v) the net cash surrender value of the policy as of the end of the current report period; and~~

~~_____ (vi) the amount of outstanding loans, if any, as of the end of the current report period.~~

~~_____ (8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.~~

~~_____ (9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.~~

~~_____ (10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:~~

~~_____ (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;~~

~~_____ (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;~~

~~_____ (c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;~~

~~_____ (d) reissued with any reduction in cash value; or~~

~~_____ (e) used in a financed purchase.~~

~~_____ (11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.~~

R590-93-4. Duties of Producers.

~~_____ A producer shall comply with Section 31A-22-429.~~

R590-93-5. Duties of Insurers that Use Producers.

~~_____ Each insurer shall:~~

~~_____ (1) maintain a system of supervision and control to insure compliance with the requirements of Section 31A-22-429 and this rule that shall include at least the following:~~

~~_____ (a) inform its producers of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into all relevant producer training manuals prepared by the insurer;~~

~~_____ (b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;~~

~~_____ (c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;~~

~~_____ (d) procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;~~

~~_____ (e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;~~

~~_____ (2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:~~

~~_____ (a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;~~

~~_____ (b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;~~

~~_____ (c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;~~

~~_____ (d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and~~

~~_____ (e) replacements, indexed by replacing producer and existing insurer;~~

~~_____ (3) require with or as a part of each application for life insurance or an annuity a signed statement by the applicant as to:~~

~~_____ (a) whether the applicant has existing policies or contracts; and~~

~~_____ (b) whether the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract;~~

~~_____ (4) require with each application for life insurance or annuity that indicates the replacement, discontinuance, or change of~~

~~an existing policy or contract, a completed notice regarding replacements as contained in Appendix A or Appendix C;~~

~~_____ (5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection 31A-22-429(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the signed statement with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;~~

~~_____ (6) ascertain that the sales material and illustrations required by Subsection 31A-22-429(5) are complete and accurate for the proposed policy or contract;~~

~~_____ (7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and~~

~~_____ (8) maintain records in any media or by any process that accurately reproduces the actual document.~~

R590-93-6. Duties of Replacing Insurers that Use Producers.

~~_____ (1) Where a replacement is involved in the transaction, the replacing insurer shall:~~

~~_____ (a) verify that the required forms are received and are in compliance with this rule;~~

~~_____ (b) with respect to an electronically completed notice, the replacing insurer shall send a printed copy of the electronically executed notice to the applicant within five business days of the date the notice is received by the company;~~

~~_____ (c) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;~~

~~_____ (d) be able to produce copies of the notice regarding replacement required in Subsection 31A-22-429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and~~

~~_____ (e) provide to the policy or contract holder notice of the right to return the policy or contract within 30 calendar days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.~~

~~_____ (2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.~~

~~_____ (3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A-22-429(5) with regard to sales materials, the insurer may:~~

~~_____ (a) require with each application a statement signed by the producer that:~~

~~_____ (i) represents that the producer used only company-approved sales material; and~~

~~(ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A-22-429(4); and~~
~~(b) within ten business days of the issuance of the policy or contract:~~
~~(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A-22-429(4);~~
~~(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and~~
~~(iii) stress the importance of retaining copies of the sales material for future reference; and~~
~~(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.~~

R590-93-7. Duties of the Existing Insurer.

~~Where a replacement is involved in the transaction, the existing insurer shall:~~

~~(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;~~
~~(2) within 5 business days of receiving a replacement notice, send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The policy or contract information shall be provided within five business days of receipt of the request from the policy or contract holder; and~~
~~(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.~~

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

~~(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.~~
~~(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:~~
~~(a) provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar document filed with the commissioner. In these instances the insurer may delete the references to the producer,~~

~~including the producer's signature, and references not applicable to the product being sold or replaced, without having to file the document with the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and~~
~~(b) comply with the requirements of Subsection R590-93-6(1)(e), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).~~

R590-93-9. Violations and Penalties.

~~(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:~~

~~(a) any deceptive or misleading information set forth in sales material;~~
~~(b) failing to ask the applicant in completing the application the pertinent questions regarding existing policies or contracts and whether the proposed insurance will replace, discontinue, or change an existing policy or contract;~~
~~(c) the intentional incorrect recording of an answer;~~
~~(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer;~~
~~(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company; or~~
~~(f) advising a policy or contract holder to obtain policy values from an existing policy or contract with the intent to indirectly replace the policy or contract without complying with the requirements of this rule.~~
~~(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.~~

~~(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.~~

~~(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.~~

R590-93-10. Relationship to Other Statutes and Rules.

~~If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.~~

R590-93-11. Severability.

~~If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.~~

R590-93-12. Enforcement Date.

~~The commissioner will begin enforcing the provisions of this revised rule as of the effective date of the changes.]~~

R590-93-1. Authority.

~~This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-22-429, and 31A-23a-402.~~

R590-93-2. Purpose and Scope.

- ~~(1) The purpose of this rule is to:~~
 - ~~(a) regulate the activities of insurers and producers regarding the replacement of existing life insurance and annuities;~~
 - ~~(b) protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct for replacement or financed purchase transactions;~~
 - ~~(c) ensure that each purchaser receives information to make a decision in their best interest; and~~
 - ~~(d) reduce the opportunity for misrepresentation and incomplete disclosure.~~
- ~~(2) This rule applies to each insurer and producer transacting life insurance and annuity business in this state.~~
- ~~(3) Unless otherwise specifically included, this rule does not apply to a transaction involving:~~
 - ~~(a) credit life insurance;~~
 - ~~(b) group life insurance or a group annuity if there is no direct solicitation of an individual by a producer;~~
 - ~~(c) group life insurance or a group annuity used to fund a prearranged funeral contract;~~
 - ~~(d) an application to exercise a contractual change or a conversion privilege for an existing policy or contract when:~~
 - ~~(i) the existing policy or contract is being replaced by the same insurer according to a program filed with the commissioner; or~~
 - ~~(ii) when a term conversion privilege is exercised among corporate affiliates;~~
 - ~~(e) unexpired life insurance to replace life insurance under a binding or conditional receipt issued by the same insurer;~~
 - ~~(f) except as outlined in Subsection (4), a policy or contract used to fund:~~
 - ~~(i) an employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act, 29 U.S.C. 1001 (ERISA);~~
 - ~~(ii) a plan described by Sections 401(a), 401(k), or 403(b) of the Internal Revenue Code, 26 U.S.C. Sec. 25, if the plan, for purposes of ERISA, is established or maintained by an employer;~~
 - ~~(iii) a governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or~~

~~(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;~~

~~(g) new coverage provided under a policy or contract and where the cost is borne wholly by the insured's employer or by an association of which the insured is a member;~~

~~(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;~~

~~(i) an immediate annuity that is purchased with proceeds from an existing annuity contract; or~~

~~(j) a structured settlement.~~

~~(4) Notwithstanding Subsection (3)(f), this rule applies to a policy or contract used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, if:~~

~~(i) the insurer has been notified that a plan participant may choose from two or more insurers; and~~

~~(ii) there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy.~~

~~(5) A registered contract is exempt from the requirements of Subsections R590-93-5(1)(b) and R590-93-6(2) regarding the provision of an illustration or policy summary; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular are required instead.~~

R590-93-3. Definitions.

~~Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:~~

~~(1) "Contract" means an annuity contract.~~

~~(2) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mail, telephone, the internet, or other mass communication media.~~

~~(3)(a) "Direct solicitation" means a personalized solicitation to a specific individual through an insurer or producer that is not a direct-response solicitation.~~

~~(b) Direct solicitation does not include a group meeting held by a producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.~~

~~(4) "Existing insurer" means the insurance company whose policy or contract is changed or affected in a manner described within the definition of "replacement" in Subsection (12).~~

~~(5) "Existing policy or contract" means an individual policy or contract in force, including a policy under a binding or unconditional receipt, or a policy or contract that is within an unconditional refund period.~~

~~(6)(a) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on the new policy.~~

~~(b)(i) A withdrawal, surrender, or borrowing involving the policy values of an existing policy used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy is prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy yields.~~

~~(ii) The standard in Subsection (i) does not change the monitoring requirements in Subsection R590-93-4(1)(e).~~

(c) A financed purchase is a replacement.

(7) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy over a period of years as defined in Rule R590-177.

(8) "Policy" means a life insurance policy.

(9)(a) "Policy summary," for a policy or contract other than a universal life policy, means a written statement regarding a policy or contract that includes the following information:

- (i) the current death benefit;
- (ii) the annual contract premium;
- (iii) the current cash surrender value;
- (iv) the current dividend;
- (v) the application of current dividend; and
- (vi) the amount of any outstanding loan.

(b) "Policy summary," for a universal life policy, means a written statement that includes the following information:

- (i) the beginning and end date of the current report period;
- (ii) the policy value at the end of the previous report period and at the end of the current report period;
- (iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, such as interest, mortality, expense, and riders;
- (iv) the current death benefit at the end of the current report period on each life covered by the policy;
- (v) the net cash surrender value of the policy as of the end of the current report period; and
- (vi) the amount of outstanding loans, if any, as of the end of the current report period.

(10) "Registered contract" means a contract or policy subject to the prospectus delivery requirements of the Securities Act of 1933, 15 U.S.C. Sec. 77a.

(11) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that:

- (a) replaces an existing policy or contract; or
- (b) is a financed purchase.

(12) "Replacement" means a transaction in which a new policy or contract is to be purchased, and the producer or insurer is aware, or should be aware, that an existing policy or contract is or will be:

- (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
- (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (c) amended to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (d) reissued with any reduction in cash value; or
- (e) used in a financed purchase.

(13)(a) "Replacement notice" means the same as the following documents, available on the department's website, <https://insurance.utah.gov>:

- (i) Appendix A, Important Notice: Replacement of Life Insurance or Annuities;
- (ii) Appendix B, Notice Regarding Replacement: Replacing Your Life Insurance Policy or Annuity; and
- (iii) Appendix C, Important Notice: Replacement of Life Insurance or Annuities.

(b) The replacement notice shall be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(14) "Sales material" means a sales illustration and any other written, printed, or electronically presented information provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of an Insurer That Uses a Producer.

(1) Each insurer shall maintain a system of supervision to ensure compliance with the requirements of Section 31A-22-429 and this rule that includes the following:

(a) inform each producer of the requirements of Section 31A-22-429 and this rule and incorporate the requirements into each relevant producer training manual prepared by the insurer;

(b) provide each producer guidance and a written statement of the company's position regarding the acceptability and appropriateness of a replacement transaction;

(c) maintain a system to review the appropriateness of each replacement transaction that a producer does not indicate is in accord with Subsection (1)(b);

(d) establish procedures to confirm that the requirements of Section 31A-22-429 and this rule have been met;

(e) establish procedures to detect any transaction that is a replacement of an existing policy or contract by the existing insurer, but that has not been reported as such by the applicant or producer;

(f) establish procedures to determine that the sales material and illustrations required by Section 31A-22-429 are complete and accurate for the proposed policy or contract; and

(g) maintain any record in any means that accurately reproduces the actual document.

(2) Each insurer shall monitor each producer's policy and contract replacements and make available to the department, upon request, a record of each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-4(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer.

(3)(a) An insurer shall require each application for life insurance or an annuity to include:

(i) a signed statement by both the applicant and the producer declaring whether or not:

(A) the applicant has existing policies or contracts; and

(B) the proposed life insurance or annuity will replace, discontinue, or change an existing policy or contract; and

(ii) a completed replacement notice in Appendix A if there is a replacement, discontinuance, or change of an existing policy or contract.

(b) When the applicant has an existing policy or contract, an insurer shall maintain for at least five years after the termination or expiration of the proposed policy or contract:

(i) any sales material required by Subsection 31A-22-429(5);

(ii) the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased; and

(iii) the applicant's and producer's signed statement regarding financing and replacement.

(4) If an application does not meet the requirements of this rule, the insurer shall notify the producer and applicant and fulfill the outstanding requirements.

(5) Compliance with this rule may include the use of systematic customer surveys, interviews, confirmation letters, or internal monitoring programs.

R590-93-5. Duties of a Replacing Insurer That Uses a Producer.

(1) If a replacement is involved in a transaction, the replacing insurer shall:

(a) verify that the required forms are received and comply with this rule;

(b) notify any other insurer who may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement, or when the replacement is identified if not indicated on the application, and send a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(c) maintain copies of the replacement notice required in Subsection 31A-22-429(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(d) provide to the policy or contract holder notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it.

(e) The notice in Subsection (1)(d) may be included in the documents Appendix A or Appendix C.

(2) Nothing in Subsection (1) preempts the requirements of Section 31A-22-423.

(3) In a transaction where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the time elapsed under the replaced policy's or contract's incontestability and suicide periods up to:

(a) the face amount of the existing policy or contract; or

(b) in the case of a financed purchase, the reduction in the face amount of the existing policy due to the use of existing policy values to fund the new policy or contract.

(4) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection 31A-22-429(5) regarding sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection 31A-22-429(4);

(b) within ten business days of the issuance of the policy or contract:

(i) a person whose duties are separate from the marketing area of the insurer shall notify the applicant that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection 31A-22-429(4);

(ii) provide the applicant a toll-free number to contact company compliance personnel; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) maintain a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-6. Duties of the Existing Insurer.

If a replacement is involved in a transaction, the existing insurer shall:

(1) retain each replacement notification received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of the existing insurer's state of domicile, whichever is later;

(2) within five business days of receiving a replacement notification, notify the policy or contract holder of the right to receive information regarding the existing policy or contract values including an in-force illustration or a policy summary if an in-force illustration cannot be produced;

(3) provide the policy or contract information in Subsection (2) within five business days of receipt of the request from the policy or contract holder; and

(4) upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice advising the policyholder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount, or surrender value of the policy from which the values are released.

(a) The notice shall be sent directly to the policyholder if the check is sent to anyone other than the policyholder.

(b) In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-7. Duties of an Insurer Regarding a Direct-Response Solicitation.

(1)(a) When an application is initiated from a direct-response solicitation, the insurer shall require with each completed application for a policy or contract, a statement asking whether the applicant intends to replace, discontinue, or change an existing policy or contract.

(b) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the replacement notice in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide an applicant or prospective applicant a replacement notice in Appendix C, or other substantially similar document filed with the commissioner; and

(b) comply with the requirements of Subsection R590-93-5(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-5(1)(c), R590-93-5(1)(d), and R590-93-5(2).

(3)(a) In an instance described in Subsection (2), an insurer may delete any reference to the producer, including the producer's signature, and any reference not applicable to the product being sold or replaced, without having to file the document with the commissioner.

(b) The insurer's obligation to obtain the applicant's signature is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the replacement notice.

R590-93-8. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, the inconsistent portion shall be interpreted to provide the greatest information or protection to the policyholder.

R590-93-9. Severability.

If any provision of this rule, Rule R590-93, 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, annuity replacement

Date of Last Change: ~~2022~~~~June 11, 2013~~

Notice of Continuation: April 3, 2019

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402; 31A-22-429

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R590-162 | Filing ID 54693 |
|--------------------------------------|-----------------|------------------------|

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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: |
| R590-162. Actuarial Opinion and Memorandum Rule |
| 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 the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, and update the Severability section (the new Section R590-162-8) 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, Insurance 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

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-17-503 | |
|-------------------|--------------------|--|

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|---|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/15/2022 |
|--|---|--------------|------------|

R590. Insurance, Administration.**R590-162. Actuarial Opinion and Memorandum Rule.****R590-162-1. [Purpose.**

~~The purpose of this rule is to prescribe:~~
~~A. Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;~~

~~B. Guidance as to the meaning of "adequacy of reserves;" and~~

~~C. Rules applicable to the appointment of an appointed actuary.~~

R590-162-2. [Authority.

~~This rule is [issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under Title 31A, Chapter 17, Part 5]promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-17-503.~~

R590-162-[3.-]2. Purpose and Scope.

~~[This rule shall apply to all companies and fraternal benefit societies that file the life, accident and health annual statement and to all companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.~~

~~Companies that file the property and casualty annual statement or the health annual statement shall follow the actuarial opinion and supporting actuarial memoranda requirements pursuant to the instructions for these annual statements. Such companies are not subject to actuarial opinion and supporting actuarial memoranda requirements of this rule.~~

~~This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and~~

~~supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.~~

~~This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this rule, and a memorandum in support thereof in accordance with Section 7 of this rule, shall be required each year.]~~

~~(1) The purpose of this rule is to prescribe:~~

~~(a) requirements for statements of actuarial opinion and memoranda in support that are submitted under Section 31A-17-503;~~

~~(b) guidance for adequacy of reserves; and~~

~~(c) rules applicable to an appointed actuary.~~

~~(2)(a) This rule applies to a company that:~~

~~(i) files a life, accident and health annual statement; or~~

~~(ii) is authorized to reinsure life insurance, annuities, or accident and health insurance business.~~

~~(b) This rule allows an appointed actuary to use professional judgment in performing an asset adequacy analysis and developing an actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice.~~

R590-162-[4]3. Definitions.

~~[A.]~~ Terms used in this rule are defined in Section 31A-1-301. Additional terms are defined as follows:

~~(1) "Actuarial [O]pinion" means [the] an opinion of an [Appointed Actuary] appointed actuary regarding the adequacy of [the] reserves and related actuarial items based on an asset adequacy test [in accordance with Section 6 of this rule] under Section R590-162-5 and [with applicable Actuarial Standards of Practice] applicable actuarial standards of practice.~~

~~[B.](2) "Actuarial Standards Board" [is] means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.~~

~~[C.](3) "Annual [S]statement" means [that] a statement required [by Section 31A-4-113 to be filed by the company with the office of the commissioner annually] under Section 31A-4-113.~~

~~[D.](4) "Appointed [A]ctuary" means an [x] individual who is appointed or retained in accordance with the requirements [set forth in Subsection 5C of this rule] in Subsection R590-162-4(2) to provide the actuarial opinion and supporting memorandum [as required by] required under Section 31A-17-503.~~

~~[E.](5)(a) "Asset [A]dequacy [A]nalysis" means an analysis that meets the standards [and other requirements referred to in Subsection 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory] of practice of the Actuarial Standards Board and this rule and that forms the basis of the statement of actuarial opinion.~~

~~(b) An asset adequacy analysis may take the form of:~~

~~(i) cash flow testing;~~

~~(ii) sensitivity testing; or~~

~~(iii) an application of risk theory.~~

~~[F. "Commissioner" means the Insurance Commissioner of this State.~~

~~G.](6) "Company" means a life insurance company, a fraternal benefit society, or a reinsurer[subject to the provisions of this rule].~~

~~[H.](7)(a) "Qualified [A]ctuary" means [any individual who meets the requirements set forth in Subsection 5B of this rule] an individual who:~~

~~(i) is a member in good standing of the American Academy of Actuaries;~~

~~(ii) is qualified to sign a statement of actuarial opinion for a life and health insurance company annual statement in accordance with the American Academy of Actuaries qualification standards for actuaries signing an annual statement; and~~

~~(iii) is familiar with the valuation requirements applicable to a life and health insurance company.~~

~~(b) "Qualified actuary" does not include an individual who:~~

~~(i) has been found by the commissioner, following notice and hearing, to have:~~

~~(A) violated a provision of Utah law in the course of a person's dealings as a qualified actuary;~~

~~(B) been guilty of fraudulent or dishonest practices;~~

~~(C) demonstrated incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;~~

~~(D) submitted to the commissioner, during the past five years, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule or the standards set by the Actuarial Standards Board; or~~

~~(E) resigned or been removed as an actuary within the past five years because of acts or omissions indicated in any adverse report on examination or because of a failure to adhere to generally acceptable actuarial standards; or~~

~~(ii) failed to notify the commissioner of any action taken by a commissioner of another state similar to that in this Subsection (7)(b).~~

~~(c) Notwithstanding Subsection (7)(b), an individual may be reinstated as a qualified actuary by the commissioner.~~

R590-162-[5]4. General Requirements of an Actuarial Opinion.

~~[A. Submission of-](1) Submitting a Statement of Actuarial Opinion.~~

~~[(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this rule](a) A statement of an appointed actuary setting forth an opinion relating to reserves and related actuarial items held in support of a policy or a contract, entitled Statement of Actuarial Opinion, shall be included with the annual statement.~~

~~[(2) In the case of a statement of actuarial opinion required to be submitted by-](b) For a foreign or an alien company, the commissioner may accept [the] a statement of actuarial opinion filed by [such] a company with the insurance [supervisory] regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this [State] state.~~

~~[(3) Upon-](c) On written request [by the] of a company, the commissioner may grant an extension [of the date for submission of the] to submit a statement of actuarial opinion.~~

~~[B. Qualified Actuary~~

~~A "qualified actuary" is an individual who:~~

~~(1) Is a member in good standing of the American Academy of Actuaries;~~

~~(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance~~

with the American Academy of Actuaries qualification standards for actuaries signing such statements;

~~(3) Is familiar with the valuation requirements applicable to life and health insurance companies;~~

~~(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:~~

~~(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary;~~

~~(b) Been found guilty of fraudulent or dishonest practices;~~

~~(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;~~

~~(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or~~

~~(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and~~

~~(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under Subsection (4) above.~~

~~C. (2) Appointed Actuary.~~

~~[An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Subsection 5B of this rule. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.]~~

~~(a) An appointed actuary shall be appointed either directly by or by the authority of the Board of Directors through an executive officer of the company other than the appointed actuary.~~

~~(b) A company shall:~~

~~(i) give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed by a company as an appointed actuary; and~~

~~(ii) state in the notice that the individual meets the requirements of a qualified actuary.~~

~~(c) When notice is provided, no further notice is required for the appointed actuary, provided the company gives the commissioner timely written notice that the actuary ceases to be appointed or meet the requirements of a qualified actuary.~~

~~(d) If an appointed actuary replaces a previously appointed actuary, the notice shall give the reasons for replacement.~~

~~D. Standards for Asset Adequacy Analysis~~

~~The asset adequacy analysis required by this rule:~~

~~(1) shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and~~

~~on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with this rule; and~~

~~(2) shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.]~~

~~[E. (3) Liabilities to be Covered.~~

~~(1) Under authority of (a) Under Section 31A-17-503, [the] a statement of actuarial opinion [shall apply to all] applies to an in[-]force business on the statement date, whether directly issued or assumed, regardless of when or where issued.~~

~~(2) If the (b) If an appointed actuary determines, as the result of an asset adequacy analysis, that a reserve should be held in addition to the aggregate reserve held by [the] a company and calculated in accordance with methods [set forth in] under Title 31A, Chapter 17, Part 5, Standard Valuation Law, the company shall establish [such] the additional reserve.~~

~~(3) (c) Additional reserves established under Subsection [(2) above and deemed] (3)(b) and considered not necessary in subsequent years may be released. [-Any amounts-]~~

~~(i) Reserves that are released [must] shall be disclosed in the actuarial opinion for the applicable year.~~

~~(ii) The release of [such] reserves [would not be deemed] is not an adoption of a lower standard of valuation.~~

R590-162-[6]5. Statement of Actuarial Opinion Based [O]n an Asset Adequacy Analysis.

~~[A. (1) General Description.~~

~~(1) The (a) A statement of actuarial opinion [submitted in accordance with this section shall consist of] based on an asset adequacy analysis shall include a paragraph identifying:~~

~~(a) a paragraph identifying (i) the appointed actuary and [his or her] the appointed actuary's qualifications [-as specified in Subsection 6B(1) of this rule];~~

~~(b) a scope paragraph identifying the subjects on which an opinion is to be expressed and (ii) the scope of the actuarial opinion, describing [-the scope of];~~

~~(A) the appointed actuary's work, [including] with a tabulation delineating the reserves and related actuarial items [which have been] analyzed for asset adequacy and the method of analysis [-as specified in Subsection 6B(2) of this rule, and identifying]; and~~

~~(B) the reserves and related actuarial items covered by the opinion [which have not been so] that were not analyzed;~~

~~(c) a reliance paragraph describing those areas, if any, (iii) the areas where the appointed actuary [has] deferred to another expert [s] in developing data, procedures, or assumptions, [-e.g.,] such as anticipated cash flows from currently owned assets [-as specified in Subsection 6B(3) of this rule], supported by a statement of each [such] expert in the form prescribed by Subsection [6E of this rule] (5); and~~

~~(d) an opinion paragraph expressing (iv) the appointed actuary's opinion [with respect to] of the adequacy of the supporting assets to mature the liabilities [-as specified in Subsection 6B(6) of this rule].~~

~~(2) One or more additional (b) Additional paragraphs [will] may be needed [in individual company cases as follows] if the appointed actuary:~~

~~(a) if the appointed actuary (i) considers it necessary to state a qualification of the opinion;~~

~~(b) if the appointed actuary must (ii) is required to disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;~~

~~[(c) if the appointed actuary must-](iii) is required to disclose reliance upon [any-]a portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR), or other mandatory or voluntary statement of reserves for asset adequacy analysis;~~

~~[(d) if the appointed actuary must-](iv) is required to disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior [opinion date with that used for this-]year opinion;~~

~~[(e) if the appointed actuary must-](v) is required to disclose whether additional reserves of the prior year opinion [date] are released as of [this opinion date]the current year opinion, and the extent of the release; or~~

~~[(f) if the appointed actuary-](vi) chooses to add a paragraph briefly describing the assumptions [which-]that form the basis for the actuarial opinion.~~

~~[B. Recommended-](2) Required Language.~~

~~[The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.]The language in a statement of actuarial opinion may be modified as needed to meet the circumstances of a particular case, but the appointed actuary shall use language that clearly expresses the appointed actuary's professional judgment. The following paragraphs shall be included in the statement of actuarial opinion.~~

~~[(1)(a)(i) The opening paragraph [should generally-]shall [indicate]state the appointed actuary's relationship to the company and [his or her-]the appointed actuary's qualifications to sign the opinion.~~

~~(ii) For a company actuary, the opening paragraph of the actuarial opinion [should-]shall read as follows:~~

~~"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. [-]I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). [-]I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~(iii) For a consulting actuary, the opening paragraph [should contain a sentence such as-]shall read as follows:~~

~~"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). [-]I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). [-]I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~[(2)(b) The scope paragraph [should-]shall include [a statement such as-]the following statement:~~

~~"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [20(-)]20. [-]Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis."~~

~~[(3)(c)(i) If [the-]an appointed actuary [has relied-]relies on another expert[s] to develop certain portions of the analysis, [the-]a reliance paragraph [should-]shall include [a statement such as-]the following statement:~~

~~"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion), as certified in the attached statement I have reviewed the information relied upon for reasonableness."~~

~~[Such a-](ii) A statement of reliance on another expert[s] should-]shall be accompanied by a statement [by each of such experts of the-]from each expert in a form prescribed by Subsection [6E of this rule](5).~~

~~[(4)(d) If [the-]an appointed actuary [has-]examined the underlying asset and liability records, the reliance paragraph [should also-]shall include the following:~~

~~"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."~~

~~[(5)(c)(i) If [the-]an appointed actuary has not examined the underlying records, but has relied upon data [(e.g., listings and summaries of policies in force or asset records)-]prepared by the company or a third party, the reliance paragraph [should include a statement such as-]shall include the following statement:~~

~~"In forming my opinion on (specify types of reserves) I have relied upon data prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."~~

~~[Such a-](ii) A statement of reliance [must-]shall be accompanied by a statement [by-]from each person relied upon [of the-]in a form prescribed by Subsection [6E of this rule](5).~~

~~[(6)(f) The opinion paragraph [should include the following-]shall include:~~

~~[~~

~~TABLE~~

~~— (a) "In my opinion the reserves and related actuarial values concerning the statement items identified above:~~

~~— (i) are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;~~

~~— (ii) are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;~~

~~— (iii) meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;~~

~~— (iv) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year end (with any exceptions noted below);~~

~~— (v) include provision for all actuarial reserves and related statement items which ought to be established;"~~

~~(b) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited~~

to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company;"

(c) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion;" and

(d) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion;"

or

"The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:" (Describe the change or changes.)

"The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis."

.....
"Signature of Appointed Actuary

.....
Address of Appointed Actuary

.....
Telephone Number of Appointed Actuary

.....
Date"]

(i) "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(A) are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(B) are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(C) meet the requirements of the insurance laws and rules of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(D) are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(E) include provision for all actuarial reserves and related statement items which ought to be established";

(ii) "The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company";

(iii) "The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of

Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion";

(iv)(A) "This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion"; or

(B) "The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion (describe the change or changes)";

(v) "The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis"; and

(vi) a signature block including the:

(A) signature of the appointed actuary;

(B) address of the appointed actuary;

(C) telephone number of the appointed actuary; and

(D) date.

[C-](3) Assumption[s] for New Issue[s].

The adoption for new issues or new claims or other new liabilities of an actuarial assumption [~~which~~]that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in an actuarial assumption[s] within the meaning of this [S]section[6].

[D-](4) Adverse Opinion[s].

(a) If [~~the~~]an appointed actuary ~~cannot~~[is unable to] form an opinion, [~~then~~]the actuary shall refuse to issue a statement of actuarial opinion.

(b)(i) If [~~the~~]an appointed actuary's opinion is adverse or qualified, [~~then~~]the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason[~~s~~] for [~~such~~]the opinion.[~~This statement should~~]

(ii) The explicit statement required under Subsection (4)(b)(i) shall follow the scope paragraph and precede the opinion paragraph.

[E-](5) Reliance on Data Furnished by Other Persons.

(a) If [~~the~~]an appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion [~~should so~~]shall [~~indicate~~]state the persons the actuary is relying [~~up~~]on and [~~a precise identification of~~]identify the items [~~subject to the reliance~~]the actuary is relying on.

[In addition, the-](b)(i) A person[s on whom-] that the appointed actuary relies on shall provide a certification that [~~precisely~~]identifies the items [~~on which~~]the person is providing information about and a statement as to the accuracy, completeness, or reasonableness[~~, as applicable,~~] of the items.[~~This~~]

(ii) The certification shall include the signature, date, title, company, address, and telephone number of the person [~~rendering~~]providing the certification[~~, as well as the date on which it is signed~~].

[F-](6) Alternate Option.

[~~(4)~~](a) As an alternative to the requirements of Subsection [B(6)(a)(iii) of this rule](2)(f)(i)(C), [~~the~~]an appointed actuary may state that the reserves and related actuarial values "meet the requirements of the [I]insurance [L]aws and rules of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been

approved by the commissioner and that any conditions required by the commissioner for approval of ~~that~~ the request have been met."

~~(2)(b)(i)~~ To use ~~this~~ an alternative, the company shall file a request ~~to do so~~ with the commissioner, along with ~~the~~ justification for its use, no later than April 30 of the year ~~of~~ the opinion ~~to be~~ is filed.

~~(ii)~~ The request ~~shall be deemed~~ is approved on October 1 of that year if the commissioner has not denied the request by that date.

~~(3) Notwithstanding the above, the~~ (c)(i) The commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this ~~S~~ state.

~~(ii)~~ If a company ~~is unable to~~ cannot provide the opinion within ~~sixty~~ 60 days of the request or ~~such other period of time~~ other period determined by the commissioner after consultation with the company, the commissioner may contract with an independent actuary at the company's expense to prepare and file the opinion.

R590-162-~~7~~6. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.

~~A-~~(1) General Provisions of Actuarial Memorandum.

~~(1) In accordance with~~ (a)(i) Under Section 31A-17-503, ~~the~~ an appointed actuary shall prepare a memorandum to ~~the~~ a company describing the analysis done in support of the opinion ~~regarding the~~ with respect to reserves~~-. The memorandum shall be made-~~, and shall make it available for examination by the commissioner upon request.~~but~~

~~(ii)~~ The memorandum shall be returned to the company after ~~such~~ examination by the commissioner and ~~shall not be~~ is not considered a record of the ~~insurance~~ department or subject to automatic filing with the commissioner.

~~(2)(b)~~ In preparing the memorandum, the appointed actuary may rely on, and include as a part of ~~his or her own~~ the memorandum, memoranda prepared and signed by other qualified actuaries~~who are qualified within the meaning of Subsection 5B of this rule~~, with respect to the areas covered in ~~such~~ the memoranda~~and so state in their memoranda~~.

~~(3)(c)(i)~~ If the commissioner requests a memorandum and ~~no such~~ a memorandum does not exist[s] or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare ~~such~~ a supporting memorandum as ~~is~~ required for review.~~The~~

~~(ii)~~ A reasonable and necessary expense of the independent review shall be paid by the company but ~~shall be~~ the review is directed and controlled by the commissioner.

~~(4)(d)(i)~~ The reviewing actuary ~~shall have~~ has the same status as an examiner for purposes of obtaining data from the company.~~and the~~

~~(ii)~~ The work papers and documentation of the reviewing actuary ~~shall be~~ are retained by the commissioner; ~~provided,~~ however, ~~that~~ any information provided by the company to the reviewing actuary and included in the work papers ~~shall be considered as~~ are considered material provided by the company to the commissioner and ~~shall be~~ are kept confidential ~~to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner~~ pursuant to ~~the statute governing this rule~~ Section 31A-17-517.

~~(iii)~~ The reviewing actuary ~~shall~~ may not be an employee of a consulting firm involved with the preparation of any prior

memorandum or opinion for the insurer pursuant to this rule for ~~any one of~~ the current year or the preceding three years.

~~(5)(a) In accordance with~~ (e)(i) Under Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, ~~the content of which are specified in Subsection C~~ pursuant to Subsection (3).

~~(b) Every~~ (ii) A company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year ~~for which~~ a statement of actuarial opinion based on asset adequacy is required.

~~(c) Every~~ (iii) A foreign company ~~is required to~~ shall make the regulatory asset adequacy issues summary available to the commissioner upon request.

~~(d)(iv)~~ The regulatory asset adequacy issues summary ~~shall be~~ is kept confidential to the same extent and under the same conditions as the actuarial memorandum.

~~B-~~ (2) Detail[s] of the Memorandum ~~Section~~ Documenting Asset Adequacy Analysis.

~~When an actuarial opinion is provided, the~~ The memorandum documenting asset adequacy analysis shall demonstrate that the analysis ~~has been~~ was done in accordance with the standards for asset adequacy ~~referred to in Subsection 5D of this rule and any additional standards under this rule. It shall specify~~ and shall include:

~~(1)(a)~~ for reserves:

~~(a)(i)~~ product descriptions including market description, underwriting and other aspects of a risk profile, and the specific risks the appointed actuary ~~deems~~ considers significant;

~~(b)(ii)~~ source of liability in force;

~~(c)(iii)~~ reserve method and basis;

~~(d)(iv)~~ investment reserves;

~~(e)(v)~~ reinsurance arrangements;

~~(f)(vi)~~ identification of an[y] explicit or implied guarantee[s] made, the general account in support of benefits provided through a separate account or under a separate account policy or contract, and the method[s] used by the appointed actuary to provide for the guarantee[s] in the asset adequacy analysis; and

~~(g)(vii)~~ documentation of assumptions to test reserves for the following:

~~(1)(A)~~ lapse rates, ~~(f)~~ including both base and excess~~(f)~~;

~~(2)(B)~~ interest crediting strategy;

~~(3)(C)~~ mortality;

~~(4)(D)~~ policyholder dividend strategy;

~~(5)(E)~~ competitor or market interest rate;

~~(6)(F)~~ annuitization rates;

~~(7)(G)~~ commissions and expenses; and

~~(8)(H)~~ morbidity;

~~(2)(b)~~ for assets:

~~(a)(i)~~ portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;

~~(b)(ii)~~ investment and disinvestment assumptions;

~~(c)(iii)~~ source of asset data;

~~(d)(iv)~~ asset valuation bases; and

~~(e)(v)~~ documentation of assumptions made for:

~~(1)(A)~~ default costs;

~~(2)(B)~~ bond call function;

~~(3)(C)~~ mortgage prepayment function;

~~(4)(D)~~ determining market value for assets sold due to disinvestment strategy; and

~~(5)(E)~~ determining yield on assets acquired through the investment strategy;

~~[(3)](c)~~ for the analysis basis:

~~[(a)](i)~~ methodology;

~~[(b)](ii)~~ rationale for inclusion~~[/]~~ or exclusion of different blocks of business and how pertinent risks were analyzed;

~~[(c)](iii)~~ rationale for degree of rigor in analyzing different blocks of business~~[(include in the rationale)]~~, including the level of ~~[""]~~materiality~~[""]~~ that was used in determining~~]~~ used to determine how rigorously to analyze different blocks of business~~]~~;

~~[(d)](iv)~~ criteria for determining asset adequacy~~[(include in]]~~, including the criteria ~~[the precise basis for determining]~~ used to determine if assets are adequate to cover reserves under ~~[""]~~moderately adverse conditions~~[""]~~ or other conditions ~~[as]~~specified in relevant actuarial standards of practice~~]~~; and

~~[(e)](v)~~ effect of federal income taxes, reinsurance, and other relevant factors;

~~[(4)](d)~~ summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

~~[(5)](e)~~ summary of ~~[R]~~results; and

~~[(6)](f)~~ conclusions.

~~[C-](3)~~ Detail[s] of the Regulatory Asset Adequacy Issues Summary.

~~[(1)-The-]A~~ regulatory asset adequacy issues summary shall include:

(a) a description[s] of the scenarios tested~~[-(f)]~~, including whether those scenarios are stochastic or deterministic~~]~~, and the sensitivity testing done relative to those scenarios~~[-(f)]~~;

(i) if negative ending surplus results under certain tests in aggregate, the actuary ~~[should-]~~shall describe those tests and the amount of additional reserve as of the valuation date ~~[which]~~that, if held, would eliminate the negative aggregate surplus values~~[-Ending]~~; and

(ii) ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) the amount of reserves and the identity of the product lines ~~[that had been-]~~subject~~[ed]~~ to asset adequacy analysis in the prior year opinion but ~~[were-]~~not subject to analysis for the current year opinion;

(d) comments on any interim results that may be of significant concern to the appointed actuary~~[-For-]~~, for example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserve during one or more interim periods;

(e) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested~~[-and]~~

(f) whether the actuary ~~[has been-]~~is satisfied that all options, whether explicit or embedded, in any asset or liability~~[-(f)]~~, including ~~[but not limited to-]~~those affecting cash flows embedded in fixed income securities~~]~~, and equity-like features in an~~[y]~~ investment~~[s have been-]~~ were appropriately considered in the asset adequacy analysis~~[-~~

~~(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset~~

adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion~~]~~;

~~(g) the name of the company the regulatory asset adequacy issues summary is being prepared for;~~

~~(h) the signature of the appointed actuary; and~~

~~(i) the date of the actuarial opinion.~~

~~[D-](4)~~ Documentation.

~~(a) The appointed actuary shall retain[-on file], for at least seven years, sufficient documentation [so that it will be possible-]to determine the procedures followed, the analyses performed, the bases for assumptions, and the results obtained.~~

~~(b) The documentation [of the assumptions-]shall be of such quality that an actuary reviewing the actuarial memorandum [could-]can form a conclusion as to the reasonableness of the assumptions.~~

R590-162-[8]7. Exemptions.

~~[A-](1)~~ Unless ordered by the commissioner, a company that is under supervision, rehabilitation, or liquidation is exempt from the requirements of this rule.

~~[B-(1)](2)(a)~~ At the discretion of the commissioner, a company domiciled in this ~~[S]~~state and doing business only in this ~~[S]~~state may submit an opinion without the statement required under Subsection R590-162-[6(B)(6)(b)]5(2)(f)(ii).

~~[(2)](b)~~ If the commissioner grants an exemption under Subsection [B-(1)](2)(a), the company ~~[shall be-]~~is exempt from preparing and submitting the ~~[RAAIS-]~~regulatory asset adequacy issues summary document required under Subsection R590-162-[7(A)(5)]6(1)(c).

~~[C-(1)](3)~~ A company domiciled in this ~~[S]~~state~~[-and otherwise subject to the requirements of this rule-]~~ may apply to the commissioner for an exemption from:

(a) the requirement to submit an actuarial opinion ~~[required]~~ under Subsection R590-162-[5(A)(1)]4(1)(a);

(b) the requirement to include within its actuarial opinion the statement ~~[required-]~~under Subsection R590-162-[6(B)(6)(b)]5(2)(f)(ii); or

(c) the requirement to prepare and submit the ~~[RAAIS]~~regulatory asset adequacy issues summary document ~~[required]~~ under Subsection R590-162-[7(A)(5)]6(1)(c).

(2) A company seeking an exemption under Subsection [C-(1)](3) shall:

(a) submit a written request for an exemption no later than November 1 of the year for which the exemption is sought; and

(b) provide a written explanation and supporting documents~~[-if any-]~~ explaining how complying with the requirement for which an exemption is sought would not enhance the department's understanding of the financial position of the company and, therefore, be an unnecessary burden on the company.

R590-162-[9]8. Severability.

~~[If any provision of this rule or its application to any person or circumstances 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 thereby.]If any provision of this rule, Rule R590-162, 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~~~~August 26, 2015~~
Notice of Continuation: September 21, 2018
Authorizing, and Implemented or Interpreted Law: 31A-17-503

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|-------------------------------|----------|-----------------|
| Utah Admin. Code Ref (R no.): | R590-178 | Filing ID 54694 |
|-------------------------------|----------|-----------------|

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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: |
| R590-178. Securities Custody |
| 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 the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Enforcement Date section (the current Section R590-178-8) because this rule is already in force, and update the Severability section (the new Section R590-178-8) 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, Insurance 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| 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-2-206 | Section 31A-4-108 |

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: | 08/01/2022 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|---|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/15/2022 |
|--|---|--------------|------------|

R590. Insurance, Administration.**R590-178. Securities Custody.****R590-178-1. Authority.**

This rule is promulgated by the ~~[Insurance Commissioner]~~ commissioner pursuant to ~~[Utah Insurance Code]~~ Sections 31A-2-201, 31A-2-206, and 31A-4-108.

R590-178-2. Purpose and Scope.

~~[This rule authorizes domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule establishes standards for national banks, state banks, trust companies and broker/dealers to qualify and operate as custodians for insurance company securities.]~~ (1) The purpose of this rule is to:

(a) authorize a domestic insurance company to use a modern system for holding and transferring a security without physical delivery of a security certificate; and
 (b) establish standards for a person in Subsection (2)(b) through (2)(e) to qualify and operate as a custodian for insurance company securities.

(2) This rule applies to:

(a) a domestic insurance company;
 (b) a national bank;
 (c) a state bank;
 (d) a trust company; and
 (e) a broker/dealer.

R590-178-3. Definitions.

~~[As used in this rule]~~ Terms used in this rule are defined in Sections 31A-1-301, 31A-2-206, and 70A-8-101. Additional terms are defined as follows:

~~[A-]~~ (1) "Agent" means a national bank, state bank, trust company, or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system.

~~[B-]~~ (2) "Clearing corporation" means a corporation ~~[as defined in Subsection 70A-8-101(1),]~~ that is organized for the purpose of effecting transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. ~~[Section]~~ 3100 et seq., 12 U.S.C. ~~[pt-]~~ 391 and 5 U.S.C. ~~[pt-]~~ 301.

~~[C-]~~ (3) "Custodian" means:

[1-](a) a national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to this rule, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below; or

[2-](b) a trust company with minimum net worth of \$1,500,000 at all times during which it acts as a custodian, is licensed by the United States or any state thereof as a trust company, and is in compliance with the regulatory authority as verified through regular examination by the regulatory authority; or

[3- A-](c) a broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than ~~two hundred fifty million dollars~~ [\$250,000,000].

[D-](4) "Custodied securities" means securities held by the custodian or its agent, or that are being cleared or transferred through a clearing corporation.

~~[E-] "Federal Reserve book entry system" means the computerized systems sponsored by the United States Department of the Treasury and other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities.~~

~~F. "Security" has the same meaning as that defined in 70A-8-101(1).~~

~~G. "Securities' certificate" has the same meaning as that defined in 70A-8-101(1).~~

[H-](5) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 ~~(S.E.C. Form 10-K)~~ Form 10-K, filed with the Securities and Exchange Commission.

[I-](6) "Treasury/Reserve Automated Debt Entry Securities System" (TRADES) and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. ~~[Section]~~ [Section] 3100 et seq., 12 U.S.C. ~~[pt.]~~ [pt.] 391, and 5 U.S.C. ~~[pt.]~~ [pt.] 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. ~~[pt.]~~ [pt.] 357 et seq.

R590-178-4. Use of Book-Entry Systems.

A custodian may ~~utilize~~ use a clearing corporation to clear and transfer securities when depositing or arranging for the deposit of securities held in or purchased for a domestic insurance company's general account or its separate accounts. When a clearing corporation is used to clear and transfer securities, securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation regardless of the ownership of such securities and securities of small denominations may be merged into larger denominations. The records of any custodian ~~utilizing~~ using a clearing corporation to clear and transfer securities shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interest in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.

R590-178-5. Requirements for Custodial Agreements.

[A-](1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be

held by the custodian or its agent, by the Federal Reserve book-entry system, or may be cleared or transferred through a clearing corporation.

[B-](2) Agreements shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurance company or of an authorized committee of the board pursuant to Section 31A-5-412. The terms of the agreement shall comply with the following:

[1-](a) Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.

[2-](b) Securities held indirectly by the custodian or its agent, by the Federal Reserve book-entry system, and securities being cleared or transferred through a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or its agent, by the Federal Reserve book-entry system, and which securities are being cleared or transferred through a clearing corporation. If the securities are with the Federal Reserve book-entry system or are being cleared or transferred through a clearing corporation, the records shall also identify where the securities are and the name of the clearing corporation. If the securities are held by an agent of the custodian, the records shall contain the name of the agent.

[3-](c) All custodied securities shall be registered in the name of the insurance company or in the name of a nominee of the insurance company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

[4-](d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in Subsection 31A-2-206(2) shall, to the extent required by Subsection 31A-2-206(2), be under the control of the insurance commissioner and shall not be withdrawn by the insurance company without the prior written approval of the insurance commissioner. Broker/dealers are not authorized to hold custodied securities that are used to meet the deposit requirements set forth in Subsection 31A-2-206(2). To the extent that national banks, state banks, and trust companies hold custodied securities that are used to meet the deposit requirements set forth in Subsection 31A-2-206(2), these custodied securities must be held in an account separate from other custodied securities of the insurance company.

[5-](e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's annual report of the insurance company's accounts shall also be provided to the insurance company. Reports and verifications may be transmitted in electronic or paper form.

[6-](f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company, or a representative of the Insurance Department shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

[7-](g) Upon written request from the insurance company, the custodian and its agents shall be required to send to the insurance company:

[6-](i) all reports they receive from a clearing corporation on their respective systems of internal accounting control^[7-]; and

[4-](ii) reports prepared by outside auditors on the custodian's or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.

[8-](h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.

[9-](i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits with respect to custodied securities. These shall be substantially in the form of Custodian Affidavits, Form A, 298-6, Form B, 298-7, and Form C, 298-8, published by NAIC Model Regulation Service.

[a. "Form A-"] (i) Form A is to be used by a custodian where securities entrusted to its care have not been redeposited elsewhere;

[b. "Form B-"] (ii) Form B is to be used in instances where a custodian corporation maintains securities on deposit with The Depository Trust Company or like entity; and

[c. "Form C-"] (iii) Form C is to be used where ownership is evidenced by book entry at a Federal Reserve Bank.

[10-](j) A national bank, state bank, or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurance company's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator or other regulator of a trust company. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

[11-](k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, and for burglary, robbery, holdup, theft, and mysterious disappearance, including loss by damage or destruction.

[12-](l) In the event that there is loss of custodied securities, for which the custodian shall be obligated to indemnify the insurance company as provided in [paragraph (11) above] Subsection (2)(k), the custodian shall promptly replace the securities or the fair value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

[13-](m) The agreement may provide that the custodian will not be liable for failure to take an action required under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war, whether declared or not and including existing wars, revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders, other acts of any governmental authority, or any other cause beyond its reasonable control.

[14-](n) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement

between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

[15-](o) The custodian shall provide written notification to the insurance company's domiciliary commissioner if the custodial agreement with the insurance company has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three [3-] business days of the receipt by the custodian of the insurance company's written notice of termination or within three [3-] business days of the withdrawal of 100% of the account assets.

R590-178-6. Requirements for Deposits with Affiliates.

[A-](1) Nothing in this rule shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States [of America] or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within [thirty (30)-] 30 days of the receipt of the notice.

[B-](2) The terms of the agreement shall comply with the following:

[1-](a) The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

[2-](b) The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.

[3-](c) The depositing insurance company may authorize the receiving insurance company:

[a. To-](i) to hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company^[7-]; and

[b. To-](ii) to provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company, or in a clearing corporation.

R590-178-7. Penalties and Prohibitions.

[A-](1) Insurance companies found to be or to have been in violation of this rule shall be subject to fine, suspension, and revocation of license or other penalties permitted by Section 31A-2-308.

[B-](2) Insurance companies are not authorized to provide for the custody of their securities except as granted in this rule.[-] Custodial securities held in violation of this rule shall be disregarded in determining and reporting the financial condition of an insurer.

R590-178-8. [Enforcement Date.

~~The commissioner will begin enforcing this rule 90 days from the rule's effective date.~~

R590-178-9. [Separability.

~~[If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions may not be affected.]~~ If any provision of this rule, Rule R590-178, 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 law

Date of Last Change: ~~2022~~ September 19, 2006

Notice of Continuation: July 14, 2021

Authorizing, and Implemented or Interpreted Law: 31A-4-108

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|-----------------|------------------------|
| Utah Admin. Code Ref (R no.): | R590-207 | Filing ID 54695 |
|--------------------------------------|-----------------|------------------------|

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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: |
| R590-207. Health Producer Commissions for Small Employer Groups |
| 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 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 the Utah Rulewriting Manual standards. Other changes make the language of this rule more clear, remove the Penalties section (old Section R590-207-7) because penalties are already provided for in statute, remove the Effective Date section (old Section R590-207-8) because this rule is already in force, and update the Severability section (new Section R590-207-5) 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, Insurance 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

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-30-104 | |
|-------------------|--------------------|--|

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: | 08/01/2022 |
|--|------------|

10. This rule change MAY become effective on:

08/08/2022

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

| | | | |
|--|---|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/15/2022 |
|--|---|--------------|------------|

R590. Insurance, Administration.

R590-207. Health Producer Commissions for Small Employer Groups.

R590-207-1. Authority.

This rule is ~~issued and based upon the authority granted the commissioner under Subsections 31A-2-201(3)(a) and 31A-30-104(7) promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-30-104.~~

R590-207-2. Purpose and Scope.

(1) The purpose of this rule is to establish guidelines relating to commission structure for insurance producers in the small employer group market that affect access to health insurance coverage for small employer groups.

(2) This rule applies to a carrier offering a health benefit plan in the small employer market.

R590-207-3. ~~Applicability.~~

~~This rule applies to all licensed carriers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.~~

R590-207-4. ~~Definitions.~~

~~[The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.]~~ Terms used in this rule are defined in Sections 31A-1-301 and 31A-30-103.

R590-207-[5]4. Commission Schedule Structure.

(1) A ~~[health insurance carrier shall]~~carrier may not structure a producer commission schedule ~~[in a way]~~that, directly or indirectly, creates a restriction, hindrance, or barrier to access to coverage for the smallest ~~[size]~~groups or groups with the greatest health risks.

(2) The commission in the commission schedule for the smallest ~~[size]~~groups or the groups with the greatest health risks may not be designed to avoid, directly or indirectly, the requirements of guaranteed issue or renewal in the marketing of health insurance to small business owners.

(3) An insurer ~~[shall]~~may not design a commission structure that lessens the incentive to insure a small employer group that is smallest in size or with the greatest health risks.

(4)(a) An insurer is not required to base commissions on a percentage.

(b) An insurer ~~[is permitted to pay no]~~may elect not to pay commissions on all business~~[or to]~~.

(c) An insurer may elect to pay a dollar amount based on factors other than risk characteristics.

R590-207-6. Commission Structure Examples.

~~(1)(5)~~ Examples of commission structures that ~~[are in compliance would be]~~comply with this rule include:

(a)(i) a 10% commission for ~~[employer]~~group size 2-5;

(ii) a 9% commission for group size 6-25; and

(iii) a 7% commission for group size 26-50; or

(b)(i) ~~[\$20/Per Member Per Month (PMPM) for employer]~~\$20 per member per month (PMPM) for group size 2-5;

(ii) \$18~~[4]~~ PMPM for group size 6-25; and

~~(e) \$16/~~(iii) \$16 PMPM for group size 26-50.

~~(2)(6)~~ An example of a commission structure that ~~[is not in compliance would be]~~does not comply with this rule is:

~~(+)(a)~~ 3% commission for ~~[employer]~~group size 2-5;

~~(+)(b)~~ 8% commission for group size 6-25; and

~~(+)(c)~~ 7% commission for group size 26-50.

R590-207-[7. Penalties.

~~Any carrier with a commission structure found to be in violation of this rule shall be subject to the penalties provided for in Section 31A-2-308.~~

R590-207-8. Enforcement Date.

~~The commissioner will begin enforcing the amendments to this rule 45 days from the rule's effective date.~~

R590-207-9)5. Severability.

[If any 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 R590-207, 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 law

Date of Last Change: 2022[August 2, 2011]

Notice of Continuation: August 12, 2021

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R590-247

Filing ID
54696

Agency Information

| | | |
|--|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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: |
| R590-247. Universal Health Insurance Application Rule |
| 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 the rule text more in line with current rulewriting standards. Other changes make the language of the rule more clear, remove the Penalties section (old Section R590-247-4) because penalties are already provided for in statute, and update the Severability section (Section R590-247-5) 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, Insurance 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| 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-2-212 | Section 31A-22-635 |
| Section 31A-30-102 | Section 31A-30-117 | |

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: | 08/01/2022 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|---|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/15/2022 |
|--|---|--------------|------------|

R590. Insurance, Administration.

R590-247. Universal Health Insurance Application Rule.

R590-247-1. Authority.

This rule is promulgated ~~[pursuant to Sections 31A-22-635 and 31A-30-102 which direct the commissioner to create a universal health insurance application]~~ by the commissioner pursuant to Sections 31A-2-201, 31A-2-212, 31A-22-635, 31A-30-102, and 31A-30-117.

R590-247-2. Purpose and Scope.

(1) The purpose of this rule is to establish a universal application[s] for all insurers offering a health benefit plan ~~[in Utah outside the Federally Facilitated Marketplace]~~.

(2) This rule applies to:

- (a) ~~[all]~~ an individual health benefit plan ~~[s in Utah]~~ offered outside the Federally Facilitated Marketplace; and
- (b) ~~[all]~~ a small employer health benefit plan ~~[s]~~.

R590-247-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-22-635.

R590-247-4. General Instructions.

(1) ~~[Use of]~~ An insurer or producer shall use the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application ~~[by insurers or by health insurance producers is mandatory]~~.

(2) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application ~~[must]~~ shall be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.

(3) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application ~~[can be downloaded from the Department's website at www.]~~ are available on the department's website, <https://insurance.utah.gov>.

(4) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may be altered for:

- (a) ~~[purposes of]~~ electronic application and submission, including electronic signature disclaimers;
- (b) languages other than English; and
- (c) reasons specifically approved by the commissioner.
- (5) ~~[All insurers]~~ An insurer shall offer compatible systems for electronic submission of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application.

(6) If an employee chooses to waive coverage, an insurer shall not require ~~[such]~~ the employee to complete any section of the Utah Small Employer Health Insurance Application other than the Waiver of Coverage section.

~~[(7)(a) Individual health insurers shall use the Utah Individual Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.]~~

~~[(ii) Individual health insurers shall use the Utah Individual Health Insurance Application dated June 2016 for coverage outside of the Federally Facilitated Marketplace.]~~

~~[(b)(i) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.]~~

~~[(ii) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated January 2014 for all applications with coverage effective dates on or after January 1, 2014.]~~

(7) An insurer offering an individual health benefit plan shall use the Utah Health Insurance Application dated June 2016 for coverage outside of the Federally Facilitated Marketplace.

(8) An insurer offering a small employer health benefit plan shall use the Utah Small Employer Health Insurance Application dated January 2014 for an application with a coverage effective date on or after January 1, 2014.

~~[R590-247-4. Penalties.]~~

~~A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.~~

R590-247-5. Severability.

~~[If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.]~~ If any provision of this rule, Rule R590-247, 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: universal health insurance application

Date of Last Change: 2022~~[June 15, 2016]~~

Notice of Continuation: June 13, 2018

Authorizing, and Implemented or Interpreted Law: 31A-30-102

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

Utah Admin. Code Ref (R no.): R657-54-20

Filing ID
54689

Agency Information

| | |
|-----------------------------|---------------------------------|
| 1. Department: | Natural Resources |
| Agency: | Wildlife Resources |
| Room no.: | Suite 2110 |
| Building: | Department of Natural Resources |
| Street address: | 1594 W North Temple |
| City, state and zip: | Salt Lake City, UT 84116 |

| | | |
|--|---------------|---------------------|
| Mailing address: PO Box 146301 | | |
| City, state and zip: Salt Lake City, UT 84114-6301 | | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Staci Coons | 801-450-3093 | stacicoons@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|--|
| 2. Rule or section catchline: |
| R657-54-20. Season Dates, Bag and Possession Limits, and Areas Open |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| This section is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resource's (DWR) rule pursuant to the taking of wild turkey. |
| 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 amendments to this rule amend the number of fall turkey permits a hunter may purchase. |

Fiscal Information

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|---|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| This amendment limits the number of turkey permits an individual hunter may purchase and therefore, DWR has determined that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget. |
| B) Local governments: |
| Since this amendment limits the number of turkey permits an individual hunter may purchase, this should have little to no effect on local governments. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by this rule. Nor are local governments indirectly impacted because this rule does not create a situation requiring services from local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |

This amendment limits the number of turkey permits an individual hunter may purchase, therefore, this rule does not impose any additional financial requirements on small businesses, nor generate a cost or saving impact to small businesses because this rule does not create a situation requiring services from them.

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

This amendment limits the number of turkey permits an individual hunter may purchase, therefore, this rule does not impose any additional financial requirements on non-small businesses, nor generate a cost or saving impact to non-small businesses because this rule does not create a situation requiring services from them.

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 amendment limits the number of turkey permits an individual hunter may purchase, therefore, this rule does not impose any additional financial requirements on other persons, nor generate a cost or saving impact to other persons because this rule does not create a situation requiring services from them.

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

DWR has determined that this amendment will not create additional costs for those individuals who participate in wild turkey hunting in Utah.

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 measurable fiscal impact to businesses. 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.)

| 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| B) Department head approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Natural Resources, Brian Steed, 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 23-14-18 | Section 23-14-19 | |

Public Notice Information

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|---|------------|
| 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: | 08/01/2022 |

| | |
|--|------------|
| 10. This rule change MAY become effective on: | 08/08/2022 |
| 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

| | | | |
|--|----------------------|--------------|------------|
| Agency head or designee, and title: | J. Shirley, Director | Date: | 04/14/2022 |
|--|----------------------|--------------|------------|

R657. Natural Resources, Wildlife Resources.

R657-54. Taking Wild Turkey.

R657-54-20. Season Dates, Bag and Possession Limits, and Areas Open.

(1) Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not obtain or possess more than:

(a) one permit during the spring season annually; ~~or~~ and

(b) ~~three permits~~ one permit during the fall season annually.

KEY: wildlife, wild turkey, game laws

Date of Last Change: ~~2022~~ August 10, 2020

Notice of Continuation: August 5, 2019

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

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|---------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R850-3 | Filing ID 54687 |
|--------------------------------------|---------------|----------------------------------|

Agency Information

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

General Information

| |
|---|
| 2. Rule or section catchline: |
| R850-3. Applicant Qualifications, Application Forms, and Application Processing |

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

The change in this rule is to include the listing of the Renewable Energy Lease application types in Subsection R850-3-400(1). Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location (i.e., as Surface Leases, Development Leases, or Mineral Leases). The proposed rule changes clarify and classify all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification, that rule has been submitted as proposed new Rule R850-170. Renewable Energy Lease Agreements.

(EDITOR'S NOTE: The proposed new Rule R850-170 is under ID 54684 in this issue, July 1, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do)

This change will add the reference to the new type of renewable energy lease prompted by the new Rule R850-170, and will correct minor rulewriting errors.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

No changes are proposed or anticipated with this clarification. This will not affect the state budget cost.

B) Local governments:

Local governments will not see an affect to the changes with this clarification of renewable energy lease applications.

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

Small businesses will not be affected by adding the reference to renewable energy lease applications.

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

Non-small businesses will not see any changes with this clarification because of the new Rule R850-170.

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**):

Other persons will not see any changes with this clarification.

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

No direct compliance costs will be charged as a result of these rule changes and no indirect compliance costs are anticipated.

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):

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process as well as tracking of renewable energy projects. Michelle McConkie, 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

B) Department head approval of regulatory impact analysis:

The Director of the Department of School and Institutional Trust Lands Administration, Michelle McConkie, 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:**

| | | |
|--|--------------------------------|-------------------|
| 28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12 | Subsection 53C-1-302(1)(a)(ii) | Section 53C-2-404 |
| Article X | Article XX | |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|-----------------------------|--------------|------------|
| Agency head or designee, and title: | Michelle McConkie, Director | Date: | 06/13/2022 |
|--|-----------------------------|--------------|------------|

R850. School and Institutional Trust Lands, Administration.**R850-3. Applicant Qualifications, Application Forms, and Application Processing.****R850-3-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsection~~Sections~~ 53C-1-302(1)(a)(ii) and Section 53C-2-404 which authorize the Director of the School and Institutional Trust Lands Administration (Trust Lands Administration) to prescribe the applicant requirements and the form of application.

R850-3-200. Applicant Qualifications.

Any person qualified to do business in ~~the state of~~ Utah, and not in default under the laws of the state of Utah relative to qualification to do business within the state, or not in default on any previous obligation with the Trust Lands Administration, shall be a qualified applicant for sale, exchange, lease, or permit.

R850-3-300. Application Forms.

Application for the purchase, exchange, or use of trust lands or resources shall be on forms provided by the Trust Lands Administration, exact copies of its forms, forms retrieved from electronic sources, or forms submitted electronically.

R850-3-400. Application Processing.

1. Within 15 days from receipt of an application for a Special Use Lease, Easement, Sale, Exchange, Modified Grazing Permit, ~~or~~ Materials Permit, or Renewable Energy Lease, the Trust Lands Administration shall conduct an initial evaluation of the application. Trust Lands Administration may refuse the application if it determines, in its sole discretion, that:

- activities with higher priorities would be adversely impacted by processing the application;
- an existing or planned application or activity on the parcel would be adversely impacted by processing the application;
- an agency-initiated activity would be adversely impacted by processing the application; or
- proceeding with the proposal would not be in the best interests of the trust land beneficiaries.

2. No fees shall be collected from the applicant ~~before~~~~prior to~~ the ~~above referenced~~ evaluation reference in Subsection R850-3-400(1). If the Trust Lands Administration chooses to refuse the application, it shall notify the applicant in writing. If the Trust Lands Administration chooses to accept the application, it shall inform the applicant of any further information, material, deposits, and fees which may be required ~~in order~~ to accept the application and commence processing. Failure to provide the requested items by the deadline established by the Trust Lands Administration may result in the application being rejected. A determination refusing an application shall not be subject to administrative review.

R850-3-500. No Interest Conveyed by Submitting Application.

1. Until an executed instrument of conveyance, lease, permit, or right is delivered or mailed to the successful applicant, applications for the purchase, exchange, or use of trust lands or resources shall not convey or vest the applicant with any rights or interests.

2. The Trust Lands Administration may reject any application ~~before~~~~prior to~~ execution if it determines that rejection is in the best interest of the trust.

3. If an application is rejected, all moneys~~monies~~ tendered by the applicant, except the application fee, shall be refunded.

4. Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received ~~before~~~~prior to~~ the time that the application is considered for formal action, all moneys~~monies~~ tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals ~~before~~~~prior to~~ the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all moneys~~monies~~ tendered are forfeited to the Trust Lands Administration, unless otherwise ordered for a good cause shown.

5. Any deposit to cover advertising, appraisal costs and processing fees shall be forfeited if any lease, permit, grant, or certificate is offered but not executed by the applicant.

R850-3-600. Rule Changes During Application Processing.

Applications shall be processed in accordance with the applicable rules in effect ~~when~~^[at the time] the application was accepted except that the Trust Lands Administration may apply rule changes that become effective during the processing of an application if the Trust Lands Administration determines that the application of the rule change is in the best interest of the beneficiary of the land. If the applicant objects to compliance with changes in the rules, then the applicant may elect to withdraw the application, or the Trust Lands Administration may reject the application. For applications which are withdrawn or rejected under ~~[this section]~~ Section R850-3-600, all fees, except application fees, shall be refunded to the applicant without penalty.

KEY: administrative procedures, residency requirements

Date of Last Change: 2022~~[June 3, 2003]~~

Notice of Continuation: May 12, 2022

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-404

NOTICE OF PROPOSED RULE

TYPE OF RULE: Amendment

| | | |
|--------------------------------------|---------------|------------------------|
| Utah Admin. Code Ref (R no.): | R850-5 | Filing ID 54686 |
|--------------------------------------|---------------|------------------------|

Agency Information

| | | |
|-----------------------------|--------------------------------------|-----------------------|
| 1. Department: | School and Institutional Trust Lands | |
| Agency: | Administration | |
| Room no.: | Suite 500 | |
| Street address: | 675 E 500 S | |
| City, state and zip: | Salt Lake City, UT 84102-2818 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Michelle McConkie | 801-538-5183 | meastmconkie@utah.gov |
| Lisa Wells | 801-538-5154 | lisawells@utah.gov |

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

General Information

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|--|
| 2. Rule or section catchline: |
| R850-5. Payments, Royalties, Audits, and Reinstatements |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location (i.e., as Surface Leases, Development Leases, or Mineral Leases). The proposed rule changes clarify and classify |

all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification, that rule has been submitted as proposed new Rule R850-170. Renewable Energy Lease Agreements.

The changes in this rule is to specify the listing of renewable energy leases restatement rules in Subsection R850-5-500(1). The changes also add opening parentheses to the Roman numeral listings in Subsections R850-5-300(1) and R850-5-500(1); and further rule changes to follow the rulewriting guidelines set by the Office of Administrative Rules.

(EDITOR'S NOTE: The proposed new Rule R850-170 is under ID 54684 in this issue, July 1, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do)

This change will add reference to the new type of renewable energy lease references prompted by the new Rule R850-170, and will correct minor rulewriting errors.

Fiscal Information

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

A) State budget:

No changes to the state budget cost are proposed or anticipated with the clarification of the new Rule R850-170 in this rules amendments.

B) Local governments:

Local governments will not see any changes with this clarification.

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

Small businesses are not affected by the additions to the rule referring to renewable energy.

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

The renewable leasing content does not affect the cost or savings to the 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**):

Other persons will not be affected by the changes to this rule clarification.

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

No direct compliance costs will be charged as a result of these rule changes and no indirect compliance costs are anticipated.

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):

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process as well as tracking of renewable energy projects. Michelle McConkie, 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

B) Department head approval of regulatory impact analysis:

The Director of the Department of School and Institutional Trust Lands Administration, Michelle McConkie, 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:

| | | |
|--|--------------------------------|-------------------|
| 28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12 | Subsection 53C-1-302(1)(a)(ii) | Section 53C-2-404 |
| Article X | Article XX | |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|-----------------------------|--------------|------------|
| Agency head or designee, and title: | Michelle McConkie, Director | Date: | 06/13/2022 |
|--|-----------------------------|--------------|------------|

R850. School and Institutional Trust Lands, Administration.
R850-5. Payments, Royalties, Audits, and Reinstatements.
R850-5-100. Authorities.

This rule is authorized by Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution and Subsection[Section] 53C-1-302(1)(a)(ii) [of the Utah Code] entitling the Director of the School and Institutional Trust Lands Administration to establish fees, procedures, and rules for management of the agency.

R850-5-200. Payments.

Payments include rentals, royalties, or any other financial obligation owed under the terms of a lease, permit, or any other agreement.

1. As a matter of convenience, the agency allows parties other than the obligee to remit payments on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments

or the proper and timely filing of reports. For practical reasons, the agency often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of each party~~[all parties]~~ to cooperate in responsibly discharging their obligations to each other and to the Trust Lands Administration.

2. The obligee bears final responsibility for payments. Payments must be for the full amount owed. Partial payments will only be accepted if approved in writing by the agency before submission. ~~[In order to]~~To fulfill payment obligations of a lease, permit, or other financial contract with the agency, payments must be received as defined in Subsection R850-5-200(3)~~[subsection 3]~~ of this rule by the appropriate due dates and must be accompanied by the appropriate report. If the obligee submits payment by electronic fund transfer then appropriate supporting documentation must be submitted by electronic data transfer on the same day.

3. Payments will be considered received if sent by electronic fund transfer, delivered to the agency, or if the postmark stamped on the envelope is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a Saturday, Sunday, or legal holiday, the payment shall be considered timely if received as defined in Section R850-5-200~~[herein]~~ by the next business day.

4. A \$30 return~~[-]~~check charge or the actual charge levied by the bank, whichever is greater, will be assessed on ~~[all]~~any checks returned by the bank. The check must be replaced by cash, certified funds, or immediately available funds. The Director may require future payments with certified funds when notified in writing. If replacement funds are received after the required due date, Subsection R850-5-200(6) will be applied.

5. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease~~[/]~~, permit~~[-]~~, or other contractual agreement unless otherwise specified by the contract, is defined as 30 days after the postmark date stamped on the U.S. Postal Service Receipt for Certified Mail of the cancellation notice. In the event payment is not received by the agency on or before the cancellation date, the lease, permit~~[-]~~, or other contractual agreement will be subject to cancellation, forfeiture~~[-]~~, or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the agency more than 30 days after the due date shall initiate a certified billing, return receipt requested. If ~~[all]~~any sums then due and payable are not received within 30 days after the mailing of the U.S. Postal Service certified notice, the agency may elect any of the remedies as outlined in Subsection R850-80-500(8). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

6. A late penalty of 6% or \$30, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in Subsection R850-5-300(2), within the time limit under which such payment is due.

7. Subject to Section R850-4-300, rental payments received after the due date which do not include a late fee may be returned to the lessee by certified mail, return receipt requested. Payment may only be accepted for the full amount due.

R850-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the School and Institutional Trust Lands Administration and shall be accompanied by a royalty report on a form specified by the agency. Failure to provide such a report may, after proper notification, subject the lease to cancellation. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the agency to deposit the royalty to the correct institutional fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

(c) Any report submitted which includes entries as described in Subsections R850-5-300(1)(c)(i) through (iii)~~[below]~~, may not be accepted by the agency and may be returned.

(i) Any report submitted 24 months after the royalty due date.

(ii) Amendments to prior report periods creating a net adjustment of less than \$10.

(iii) Any oil and gas royalty report line of original entry submitted after the first 180 days following the month of first production with a volume entry of zero which is subsequently amended with the actual volume.

2. Interest on Delinquent Royalties

Interest shall be based on the prime rate of interest at the beginning of each month as approved by the Director and documented in the agency's Director's Actions, plus 4%.

R850-5-400. Audits.

The agency shall have the right at reasonable times and intervals to audit the books and records of any lessee~~[-]~~, permittee~~[-]~~ or payor and to inspect the leased or ~~[/]~~permitted premises and conduct field audits ~~[for the purpose of determining]~~to determine whether there has been compliance with the rules or the terms of agreement.

R850-5-500. Reinstatements.

1. The D~~[d]~~irector may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests,

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the D~~[d]~~irector without a written finding.

(d) Easements within 60 days of cancellation provided that:

(i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

(ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

(iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the agency would charge for the easement [at the time] when the request for reinstatement is submitted.

(e) Materials permits within 60 days of cancellation.

(f) Materials permits issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests,

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(g) Renewable energy leases within 60 days of cancellation.

(h) Renewable energy leases issued without using a competitive process within 60 days of cancellation if:

(i) there are no apparent competing interests;

(ii) the cost of requiring a competitive process would be excessive in light of the potential revenue;

(iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement; or

(iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The Director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to Rules R850-30[~~7~~] and R850-80 and Subsection R850-40-700(3)[~~7~~ or R850-80] upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the trust beneficiaries.

KEY: audits, payments, reinstatements, royalties

Date of Last Change: ~~2022~~June 1, 2019

Notice of Continuation: June 27, 2017

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); 53C-2-404

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal

| | | |
|--------------------------------------|----------------|----------------------------------|
| Utah Admin. Code Ref (R no.): | R850-27 | Filing ID 54685 |
|--------------------------------------|----------------|----------------------------------|

Agency Information

| | | |
|-----------------------------|--------------------------------------|--------------------|
| 1. Department: | School and Institutional Trust Lands | |
| Agency: | Administration | |
| Room no.: | Suite 500 | |
| Street address: | 675 E 500 S | |
| City, state and zip: | Salt Lake City, UT 84102-2818 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Keli Beard | 801-538-5185 | kelibeard@utah.gov |
| Lisa Wells | 801-538-5154 | lisawells@utah.gov |

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

General Information

| |
|---|
| 2. Rule or section catchline: |
| R850-27. Geothermal Steam |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location (i.e., as Surface Leases, Development Leases, or Mineral Leases). This change removes the Rule R850-27 in its entirety to be replaced with a proposed new rule submitted as Rule R850-170. Renewable Energy Lease Agreements, for greater clarity and management of this type of commodity. |
| (EDITOR'S NOTE: The proposed new Rule R850-170 is under ID 54684 in this issue, July 1, 2022, of the Bulletin.) |
| 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): |
| This change repeals the Rule R850-27 in its entirety. Geothermal projects will now be reviewed under the new rule submitted as Rule R850-170. |

Fiscal Information

| |
|--|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| No significant change is anticipated the state budget with the repeal of this rule. Geothermal Projects will now be reviewed under the proposed Rule R850-170. |

B) Local governments:

With the repeal of this rule and geothermal projects being reviewed under the proposed Rule R850-170, local governments will have additional opportunity for comments through the Resource Development Coordinating Committee Process and public notifications that will take place.

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

No significant change is anticipated with the repeal of this rule. Geothermal Projects will now be reviewed under the proposed Rule R850-170. Small businesses pursuing geothermal projects could see streamlined process resulting in minor costs savings.

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

No significant change is anticipated with the repeal of this rule. Geothermal Projects will now be reviewed under the proposed Rule R850-170. Non-small businesses pursuing geothermal projects could see streamlined process resulting in minor costs savings.

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 significant change is anticipated with the repeal of this rule. Geothermal Projects will now be reviewed under the proposed Rule R850-170. Other persons pursuing geothermal projects could see streamlined process resulting in minor costs savings.

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

No direct compliance costs will be charged as a result of the repeal of this rule and no indirect compliance costs are anticipated.

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):

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process as well as tracking of renewable energy projects. Michelle McConkie, 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 |
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | | | |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

B) Department head approval of regulatory impact analysis:

The Director of the Department of School and Institutional Trust Lands Administration, Michelle McConkie, 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:**

| | | |
|--|--------------------------------|----------------------------|
| 28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12 | Subsection 53C-1-302(1)(a)(ii) | Subsection 53C-2-402(1) |
| Article X | Article XX | Subsection 53C-2-201(1)(a) |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Michelle McConkie, Director | Date: | 06/13/2022 |
|--|--------------------------------|--------------|------------|

R850. School and Institutional Trust Lands, Administration.

~~R850-27. Geothermal Steam.~~

~~R850-27-100. Definitions.~~

~~1. In addition to those applicable definitions in R850-24-175, the following definitions shall apply to this section:~~

~~(a) Lease: a geothermal steam lease.~~

~~(b) Lessee: a person or entity holding a record title interest in a geothermal steam lease.~~

~~(c) Shut-In Geothermal Well: a geothermal well capable of producing in paying quantities, but which cannot be marketed at a reasonable price due to existing market conditions.~~

~~R850-27-200. Geothermal Steam Lease Issuance.~~

~~1. The agency shall issue leases competitively, non-competitively or enter into joint ventures or other business arrangements for the leasing of geothermal steam resources only on lands where the agency owns both the surface and mineral rights.~~

~~2. A lease shall not be issued for a parcel less than a quarter-quarter section or surveyed lot unless approved by the director.~~

~~3. Leases shall be limited to no more than 640 acres or one section unless approved by the director.~~

~~4. Any lease may be terminated by the agency in whole or part upon lessee's failure to comply with any term or condition of the lease or applicable laws and rules.~~

~~R850-27-300. Geothermal Steam Lease Provisions.~~

~~1. Rentals and Rental Credits.~~

~~(a) The director shall establish the rental rate, not less than \$1.00 per acre per year, at the time the lease is offered. The minimum annual rental on any lease shall not be less than \$40.~~

~~(b) Rental payments shall be paid in advance each year on or before the lease anniversary date, unless otherwise stated in the lease.~~

~~(c) The rental payment for a lease year shall be credited against production royalties only as they accrue for that lease year, unless otherwise provided for in the lease.~~

~~(d) Any overpayment of advance rental occurring from the lease applicant's incorrect listing of acreage of lands described in the application shall be credited toward the applicant's rental account.~~

~~(e) The agency may accept rental payments made by any party, provided however, that the acceptance of such payment(s) shall not be deemed to be recognition of any interest of the payee in the lease.~~

~~2. Royalty Rate.~~

~~(a) The director shall establish the production royalty rate, not to be less than 10%, unless otherwise established by the director, at the time the lease is offered.~~

~~3. Primary Geothermal Steam Lease Term.~~

~~(a) The director shall establish the lease primary term, not to exceed ten (10) years, at the time the lease is offered.~~

~~4. Continuance of a Geothermal Steam Lease After Expiration of Primary Term.~~

~~(a) A lease shall be continued after the primary term has expired so long as:~~

~~(i) the leased substance is being produced in paying quantities from the leased premises, from lands pooled, communitized, or unitized with the leased premises or from an approved drilling unit with respect to the leased premises; or~~

~~(b) the agency determines that the lessee:~~

~~(i) is engaged in operations, exploration, or development which are diligent and are reasonably calculated to advance development or production of the leased substance from the leased premises, from lands pooled, communitized, or unitized with the leased premises, or lands constituting an approved drilling unit with respect to the leased premises (diligent operations may include cessation of operations not in excess of 90 days in duration), and~~

~~(ii) pays the annual minimum royalty set forth in the lease.~~

~~5. Readjustment.~~

~~All geothermal leases shall contain a provision setting forth the agency's right to readjust the terms and provisions of the lease on a periodic basis, and such adjustment shall be made in accordance with R850-24-1000.~~

~~6. Unitization of Geothermal Leases.~~

~~(a) Lessees, upon prior written authorization of the director, may commit leased trust lands to unit, cooperative, or other plans of development with other lands.~~

~~(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, cooperative, or other plan of development.~~

~~(c) Production allocated to leased trust lands under the terms of a unit, cooperative, or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.~~

~~(d) The term of all leases included in any cooperative or unit plan of geothermal steam development or operation in which the agency has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to change in rates at the discretion of the director or as may be prescribed in the terms of the lease.~~

~~(e) Any lease eliminated from any cooperative or unit plan of development or operation, or any such lease which is in effect at the termination of a cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities.~~

~~(f) Rentals under such leases shall continue at the rate specified in the lease.~~

~~7. Shut In Geothermal Wells Considered to be Producing in Paying Quantities~~

~~(a) The director shall establish the minimum rental, not to be less than \$1.00 per acre per year nor more than twice the annual lease rental provided for in the lease, for a shut in geothermal well.~~

~~(b) The director shall establish the minimum royalty, to be not less than 10% nor more than twice the annual lease rental provided for in the lease, for a shut in geothermal well.~~

~~(c) The terms of the lease shall provide the basis upon which the minimum rental or minimum royalty is to be paid by the lessee for a shut in geothermal well.~~

~~(d) The director may, at any time, require written verification from the lessee that a geothermal well qualifies as a shut in geothermal well.~~

~~8. Other Lease Provisions.~~

~~The agency may require, in addition to the lease provisions required by these rules, any other provisions to be included in the lease as it deems necessary.~~

R850-27-400. Existing Geothermal Steam Lease Conversion.

~~Existing leases issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified in the lease and shall be subject to the terms and provisions contained in the lease. The agency may, however, allow such lessees to convert such existing leases to the new lease, providing such conversion will not conflict with the valid existing rights of any other lessee or owner upon the same lands.~~

R850-27-500. Geothermal Steam Lease Application Process.

~~1. Applications for leases, except in the case of competitive bid filing, are received for filing in the office of the agency during office hours. Except as provided, all the applications received by personal delivery over the counter, shall be immediately stamped with the exact date and time of filing. All applications presented for filing at the opening of the office for business on any business day shall be stamped received as of 8 a.m. on that day. All applications received in the first delivery of the U.S. Mail of each business day shall be stamped received as of 8 a.m. on that day. The time indicated on the time stamp is deemed the time of filing unless the agency determines that the application is materially deficient in any particular or particulars. If an application is determined to be deficient, it will be returned to the applicant.~~

~~2. Except in cases of competitive bid filing, if two or more applications for the same lease contain identical bids and bear a time stamp showing the applications were filed at the same time, the agency will award the lease by public drawing or oral bidding.~~

~~3. Competitive Bid Filing.~~

~~(a) The minimum acceptable bid for competitive bid filing of applications for a lease shall be at least equal to the rental rate for the first year of the lease.~~

~~(b) Notices of the offering of lands for competitive bid filing will run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office.~~

~~(c) Where applicants wish to submit applications for competitive bid, such applications shall be submitted in separately sealed envelopes and marked for competitive bid filing.~~

~~4. If an application or any part thereof is rejected, any money tendered for rental for the rejected portion shall be refunded or credited.~~

~~5. Application Withdrawal.~~

~~(a) Should an applicant desire to withdraw his application, the applicant must submit a written request to the agency. If the~~

~~request is received prior to the time the agency approves the application, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after approval of the application, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the agency, unless otherwise approved by the director, for good cause shown.~~

~~(b) Applicants desiring to withdraw an application which has been filed under the competitive bid filing rules above, must submit a written request to the agency. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant is awarded the bid, then unless the applicant accepts the offered lease, all money tendered shall be forfeited to the agency, unless otherwise approved by the director for good cause shown.~~

R850-27-600. Operations Notification and Plan.

~~1. At least 60 days prior to the commencement of any surface disturbance, drilling, or other operations, lessee shall submit a plan of operations to the agency in accordance with the terms and conditions required by the agency, as set forth in R850-24-700. Under no circumstance shall the lessee commence operations without a plan of operation approved by the agency.~~

~~2. The agency shall require the lessee to meet agency reclamation requirements as set forth in R850-24-700.~~

~~**KEY:** geothermal steam, lease provisions, administrative procedures, plan of operations~~

~~**Date of Last Change:** April 1, 2005~~

~~**Notice of Continuation:** February 4, 2020~~

~~**Authorizing, and Implemented or Interpreted Law:** 53C-1-302(1)(a)(ii); 53C-2-201(1)(a); 53C-2-402(1)~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: Repeal and Reenact

| | | |
|--------------------------------------|----------------|------------------|
| Utah Admin. Code Ref (R no.): | R850-30 | Filing ID |
| | | 54683 |

Agency Information

| | | |
|-----------------------------|--------------------------------------|-----------------------|
| 1. Department: | School and Institutional Trust Lands | |
| Agency: | Administration | |
| Room no.: | Suite 500 | |
| Street address: | 675 E 500 S | |
| City, state and zip: | Salt Lake City, UT 84102-2818 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Michelle McConkie | 801-538-5183 | meastmconkie@utah.gov |
| Lisa Wells | 801-538-5154 | lisawells@utah.gov |

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

General Information

2. Rule or section catchline:

R850-30. Special Use Leases

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

The current Special Use Lease rule needs clarification and reorganization so that it is consistent with other agency administrative rules, particularly the new Renewable Energy Lease rule (proposed Rule R850-170) that is being considered under a separate rule filing. The revised rule streamlines and simplifies rule language, clarifies out of date language, and provides better organization to the rule structure. The revised rule updates requirements related to the solicitation and evaluation of lease proposals and the determination of lease rates to align with current business practices. Finally, the reenacted rule updates provisions related to financial guarantees required by the agency and clarifies lease assignment and sublease procedures.

(EDITOR'S NOTE: The proposed new Rule R850-170 is under ID 54684 in this issue, July 1, 2022, of the Bulletin.)

4. Summary of the new rule or change (What does this filing do)

The repeal of the current Special Use Lease rule and reenactment of the revised rule is to streamline and simplify rule language, provide better organization to this rule, and update requirements and procedures to align with current business practices.

Fiscal Information

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

A) State budget:

The purpose of the repeal of the current rule and reenactment of revised language is to streamline and simplify rule language, provide better organization to the rules, and update requirements and procedures to align with current business practices. Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. It is not anticipated that there would be additional costs or savings to the state budget as a result of the revised rule.

B) Local governments:

The purpose of the repeal of the current rule and reenactment of revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices. Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency.

Local governments occasionally lease trust lands for government purposes such as water storage tanks. It is not anticipated that enactment of the revised rules will result in any changes to lease rates paid to the School and Institutional Trust Lands Administration (SITLA) by local governments for current and/or future leases.

Local governments are also impacted by the issuance of leases on trust lands as they review and provide input on lease proposals, issue conditional use permits, regulate land uses, and collect taxes. It is not anticipated that the revised rule would result in any changes to the current impacts of SITLA's leasing program on local governments. The volume of leases issued by the agency is largely dependent on outside market forces and will not be impacted by the proposed rule revisions.

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

The purpose of the repeal of the current rule and reenactment of the revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices.

Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. Small businesses occasionally lease trust lands for various purposes. It is not anticipated that enactment of the revised language will result in any changes to lease rates paid to SITLA for current and/or future leases.

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

The purpose of the repeal of the current rule and reenactment of the revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices.

Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. Non-small businesses frequently lease trust lands for various purposes. It is not anticipated that enactment of the revised language will result in any changes to lease rates paid to SITLA for current and/or future leases.

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

The purpose of the repeal of the current rule and reenactment of the revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices.

Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. Other persons occasionally lease trust lands for various purposes. It is not anticipated that enactment of the revised language will result in any changes to lease rates paid to SITLA for current and/or future leases.

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

The purpose of the repeal of the current rule and reenactment of the revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices.

Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. No direct compliance costs will be charged as a result of these rule changes and no indirect compliance costs are anticipated.

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 purpose of the repeal of the current rule and reenactment of the revised language is to streamline and simplify rule language, provide better organization to the rule, and update requirements and procedures to align with current business practices.

Changes to this rule will mainly impact internal technical aspects regarding processing of lease applications and administration of leases by the agency. No adverse fiscal impact for businesses is anticipated. Michelle McConkie, 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 |

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

B) Department head approval of regulatory impact analysis:

The Director of the Department of School and Institutional Trust Lands Administration, Michelle McConkie, 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:

| | | |
|--|----------------------------|-------------------------|
| 28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12 | Subsection 53C-1-302(1)(a) | Subsection 53C-4-101(1) |
| Article X | Article XX | Subsection 53C-4-202 |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Michelle McConkie, Director | Date: | 06/13/2022 |
|--|--------------------------------|--------------|------------|

R850. School and Institutional Trust Lands, Administration. R850-30. Special Use Leases.

~~R850-30-100. Authorities.~~

~~This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the director to establish criteria for the leasing of trust lands.~~

~~R850-30-150. Planning.~~

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

- ~~1. Submit proposals to lease trust lands to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;~~
- ~~2. Evaluate and respond to comments received through the RDCC process; and~~
- ~~3. Evaluate and respond to any comments received through the request for proposal process pursuant to R850-30-310 or the solicitation process pursuant to R850-30-500(2), as applicable.~~

~~R850-30-200. Terms of Leases.~~

- ~~1. The agency may issue special use leases for surface uses of trust lands, excluding grazing, for terms of up to 51 years.~~
- ~~2. In exceptional cases, the agency may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the trust beneficiaries.~~
- ~~3. The agency shall issue leases for the term most consistent with land management objectives found in R850-2. The term of a lease shall not normally be for a period longer than specified below for a particular lease type:~~
 - ~~(a) Military: 10 years~~
 - ~~(b) Agricultural: 20 years~~
 - ~~(c) Telecommunications: 20 years~~
 - ~~(d) Commercial: 51 years~~
 - ~~(e) Industrial: 51 years~~
 - ~~(f) Residential: 51 years~~
 - ~~(g) Governmental (Other than Military): 51 years.~~

~~R850-30-300. Categories of Special Use Leases.~~

~~Special use leases are classified according to the following categories:~~

- ~~1. Commercial: use of trust land for a restaurant, service station, boating facilities, motels, retail businesses and similar uses may be included in this category.~~
- ~~2. Industrial: use of trust land for testing sites, mining or extraction facilities, manufacturing plants and similar uses may be included in this category.~~
- ~~3. Residential: use of trust land for a private, permanent home and legal domicile may be included in this category.~~
- ~~4. Agricultural: use of trust land for crop production, improved pasture lands, irrigation improvements and similar uses, excluding grazing, may be included in this category.~~
- ~~5. Telecommunications: use of trust land for the operation of towers and building for telecommunication purposes may be included in this category.~~

~~6. Governmental: use of trust land for water storage tanks, well sites, reservoirs, gun ranges and similar uses by a governmental agency may be included in this category.~~

~~R850-30-310. Requests for Proposals.~~

- ~~1. The agency may issue a request for proposals (RFP) for any lands on which the director has determined the potential for development exists.~~
- ~~2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected records status until the director selects the preferred proposal.~~
- ~~3. Proposals may be evaluated using the following criteria:~~
 - ~~(a) Income potential;~~
 - ~~(b) Ability of proposed use to enhance adjacent trust lands;~~
 - ~~(c) Proposed timetable for development;~~
 - ~~(d) Ability of applicant to perform satisfactorily;~~
 - ~~(e) Desirability of proposed use; and~~
 - ~~(f) Any other criterion deemed appropriate by the director.~~
- ~~4. Requests for proposals shall be advertised through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located as well as any other advertising methods the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.~~
- ~~5. Proposals shall contain a non-refundable application and review fee as specified in the RFP.~~
- ~~6. Applicants selected in an RFP process shall be exempt from the application process set forth in R850-30-500.~~

~~R850-30-400. Lease Rates.~~

- ~~1. Lease rates shall be based on the market value and income-producing capability of the subject property and may be determined by:~~
 - ~~(a) multiplying the market value of the subject property by the current agency-determined interest rate;~~
 - ~~(b) the evaluation and use of comparable lease data; or~~
 - ~~(c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable.~~
- ~~2. The agency may base lease rentals on a value other than the market value of the subject property, provided that the director determines such is in the best interest of the beneficiaries and provided that the lease contains a clause whereby the agency may terminate the lease prior to the end of the lease term.~~
- ~~3. In addition to lease rental, the agency may require the payment of percentage rents.~~
- ~~4. The agency, pursuant to board policy, may establish a minimum lease rental based on the costs incurred in administering the leases, and a desired minimum rate of return.~~
- ~~5. Lease Review Procedures and Rental Adjustments for Special Use Leases:~~
 - ~~(a) Special use leases shall be reviewed by the agency as of the effective date specified in the respective lease and such review may result in an adjustment of base rental.~~
 - ~~(b) Adjustments in base rentals may be based upon changes in market value including appreciation of the subject properties, changes in established indices, or other methods which may be appropriate and in the best interest of the trust beneficiaries. The~~

determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

~~(c) When using established indices, the rate of adjustment shall be based on the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.~~

~~(d) The index used in the review may be the applicable component of the CPI-U or any other index determined by the agency to be appropriate.~~

~~(e) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible by 10 unless:~~

~~(i) the lease contains a fee schedule or other adjustment provisions which require a payment in an amount not evenly divisible by 10;~~

~~(ii) the lessee requests otherwise; or~~

~~(iii) the lease was acquired from the United States, Department of Interior, Bureau of Land Management, or other governmental agency and contains terms which do not allow rounding.~~

~~(f) The director may suspend, defer, or waive the adjustment of base rentals in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.~~

R850-30-500. Application Procedures.

~~1. Applications for special use leases shall indicate the appropriate lease category, as set forth in R850-30-300.~~

~~2. Solicitation of Competing Applications.~~

~~(a) Upon acceptance by the director of a completed special use lease application, the agency shall solicit competing lease applications and, if appropriate, sales applications. The solicitation of competing applications may be waived by the director based on a written finding that the waiver is in the best interest of the trust beneficiaries.~~

~~(b) The following classes of leases are exempt from the requirements of R850-30-500(2):~~

~~i) Communication sites.~~

~~ii) Mineral and oil and gas extraction facilities when the agency does not own the mineral estate.~~

~~(c) Competing applications shall be solicited through publication of a notice at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located.~~

~~(d) Copies of the notice shall be sent by certified mail at least 30 days prior to the selection of the successful applicant to lessees/permittees of record on the subject property and adjoining landowners as shown on county records.~~

~~(e) Notices shall also be sent to the appropriate county authority in which the subject property is located with a request to have the notice posted in the local governmental administrative building or courthouses.~~

~~(f) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the parcel that does not violate the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.~~

~~(g) The agency may solicit applications on trust lands when no application has been received by advertising a parcel pursuant to the process described in R850-30-500(2) or any other means, when in the best interest of the trust beneficiaries.~~

R850-30-510. Preferred Application Determination.

~~1. At the conclusion of the advertising and notification process conducted pursuant to R850-30-500(2), the agency may select the preferred application using either of the following processes. The director shall have full discretion to select which process to use:~~

~~(a) Sealed Bid Process.~~

~~i) The agency shall allow all applicants at least 20 days from the date of the agency's mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing a proposal to lease, purchase or exchange the subject parcel.~~

~~ii) The agency may reject those applications for which a proposal is not submitted within the prescribed time period.~~

~~iii) A sealed bid proposal for a lease shall contain the first year's rental unless such requirement is waived by the director. A sealed bid proposal for a sale shall contain funds in the amount of 10% of the offer to purchase. These deposits are refundable if the applicant is not the successful applicant or if the applicant withdraws the application prior to an agency decision.~~

~~iv) Competing proposals may be evaluated using the following criteria:~~

~~A) Income potential;~~

~~B) Ability of proposed use to enhance adjacent trust lands;~~

~~C) Proposed timetable for development;~~

~~D) Ability of applicant to perform satisfactorily;~~

~~E) Desirability of proposed use; and~~

~~F) Any other criterion deemed appropriate by the director.~~

~~b. Negotiation Process.~~

~~i) The director or his designee may invite each qualified applicant or interested person to meet with the agency and present its proposal for the use of the subject property. The director or his designee may also invite persons other than those responding to the initial solicitation to meet with the agency for the purpose of providing information or making a proposal. The director shall have full authority to:~~

~~A) offer counter proposals;~~

~~B) negotiate with any or all of the applicants or interested persons to create a proposal which best satisfies the objectives of R850-2-200;~~

~~C) terminate the negotiation process entirely; or~~

~~D) require the applicants or interested persons to proceed through the process described in R850-30-500(2).~~

~~2. If the preferred application is for a lease, it shall be reviewed in accordance with R850-30-550. If the preferred application is for a sale, it shall be reviewed pursuant to R850-80-200. If the preferred application is for an exchange, it shall be reviewed pursuant to R850-90-200.~~

R850-30-550. Lease Determination Procedures.

~~1. The director shall not lease trust lands when such lease:~~

~~(a) would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;~~

~~(b) would create significant obstacles to future mineral development; or~~

~~_____ (c) would foreclose future development or management options which would likely result in greater long term economic benefit.~~

R850-30-600. Special Use Lease Provisions.

~~_____ Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202 and the following provisions: the rights of the lessee; the rights reserved to the lessor, including the right to review the lease to ensure compliance with the terms and conditions of the lease; the term of the lease; annual rentals and percentage rents, if applicable; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability associated with the actions of the lessee on the subject property.~~

R850-30-800. Bonding Provisions.

~~_____ 1. At the time of initial lease payment, the lessee may be required to post with the agency performance, payment, and reclamation bonds in the form and amount and subject to any terms and conditions as may be determined by the agency to assure compliance with all terms and conditions of the lease.~~

~~_____ 2. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.~~

~~_____ 3. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided lessor first gives lessee 30 days written notice stating the increase and the reason(s) for the increase.~~

~~_____ 4. Bonds may be accepted in any of the following forms at the discretion of the agency:~~

~~_____ (a) Surety bond with an approved corporate surety registered in Utah;~~

~~_____ (b) Cash deposit. The agency shall not be responsible for any investment returns on cash deposits; or~~

~~_____ (c) Other forms of surety as may be acceptable to the agency.~~

R850-30-900. Lease Assignments and Subleases.

~~_____ 1. Any special use lease may be assigned or subleased to any person or entity qualified to hold a lease on trust land, provided, however, that all assignments and subleases are approved by the director, and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is voidable at the director's option.~~

~~_____ 2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.~~

~~_____ 3. An assignment shall be a sufficient legal instrument, properly executed and acknowledged, with the lease number, the land involved, and the name and address of the assignee, and the interest transferred clearly indicated.~~

~~_____ 4. Additional occupants of a telecommunication facility shall abide by all the requirements of this rule. In addition, the agency may charge each communication site sublessee an amount based on the then current market rental value of the premises, and such other factors as may reasonably bear upon the suitability of the sublessee as a tenant of the premises.~~

~~_____ 5. As a condition of the approval of an assignment or sublease the agency shall require:~~

~~_____ (a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and~~

~~_____ (b) The assignee or sublessee to be satisfactory to the agency.~~

R850-30-1000. Lease Amendments.

~~_____ 1. Special use leases may be amended as to the following terms and conditions upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with R850-2:~~

~~_____ (a) Purpose of the lease;~~

~~_____ (b) Term of the lease;~~

~~_____ (c) Rate of rental or percentage rent;~~

~~_____ (d) Due date of rental or percentage rent; and~~

~~_____ (e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 150% of the original acreage. If the total amended acreage exceeds 150% of the original acreage, the amendment shall be advertised pursuant to R850-30-500(2).]~~

R850-30-100. Authorities.

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

R850-30-150. Planning.

In addition to those other planning responsibilities described in this Rule R850-30, the agency shall:

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

2. Evaluate comments received through the RDCC process; and

3. Evaluate comments received through the request for proposal process pursuant to Section R850-30-310 or the solicitation process pursuant to Section R850-30-500, as applicable.

R850-30-200. Terms of Leases.

Lease terms should not normally be for longer than 30 years, except that telecommunication and agricultural leases should not normally be for longer than 20 years. Extensions to a lease term should not normally be for longer than 20 years. The agency may issue leases for a term longer than 30 years or extend a term for longer than 20 years if a longer term is consistent with the land management objectives found in Rule R850-2.

R850-30-300. Categories of Special Use Leases.

Special use leases are categorized as follows:

1. Commercial;

2. Industrial;

3. Agricultural;

4. Telecommunications;

5. Residential; and

6. Governmental.

R850-30-305. Other Business Arrangements.

1. The agency may enter into other business arrangements (OBAs), such as joint venture and lease to sell agreements, that are consistent with the purposes of the Act.

2. OBAs are exempt from these R850-30 rules.

3. OBAs and any amendments to OBAs must be approved by the Board of Trustees.

R850-30-310. Requests for Proposals.

1. The agency may issue a request for proposals (RFP) for surface uses of trust lands.

2. The agency shall give notice of the RFP to lessees or permittees of record on the subject property and shall advertise the RFP by methods determined by the agency to increase exposure of the subject property to qualified applicants.

3. In response to the RFP, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

4. The agency shall evaluate proposals using the following criteria:

(a) income potential;

(b) potential enhancement of trust lands;

(c) development timeline;

(d) applicant qualifications;

(e) desirability of proposed use; and

(f) any other criterion deemed appropriate by the agency.

5. The agency may charge non-refundable application and review fees, as specified in the RFP.

6. Applicants selected in the RFP process are exempt from the application process in Section R850-30-500.

R850-30-400. Lease Rates.

1. The agency shall base lease rates on the market value or income producing capability of the subject property and may require any commercially reasonable type of consideration, including rent, percentage rent, use payments, impact charges, escalating charges, balloon payments, and in-lieu payments. The agency may base lease rates on any of the following criteria, in combination or otherwise:

(a) the market value of the subject property multiplied by the current agency-determined interest rate;

(b) comparable lease data;

(c) market value of the proposed use of the subject property;

(d) rates schedules approved by the director;

(e) the administrative costs of leasing the subject property and a desired minimum rate of return; and

(f) a fixed rate per acre or a crop-share formula for agricultural leases providing that the lease rate is customary and reasonable.

2. The agency may base lease rates on a value other than the market value of the subject property if the director determines it is in the best interest of the beneficiaries and the agency has the right to terminate the lease before the end of the term.

3. Lease Review and Adjustment Procedures.

(a) The agency shall review special use leases periodically as specified in the lease agreement and may adjust lease rates, the amount of financial guaranty, the amount of required insurance, and other similar lease provisions to ensure the agency receives no less than fair market value for the subject property and is adequately

protected against a lessee's breach. Periodic lease reviews should normally be no longer than every five years.

(b) The agency may base lease rate adjustments on changes in market value including appreciation of the subject property, changes in established indices, or other methods that are appropriate and in the best interest of the trust beneficiaries.

(c) If the lease does not specify the rate of adjustment, the rate of adjustment will be based on the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the Consumer Price Index is no longer published, a substitute index published by a governmental agency and comparable to the Consumer Price Index. The adjusted lease rate cannot be less than the lease rate for the immediately preceding review period.

(d) The director may suspend, defer, or waive lease adjustments in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

R850-30-500. Solicitation of Competing Applications.

1. On acceptance by the agency of a completed special use lease application, the agency shall solicit competing interest in the subject parcel. The director may waive this requirement if it is in the best interest of the trust beneficiaries.

2. The following classes of leases are exempt from the requirements of Subsection R850-30-500(1):

(a) Telecommunications; and

(b) Mineral and oil and gas extraction facilities to extract the mineral estate of the subject property when the mineral estate is not a trust asset.

3. The agency shall solicit competing interest in the subject parcel by giving at least 30 days' notice by certified mail to:

(a) the legislative body of the county in which the subject parcel is located;

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

(c) adjoining landowners as shown on readily accessible county records or other credible records.

4. In addition to the notices required under Subsection R850-30-500(3), the agency may solicit competing interest in the subject parcel by methods determined by the agency to increase exposure of the subject property to qualified applicants.

5. The notice of solicitation of competing interest must include:

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

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

(c) any other information that may create interest in the subject parcel that does not violate the confidentiality of the initial application. The successful applicant is responsible for the cost of the advertising.

6. The agency may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in this Section R850-30-500 or any other means, when in the best interest of the trust beneficiaries.

7. In response to a solicitation, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

R850-30-510. Competing Proposals.

1. If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-30-500, the agency may select a proposal using the following methods:

(a) Sealed Bid Process.

(i) The agency shall give the competing applicants notice setting forth the date on which the applicants must submit a final sealed proposal to the agency.

(ii) The agency may reject proposals received after the established due date.

(iii) The agency may require proposals for a lease to include the first year's rental, proposals for a sale to include a down payment on the proposed purchase price, and payments to cover the agency's costs of advertising and application fees.

(iv) The agency shall evaluate proposals using the following criteria:

(A) income potential;

(B) potential enhancement of trust lands;

(C) development timeline;

(D) applicant qualifications;

(E) desirability of proposed use; and

(F) any other criterion deemed appropriate by the agency.

(b) The agency may negotiate with the applicants or interested persons to create a proposal that best satisfies the objectives of Rule R850-2.

2. The agency may terminate the application process at any time in its sole discretion.

R850-30-550. Lease Determination Procedures.

The agency may not lease trust lands when leasing:

1. would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;

2. would create significant obstacles to future mineral development; or

3. would foreclose future development or management options that would likely result in greater long term economic benefit.

R850-30-600. Special Use Lease Provisions.

Each lease must contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 53C-4-202, and the following provisions:

1. the term of the lease;

2. the lease rate and other payments due to the agency;

3. reporting of technical and financial data;

4. reservation for mineral exploration and development and other compatible uses, unless waived by the director;

5. operation requirements;

6. lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease;

7. procedures of notification;

8. transfers of lease interest by lessee;

9. terms and conditions of lease forfeiture; and

10. protection of the state from liability associated with the actions of the lessee on the subject property.

R850-30-800. Financial Guaranties.

1. The agency may require a lessee to provide a financial guaranty to the agency to ensure compliance with lease terms including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.

2. If a lessee assigns a lease, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or any lease obligations, including reclamation, have been satisfied.

3. The agency may increase the amount of the financial guaranty in reasonable amounts at any time by giving lessee 30 days' written notice stating the increase and the reasons for the increase.

R850-30-900. Lease Assignments and Subleases.

1. Assignments.

(a) A lessee may only assign a lease if the agency consents to the assignment. Any assignment made without such approval is voidable in the agency's discretion.

(b) On the effective date of the assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(c) An assignee must provide the agency with a copy of the assignment document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the assignee, and the interest transferred clearly indicated.

(d) As a condition of the approval of an assignment, the agency shall require:

(i) the assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(ii) the assignee be satisfactory to the agency.

2. Subleases.

(a) A lessee may only sublease a lease if the agency consents to the sublease. A sublease made without such approval is voidable in the agency's discretion.

(b) The lessee must indemnify the agency for actions or inactions of the sublessee and the agency may look to either the lessee or the sublessee for compliance with the lease.

(c) A lessee must provide the agency with a copy of the sublease document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the sublessee, the interest subleased, and the financial benefit to lessee clearly indicated.

(d) The agency may require lessee and sublessee to provide annual financial documentation that clearly identifies the revenue generated on the property by sublessee and the revenue paid by sublessee to lessee.

(e) The agency may charge the lessee sublease rates based on the then current market rental value of the subject property, the revenue paid by sublessee to lessee, and such other factors as the agency deems reasonable.

R850-30-1000. Lease Amendments.

1. The agency may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the agency shall solicit competing interest pursuant to Section R850-30-500 if:

(a) the total amended acreage exceeds 150% of the original acreage;

(b) the lease term, including any extensions is longer than 50 years; or

(c) the proposed amended purpose of the lease is substantially different from the original purpose.

2. The agency may condition approval of an amendment on the lessee accepting the current lease form.

KEY: administrative procedures, leases, trust land management, request for proposals

Date of Last Change: ~~2022~~ March 23, 2016

Notice of Continuation: June 27, 2017

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a)(ii); ~~53C-2-201(1)(a); 53C-4-101(1); 53C-4-202~~

NOTICE OF PROPOSED RULE

TYPE OF RULE: New

| | | |
|-------------------------------|----------|-----------------|
| Utah Admin. Code Ref (R no.): | R850-170 | Filing ID 54684 |
|-------------------------------|----------|-----------------|

Agency Information

| | | |
|--|--------------------------------------|--------------------|
| 1. Department: | School and Institutional Trust Lands | |
| Agency: | Administration | |
| Room no.: | Suite 500 | |
| Street address: | 675 E 500 S | |
| City, state and zip: | Salt Lake City, UT 84102-2818 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Keli Beard | 801-538-5185 | kelibeard@utah.gov |
| Lisa Wells | 801-538-5154 | lisawells@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

| |
|---|
| 2. Rule or section catchline: |
| R850-170. Renewable Energy Lease Agreements |
| 3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?): |
| Renewable Energy Leases on Trust Lands have historically been reviewed and processed under differing rules and requirements based on their location. (i.e., as Surface Leases, Development Leases, or Mineral Leases). This proposed rule clarifies and classifies all Renewable Energy Projects (solar, wind, geothermal, and green hydrogen) into their own category for both continuity and clarification. The proposed rule is largely in line with the School and Institutional Trust Lands Administration's (SITLA) surface rule requirements for application acceptance, processing, review, and public notice procedures. |
| 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): |

This proposed rule establishes the Renewable Energy Lease types and procedures for the application, processing, and review of those projects. Geothermal projects will be classified in the new Renewable Energy lease's category, therefore adding this rule will also allow for the repeal of Rule R850-27, Geothermal Steam.

(EDITOR'S NOTE: The proposed repeal of Rule R850-27 is under ID 54685 in this issue, July 1, 2022, of the Bulletin.)

Fiscal Information

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

A) State budget:

The purpose of establishing the new Renewable Energy rules is to streamline and help eliminate confusion on the part of applicants and developers of renewable energy projects on Trust Lands. Some of the processes in the review of those projects would require additional administrative steps and Board Approvals, which were deemed to not be necessary and overly burdensome to both staff and applicants. It is not anticipated that there would be any additional costs and streamlining the process for both applicants and staff could see some minimal savings to the agency and applicants.

B) Local governments:

The current leasing process for renewable energy projects requires notification to the Resource Development Coordinating Committee (RDCC), Local Association of Governments, and the County that the project is located in. This process would be not change and is incorporated into this rule. No fiscal impact is anticipated to local governments with this proposed rule.

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

The purpose of this proposed rule is to streamline and simplify rule language and update requirements and procedures to align with current business practices. This rule will mainly impact internal technical aspects regarding processing of lease applications. Renewable Energy projects are not typically pursued by small business; however these changes would make the process easier to understand and follow.

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

The purpose of this proposed rule is to streamline and simplify rule language and update requirements and procedures to align with current business practices. This rule will mainly impact internal technical aspects regarding processing of lease applications. However, Renewable Energy projects are typically pursued by larger National and International developers. Having consistent rules and

process' for review of those proposals will allow for conformity in the process.

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

The purpose of this proposed rule is to streamline and simplify rule language and update requirements and procedures to align with current business practices. This rule will mainly impact internal technical aspects regarding processing of lease applications. Other Persons may occasionally lease Trust lands for Renewable Energy projects. Having consistent rules and process' for review of those proposals will allow for conformity in the process.

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

No direct compliance costs will be charged as a result of these rule changes and no indirect compliance costs are anticipated.

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):

Renewable Energy leases have always been allowed on Trust Lands but were being tracked through differing lease types. These rule changes allow for Renewable Energy Leases (wind, solar, geothermal, and green hydrogen) to be tracked and processed as Renewable Energy leases, thus simplifying both the application and approval process as well as tracking of renewable energy projects. No adverse fiscal impact for business is anticipated. Michelle McConkie, 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 |

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

B) Department head approval of regulatory impact analysis:

The Director of the Department of School and Institutional Trust Lands Administration, Michelle McConkie, 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:

| | | |
|--|----------------------------|-------------------------|
| 28 Stat. 107-112, Utah Enabling Act of 1894, Sections 6, 8, 10, and 12 | Subsection 53C-1-302(1)(a) | Subsection 53C-4-101(1) |
| Article X | Article XX | Section 53C-4-202 |

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: 08/01/2022

10. This rule change MAY become effective on: 08/08/2022

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

| | | | |
|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Michelle McConkie, Director | Date: | 06/13/2022 |
|--|--------------------------------|--------------|------------|

R850. School and Institutional Trust Lands, Administration.**R850-170. Renewable Energy Lease Agreements.****R850-170-100. Authorities.**

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

R850-170-150. Planning.

1. In addition to those other planning responsibilities described in this Rule R850-170, the agency shall:

- (a) Submit proposals to lease trust lands for renewable energy projects to the Resource Development Coordinating Committee (RDCC) unless the proposal is exempt from such review;
- (b) Evaluate comments received through the RDCC process; and
- (c) Evaluate comments received through the request for proposal process pursuant to Section R850-170-600 or the solicitation process pursuant to Section R850-170-800.

R850-170-200. Exemption from Development Transaction Rules.

The director may exempt renewable energy leases issued on Development Property as defined in Subsection R850-140-250(1) from Rule R850-140 if the renewable energy leases are issued according to this Rule R850-170 and if the exemption is consistent with the land management objectives found in Rule R850-2.

R850-170-300. Terms of Leases.

Lease terms, including extensions, should not normally be for longer than 51 years. The agency may issue leases for a term longer than 51 years if a longer term is consistent with the land management objectives found in Rule R850-2.

R850-170-400. Categories of Renewable Energy Leases.

- 1. Renewable energy leases are categorized as follows:
 - (a) solar;
 - (b) wind;
 - (c) energy storage; and
 - (d) geothermal.
- 2. The agency may grant exploration and options to lease the renewable resources on a parcel according to the requirements of this Rule R850-170 if doing so would encourage exploration of undefined resources.

R850-170-500. Other Business Arrangements.

- 1. The agency may enter into other business arrangements (OBAs), such as joint venture agreements, that are consistent with the purposes of the Act.
- 2. OBAs are exempt from these R850-170 rules.
- 3. OBAs and any amendments to OBAs must be approved by the Board of Trustees.

R850-170-600. Requests for Proposals.

- 1. The agency may issue a request for proposals (RFP) for renewable energy projects on trust lands.

2. The agency shall give notice of the RFP to lessees or permittees of record on the subject property and shall advertise the RFP by methods determined by the agency to increase exposure of the subject property to qualified applicants.

3. In response to the RFP, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

4. The agency shall evaluate proposals using the following criteria:

- (a) income potential;
- (b) potential enhancement of trust lands;
- (c) development timeline;
- (d) applicant qualifications;
- (e) desirability of proposed use; and
- (f) any other criterion deemed appropriate by the agency.

5. The agency may charge non-refundable application and review fees, as specified in the RFP.

6. Applicants selected in the RFP process are exempt from the application process in Section R850-170-800.

R850-170-700. Lease Rates.

1. The agency shall base lease rates on the market value or income producing capability of the subject property and may require any commercially reasonable type of consideration, including rent, percentage rent, use payments, impact charges, escalating charges, balloon payments, and in-lieu payments. The agency may base lease rates on any of the following criteria, in combination or otherwise:

- (a) the market value of the subject property multiplied by the current agency-determined interest rate;
- (b) comparable lease data;
- (c) market value of the proposed use of the subject property;
- (d) rates schedules approved by the director; and
- (e) the administrative costs of leasing the subject property and a desired minimum rate of return.

2. The agency may base lease rates on a value other than the market value of the subject property if the director determines it is in the best interest of the beneficiaries and the agency has the right to terminate the lease before the end of the term.

3. Lease Review and Adjustment Procedures.

(a) The agency shall review renewable energy leases periodically as specified in the lease agreement and may adjust lease rates, the amount of financial guaranty, the amount of required insurance, and other similar lease provisions to ensure the agency receives no less than fair market value for the subject property and is adequately protected against a lessee's breach. Periodic lease reviews should normally be no longer than every five years.

(b) The agency may base lease rate adjustments on changes in market value including appreciation of the subject property, changes in established indices, or other methods that are appropriate and in the best interest of the trust beneficiaries.

(c) If the lease does not specify the rate of adjustment, the rate of adjustment will be based on the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the Consumer Price Index is no longer published, a substitute index published by a governmental agency and comparable to the Consumer Price Index. The adjusted lease rate cannot be less than the lease rate for the immediately preceding review period.

(d) The director may suspend, defer, or waive lease adjustments in specific instances, based on a written finding that the suspension, deferral, or waiver is in the best interest of the trust beneficiaries.

R850-170-800. Solicitation of Competing Applications.

1. On acceptance by the agency of a completed application, the agency shall solicit competing interest in the subject parcel. The director may waive this requirement if it is in the best interest of the trust beneficiaries.

2. Renewable energy facilities to support extraction of the mineral estate of the subject property when the mineral estate is not a trust asset is exempt from the requirements of Section R850-170-800.

3. The agency shall solicit competing interest in the subject parcel in a manner designed to increase exposure of the subject property to qualified applicants. The agency may implement the solicitation through print media, internet, signage, direct mail, or other appropriate marketing methods. The agency shall also give at least 30 days' notice by certified mail to:

(a) the legislative body of the county in which the subject parcel is located; and

(b) lessees or permittees of record on the subject property.

4. The notice of solicitation of competing interest must include:

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

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

(c) any other information that may create interest in the subject parcel that does not violate the confidentiality of the initial application. The successful applicant is responsible for the cost of the advertising.

5. The agency may solicit competing interests on trust lands when no application has been received by advertising a parcel pursuant to the process described in this Section R850-170-600 or any other means, when in the best interest of the trust beneficiaries.

6. In response to a solicitation, an applicant may propose a sale, lease, joint development, exchange, or other business arrangement.

R850-170-900. Competing Proposals.

1. If the agency receives credible competing proposals in response to the solicitation process conducted pursuant to Section R850-170-800, the agency may select a proposal using the following methods:

(a) Sealed Bid Process.

(i) The agency shall give the competing applicants notice setting forth the date on which the applicants must submit a final sealed proposal to the agency.

(ii) The agency may reject proposals received after the established due date.

(iii) The agency may require proposals for a lease to include the first year's rental, proposals for a sale to include a down payment on the proposed purchase price, and payments to cover the agency's costs of advertising and application fees.

(iv) The agency shall evaluate proposals using the following criteria:

(A) income potential;

(B) potential enhancement of trust lands;

(C) development timeline;

(D) applicant qualifications;

(E) desirability of proposed use; and

(F) any other criterion deemed appropriate by the agency.

(b) The agency may negotiate with the applicants or interested persons to create a proposal that best satisfies the objectives of Rule R850-2.

2. The agency may terminate the application process at any time in its sole discretion.

R850-170-1000. Lease Determination Procedures.

The agency may not lease trust lands when a lease:

1. would be inconsistent with board policy or would not be in the best interest of the trust beneficiaries;

2. would create significant obstacles to future mineral development; or

3. would foreclose future development or management options that would likely result in greater long term economic benefit.

R850-170-1100. Renewable Energy Lease Provisions.

Each lease must contain provisions necessary to ensure responsible management of trust lands, including those provisions enumerated under Section 53C-4-202 and the following provisions:

1. the term of the lease;

2. the lease rate and other payments due to the agency;

3. reporting of technical and financial data;

4. reservation for mineral exploration and development and other compatible uses, unless waived by the director;

5. operation requirements;

6. lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease;

7. procedures of notification;

8. transfers of lease interest by lessee;

9. terms and conditions of lease forfeiture; and

10. protection of the state from liability associated with the actions of the lessee on the subject property.

R850-170-1200. Financial Guaranties.

1. The agency may require a lessee to provide a financial guaranty to the agency to ensure compliance with lease terms including performance, payment, and reclamation. The financial guaranty must be in a form and in an amount acceptable to the agency.

2. If a lessee assigns a lease, the agency is not obligated to release the financial guaranty of the assignor until the assignee submits an equivalent replacement financial guaranty or any lease obligations, including reclamation, have been satisfied.

3. The agency may increase the amount of the financial guaranty in reasonable amounts at any time by giving lessee 30 days' written notice stating the increase and the reasons for the increase.

R850-170-1300. Lease Assignments and Subleases.

1. Assignments.

(a) A lessee may only assign a renewable energy lease if the agency consents to the assignment. Any assignment made without such approval is voidable at the agency's option.

(b) On the effective date of an assignment, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(c) An assignor must provide the agency with a copy of the assignment document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the assignee, and the interest transferred clearly indicated.

(d) As a condition of the approval of an assignment, the agency shall require:

(i) the assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the trust beneficiaries; and

(ii) the assignee be satisfactory to the agency.

2. Subleases.

(a) A lessee may only sublease a renewable energy lease if the agency consents to the sublease. A sublease made without such approval is voidable in the agency's discretion.

(b) The lessee must indemnify the agency for actions or inactions of the sublessee and the agency may look to either the lessee or the sublessee for compliance with the lease.

(c) The agency may require lessee and sublessee to provide annual financial documentation that clearly identifies the revenue generated on the property by sublessee and the revenue paid by sublessee to lessee.

(d) A lessee must provide the agency with a copy of the sublease document, which must be a sufficient legal instrument, properly executed, with the lease number, the land involved, the name and address of the sublessee, and the interest subleased clearly indicated.

(e) The agency may charge the lessee sublease rates based on the then current market rental value of the subject property, the revenue paid by sublessee to lessee, and such other factors as the agency deems reasonable.

R850-170-1400. Lease Amendments.

1. The agency may amend a lease if the amendment would be consistent with Rule R850-2. Unless waived by the director, the agency shall solicit competing interest pursuant to Section R850-170-800 if:

(a) the total amended acreage exceeds 150% of the original acreage;

(b) the lease term, including any extensions, is longer than 51 years; or

(c) the proposed amended purpose of the lease is substantially different from the original purpose.

2. The agency may condition approval of an amendment on the lessee accepting the current lease form.

KEY: administrative procedures, leases, trust land management, request for proposals

Date of Last Change: 2022

Authorizing, and Implemented or Interpreted Law: 53C-1-302(1)(a); 53C-4-101(1); 53C-4-202

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at 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.): | R68-15 | Filing ID: 50149 |
| Effective Date: | 06/03/2022 | |

Agency Information

| | | |
|-----------------------------|--|----------------------|
| 1. Department: | Agriculture and Food | |
| Agency: | Plant Industry | |
| Building: | 4315 S 2700 W, TSOB, South Bldg, Floor 2 | |
| City, state and zip: | Taylorsville, UT 84129-2128 | |
| Mailing address: | PO Box 146500 | |
| City, state and zip: | Salt Lake City, UT 84114-6500 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amber Brown | 385-245-5222 | ambermbrown@utah.gov |
| Robert Hougaard | 801-982-2305 | rhougaard@utah.gov |
| Kelly Pehrson | 801-982-2200 | kwpehrson@utah.gov |

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

General Information

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|--|
| 2. Rule catchline: |
| R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica) |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is promulgated under the authority of Subsection 4-2-103(1)(k)(ii) which allows the Department of Agriculture and Food to establish and enforce quarantines. |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: |
| No written comments were received. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| This rule is necessary because it is necessary to protect the state from damage from the Japanese Beetle. Therefore, this rule should be continued. |

Agency Authorization Information

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|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Craig W. Buttars, Commissioner | Date: | 06/03/2022 |
|--|--------------------------------|--------------|------------|

| FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION | | |
|--|------------|------------------|
| Utah Admin. Code Ref (R no.): | R68-23 | Filing ID: 50156 |
| Effective Date: | 06/03/2022 | |

Agency Information

| | | |
|--|--|----------------------|
| 1. Department: | Agriculture and Food | |
| Agency: | Plant Industry | |
| Street address: | 4315 S 2700 W, TSOB, South Bldg, Floor 2 | |
| City, state and zip: | Taylorsville, UT 84129-2128 | |
| Mailing address: | PO Box 146500 | |
| City, state and zip: | Salt Lake City, UT 84114-6500 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amber Brown | 385-245-5222 | ambermbrown@utah.gov |
| Robert Hougaard | 801-982-2305 | rhougaard@utah.gov |
| Kelly Pehrson | 801-982-2200 | kwpehrson@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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|---|
| 2. Rule catchline: |
| R68-23. Utah Firewood Quarantine |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized under Subsection 4-2-103(1)(k)ii that allows the Department of Agriculture and Food to establish and enforce quarantines. |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: |
| No written comments were received. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| This rule is necessary because it will help prevent the movement of invasive insects transported by firewood that could be extremely damaging to Utah plants. Therefore, this rule should be continued. |

Agency Authorization Information

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|--|--------------------------------|--------------|------------|
| Agency head or designee, and title: | Craig W. Buttars, Commissioner | Date: | 06/03/2022 |
|--|--------------------------------|--------------|------------|

| FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION | | |
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| Utah Admin. Code Ref (R no.): | R343-11 | Filing ID: 50844 |
| Effective Date: | 06/13/2022 | |

Agency Information

| | | |
|--|-------------------------------|------------------|
| 1. Department: | Financial Institutions | |
| Agency: | Nondepository Lenders | |
| Room no.: | 201 | |
| Street address: | 324 S State St | |
| City, state and zip: | Salt Lake City, UT 84111-2393 | |
| Mailing address: | PO Box 146800 | |
| City, state and zip: | Salt Lake City, UT 84114-6800 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Paul Allred | 801-538-8855 | pallred@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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| 2. Rule catchline: |
| R343-11. Rule Designating Applicable Federal Law for a Mortgage Lender, Broker, or Servicer Subject to the Jurisdiction of the Department of Financial Institutions |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| The rule designates which one or more federal laws are applicable to a mortgage lender, broker or servicers subject to the jurisdiction of the Department of Financial Institutions (Department). This rule establishes that designated federal law may only be enforced by the Department by taking action permitted under Title 70D and the applicable chapters set forth in Subsection 70D-2-502(2). |
| 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 supporting or opposing written comments have been received since the last notice of continuation. |

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

Subsection 70D-2-502(2) requires that the Department designate, by rule, which one or more federal laws are applicable to a person subject to the jurisdiction of the Department. Therefore, this rule should be continued.

Agency Authorization Information

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|--|--|--------------|------------|
| Agency head or designee, and title: | Darryle Rude, Interim Commissioner | Date: | 06/13/2022 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R590-122 | Filing ID: | 53986 |
| Effective Date: | 06/03/2022 | | |

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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

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| 2. Rule catchline: |
| R590-122. Permissible Arbitration Provisions |
| 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. |

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 is important because it provides guidance to an insurer about the type of arbitration provisions that may be put into an insurance policy. These provisions provide steps to be taken by insureds who disagree with the settlement of their claims and would like to involve a third party in the settlement process. This rule sets standards for disclosure to make sure policy provisions are fair and nondiscriminatory. Therefore, this rule should be continued.

Agency Authorization Information

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|--|---|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/03/2022 |
|--|---|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

| | | | |
|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R590-149 | Filing ID: | 54098 |
| Effective Date: | 06/03/2022 | | |

Agency Information

| | | |
|-----------------------------|------------------------------------|-----------------|
| 1. Department: | Insurance | |
| Agency: | Administration | |
| Room no.: | Suite 2300 | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state and zip: | Taylorsville, 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

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|---|
| 2. Rule catchline: |
| R590-149. Americans with Disabilities Act Grievance Procedures |
| 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. |
| 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 (Department) 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 implements 28 CFR 35 and Title II of the Americans with Disabilities Act. This rule is important because it provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or the benefits of the services, programs, and activities of the Department. This rule must remain in force to keep the Department in compliance with the federal Americans with Disabilities Act. Therefore, this rule should be continued. |

Agency Authorization Information

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| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/03/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R590-240 | Filing ID: | 51422 |
| Effective Date: | 06/03/2022 | | |

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

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| 2. Rule catchline: |
| R590-240. Procedure to Obtain Exemption of Student Health Programs 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) specifies by rule the business transactions that are exempted from insurance regulation. 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 is important because it provides guidance regarding procedures that an institution of higher education must follow in order to obtain exemption of a student health program from the Insurance Code. Therefore, this rule should be continued. |

Agency Authorization Information

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|--|--|--------------|------------|
| Agency head or designee, and title: | Steve Gooch, Public Information Officer | Date: | 06/03/2022 |
|--|--|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R616-1 | Filing ID: | 51531 |
| Effective Date: | 06/03/2022 | | |

Agency Information

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|-----------------------|------------------|
| 1. Department: | Labor Commission |
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| | | |
|--|---------------------------------------|--------------------|
| Agency: | Boiler, Elevator and Coal Mine Safety | |
| Room no.: | 3rd Floor | |
| Building: | Heber M. Wells Building | |
| Street address: | 160 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 146600 | |
| City, state and zip: | Salt Lake City, UT 84114-6600 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Pete Hackford | 801-536-7605 | phackford@utah.gov |
| Chris Hill | 801-530-6113 | chill@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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|--|
| 2. Rule catchline: |
| R616-1 Coal, Gilsonite, or other Hydrocarbon Mining Certification |
| 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 34A-1-104 gives the Labor Commission (Commission) authority to establish rules to administer and enforce all laws for the protection of the life, health, and safety of employees. Section 40-2-401 authorizes the Commission to certify individuals involved in coal, gilsonite, or other hydrocarbon mining pursuant to rules established by the Commission. |
| 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 during and since the last five-year review of this rule. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| In light of the Commission's continuing certification of individuals involved in Utah's coal, gilsonite or other hydrocarbon mining industries, this rule remains necessary. Therefore, this rule should be continued. |
| The Commission has received no comments in opposition to this rule. |

Agency Authorization Information

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| Agency head or designee, and title: | Jaceson R. Maughan, Commissioner | Date: | 05/27/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R657-28 | Filing ID: | 51757 |
| Effective Date: | 06/13/2022 | | |

Agency Information

| | | |
|--|-------------------------------|---------------------|
| 1. Department: | Natural Resources | |
| Agency: | Wildlife Resources | |
| Room no.: | Suite 2110 | |
| Building: | DNR – Salt Lake Complex | |
| Street address: | 1594 W North Temple | |
| City, state and zip: | Salt Lake City, UT 84116 | |
| Mailing address: | PO Box 146301 | |
| City, state and zip: | Salt Lake City, UT 84114-6301 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Staci Coons | 801-450-3093 | stacicoons@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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| 2. Rule catchline: |
| R657-28. Use of Division Lands |
| 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 23-14-8 authorizes the director of the Division of Wildlife Resources (Division) full control of all property acquired and held for the purposes specified in this title. |
| 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 R657-28 were received since June 2017, 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: |

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Rule R657-28 is necessary to provide the application procedures and administration of rights-of-way, leases, and special use permits on Division land. Therefore, this rule should be continued.

Agency Authorization Information

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|--|------------------------------|--------------|------------|
| Agency head or designee, and title: | J Shirley, Division Director | Date: | 06/13/2022 |
|--|------------------------------|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R657-29 | Filing ID: | 51756 |
| Effective Date: | 06/13/2022 | | |

Agency Information

| | |
|--|----------------------------------|
| 1. Department: | Natural Resources |
| Agency: | Wildlife Resources |
| Room no.: | Suite 2110 |
| Building: | DNR – Salt Lake Complex |
| Street address: | 1594 W North Temple |
| City, state and zip: | Salt Lake City, UT 84116 |
| Mailing address: | PO Box 146301 |
| City, state and zip: | Salt Lake City, UT 84114-6301 |
| Contact person(s): | |
| Name: | Phone: Email: |
| Staci Coons | 801-450-3093 stacicoons@utah.gov |
| Please address questions regarding information on this notice to the agency. | |

General Information

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| 2. Rule catchline: |
| R657-29. Government Records Access Management Act |
| 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 63G-2-204(2) authorizes the Division of Wildlife Resources (Division) to make rules in accordance with Title 63G, Chapter 2, Government Records Access Management Act, specifying where and to whom requests for records access shall be directed. |
| 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 Division and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-29 since the last review in 2017.

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 R657-29 is necessary to provide an effective and efficient process prescribing where and to whom requests for information shall be directed and provide procedures for access to Division records as allowed under Subsection 63G-2-204(2). Therefore, this rule should be continued.

Agency Authorization Information

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| Agency head or designee, and title: | J Shirley, Division Director | Date: | 06/13/2022 |
|--|------------------------------|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R657-64 | Filing ID: | 51777 |
| Effective Date: | 06/13/2022 | | |

Agency Information

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|--|----------------------------------|
| 1. Department: | Natural Resources |
| Agency: | Wildlife Resources |
| Room no.: | Suite 2110 |
| Building: | DNR – Salt Lake Complex |
| Street address: | 1594 W North Temple |
| City, state and zip: | Salt Lake City, UT 84116 |
| Mailing address: | PO Box 146301 |
| City, state and zip: | Salt Lake City, UT 84114-6301 |
| Contact person(s): | |
| Name: | Phone: Email: |
| Staci Coons | 801-450-3093 stacicoons@utah.gov |
| Please address questions regarding information on this notice to the agency. | |

General Information

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| 2. Rule catchline: |
| R657-64. Predator Control Incentives |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |

Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

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 Division of Wildlife Resources (Division) has not received any written comments regarding this rule. Any comments received in opposition to this rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at the Division.

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 purpose of this rule is to allow the Division flexibility with participants in the Targeted Predator Control Program for effectively controlling coyotes in a targeted area that are detrimental to mule deer production. Therefore, this rule should be continued.

Agency Authorization Information

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| Agency head or designee, and title: | J Shirley, Division Director | Date: | 06/13/2022 |
|--|------------------------------|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R708-47 | Filing ID: 51896 |
| Effective Date: | 06/07/2022 | |

Agency Information

| | | |
|-----------------------------|-------------------------------|----------------|
| 1. Department: | Public Safety | |
| Agency: | Driver License | |
| Street address: | 4501 S 2700 W | |
| City, state and zip: | Salt Lake City, UT 84129 | |
| Mailing address: | PO Box 144501 | |
| City, state and zip: | Salt Lake City, UT 84114-4501 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| 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

2. Rule catchline:

R708-47. Emergency Contact Database

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

This rule is authorized by Subsection 53-3-205.6(4) which requires the Driver License Division to establish a method for an individual who holds a license certificate, learner permit, or identification card to provide emergency contacts in the event the individual is in an accident or for any other emergency in which the individual is not able to communicate with the contact person or persons.

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 not been any written comments 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 authorized by Subsection 53-3-205.6(4) and is necessary to establish the Emergency Contact Database needed to house emergency contacts of a person who holds a license certificate, learner permit, identification card or any other type of license or permit issued under Title 53, Chapter 3, Uniform Driver Licensing Act. Therefore, this rule should be continued.

Agency Authorization Information

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|--|--------------------------------------|--------------|------------|
| Agency head or designee, and title: | Christopher Caras, Division Director | Date: | 06/01/2022 |
|--|--------------------------------------|--------------|------------|

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R708-48 | Filing ID: 51891 |
| Effective Date: | 06/07/2022 | |

Agency Information

| | | |
|-----------------------------|-------------------------------|---------------------|
| 1. Department: | Public Safety | |
| Agency: | Driver License | |
| Street address: | 4501 S 2700 W | |
| City, state and zip: | Salt Lake City, UT 84129 | |
| Mailing address: | PO Box 144501 | |
| City, state and zip: | Salt Lake City, UT 84114-4501 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| 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

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| 2. Rule catchline: |
| R708-48. Ignition Interlock System Program |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| This rule is authorized by Section 53-3-1004 which requires the Driver License Division (Division) to make rules that establish requirements for the licensure of a provider and installer of an ignition interlock system, and Section 53-3-1007 which requires the Division to make rules that establish procedures for certifying and regulating providers and installers of ignition interlock systems, acceptable proof of installation of an ignition interlock device, a system provider to electronically notify the Division, and for the administration of the Ignition Interlock System Program. |
| 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 not been any written comments 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 authorized by Sections 53-3-1004 and 53-3-1007 and is necessary to establish the licensure, certification and regulation of ignition interlock system providers and installers. In addition, it is necessary to |

establish the procedures for providing proof of installation of an ignition interlock device, and for establishing a system provider with an electronic means to notify the division of installation and removal of an ignition interlock device. Finally, this rule is necessary for the administration of the Ignition Interlock System Program. Therefore, this rule should be continued.

Agency Authorization Information

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|--|--------------------------------------|--------------|------------|
| Agency head or designee, and title: | Christopher Caras, Division Director | Date: | 06/01/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R994-102 | Filing ID: 54440 |
| Effective Date: | 06/09/2022 | |

Agency Information

| | | |
|-----------------------------|-------------------------------|-----------------|
| 1. Department: | Workforce Services | |
| Agency: | Unemployment Insurance | |
| Building: | Olene Walker Building | |
| Street address: | 140 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 45244 | |
| City, state and zip: | Salt Lake City, UT 84145-0244 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amanda B. McPeck | 801-526-9653 | ampeck@utah.gov |

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

General Information

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| 2. Rule catchline: |
| R994-102. Employment Security Act, Public Policy and 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 35A-1-104 authorizes the Department of Workforce Services (Department) to adopt rules and establish eligibility standards for its programs. Section 35A-4-502 authorizes the Department to adopt rules necessary for the administration of the Employment Security Act. Section 35A-4-102 describes the public policy of the Employment Security 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 have been received during the last five years or since the last five-year review.

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

This rule explains the purpose of Employment Security Act, including the stimulative nature of unemployment benefits in accordance with federal law and guidance. This rule is necessary to identify some limits to the receipt of benefits and accurately reflects Utah statutes and case law. Therefore, this rule should be continued.

Agency Authorization Information

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|--|-----------------------------------|--------------|------------|
| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 06/09/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R994-106 | Filing ID: 54480 |
| Effective Date: | 06/09/2022 | |

Agency Information

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|-----------------------------|-------------------------------|-----------------|
| 1. Department: | Workforce Services | |
| Agency: | Unemployment Insurance | |
| Building: | Olene Walker Building | |
| Street address: | 140 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 45244 | |
| City, state and zip: | Salt Lake City, UT 84145-0244 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amanda B. McPeck | 801-526-9653 | ampeck@utah.gov |

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

General Information

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| 2. Rule catchline: |
| R994-106. Combined-Wage Claims |

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 35A-1-104 authorizes the Department of Workforce Services (Department) to adopt rules and establish eligibility standards for its programs. Section 35A-4-502 authorizes the Department to adopt rules necessary for the administration of the Employment Security Act. Section 35A-4-106 authorizes the Department to enter into reciprocal arrangements with other jurisdictions for the payment of unemployment insurance benefits when an individual has wages and covered employment in more than one jurisdiction.

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 during the last five years or since the last five-year review.

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

This rule explains the process for evaluating a combined-wage claim, defines the paying and transferring state in a combined-wage claim and their respective roles, and identifies limits on a combined-wage claim. This rule also identifies the procedure for appealing a combined-wage claim determination. Combined-wage claims are primarily governed by interstate agreements and this rule is necessary to explain the process for such claims. Therefore, this rule should be continued.

Agency Authorization Information

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|--|-----------------------------------|--------------|------------|
| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 06/09/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------------|
| Utah Admin. Code Ref (R no.): | R994-303 | Filing ID: 54505 |
| Effective Date: | 06/09/2022 | |

Agency Information

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|-----------------------------|--------------------------|--|--|
| 1. Department: | Workforce Services | | |
| Agency: | Unemployment Insurance | | |
| Building: | Olene Walker Building | | |
| Street address: | 140 E 300 S | | |
| City, state and zip: | Salt Lake City, UT 84111 | | |

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|--|-------------------------------|-----------------|
| Mailing address: | PO Box 45244 | |
| City, state and zip: | Salt Lake City, UT 84145-0244 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amanda B. McPeck | 801-526-9653 | ampeck@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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| 2. Rule catchline: |
| R994-303. Contribution 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 35A-1-104 authorizes the Department of Workforce Services (Department) to adopt rules and establish eligibility standards for its programs. Section 35A-4-502 authorizes the Department to adopt rules necessary for the administration of the Employment Security Act. Section 35A-4-303 describes how an employer's contribution rate is determined, including how to calculate social costs and reserves. |
| 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 during the last five years or since the last five-year review. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| This rule is necessary to explain how contribution rates are assigned and calculated for each employer including how the Department calculates experience ratings using the reserve factor and benefit ratio. This rule also describes how employer successorship is determined and how it affects the contribution rate to avoid "SUTA dumping" (a process in which an employer changes ownership to avoid a high experience rating in an effort to lower state unemployment taxes). SUTA dumping rules are required under agreements with the Department's federal partners. Therefore, this rule should be continued. |

Agency Authorization Information

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| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 06/09/2022 |
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| FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION | | |
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| Utah Admin. Code Ref (R no.): | R994-401 | Filing ID: 54506 |
| Effective Date: | 06/09/2022 | |

Agency Information

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|--|-------------------------------|-----------------|
| 1. Department: | Workforce Services | |
| Agency: | Unemployment Insurance | |
| Building: | Olene Walker Building | |
| Street address: | 140 E 300 S | |
| City, state and zip: | Salt Lake City, UT 84111 | |
| Mailing address: | PO Box 45244 | |
| City, state and zip: | Salt Lake City, UT 84145-0244 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Amanda B. McPeck | 801-526-9653 | ampeck@utah.gov |
| Please address questions regarding information on this notice to the agency. | | |

General Information

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| 2. Rule catchline: |
| R994-401. Payment of Benefits |
| 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 35A-1-104 authorizes the Department of Workforce Services (Department) to adopt rules and establish eligibility standards for its programs. Section 35A-4-502 authorizes the Department to adopt rules necessary for the administration of the Employment Security Act. Section 35A-4-401 authorizes the Department to prescribe rules for determining an individual's monetary eligibility for unemployment insurance benefits and for calculating the amount benefits payable to an individual who is unemployed. |
| 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 during the last five years or since the last five-year review. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| This rule is necessary to determine an individual's monetary eligibility for benefits, the weekly benefit amount, and the maximum benefit amount for each claim. This rule |

also explains what wages are used for determining eligibility and how retirement is counted when determining the weekly benefit amount. This rule is also necessary for determining concurrent liability when there is no separation from a part-time reimbursable employer. Finally, this rule explains a claimant's obligations for reporting income while receiving unemployment benefits. Therefore, this rule should be continued.

Agency Authorization Information

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| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 06/09/2022 |
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FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

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|--------------------------------------|-------------------|-------------------|--------------|
| Utah Admin. Code Ref (R no.): | R994-402 | Filing ID: | 54507 |
| Effective Date: | 06/09/2022 | | |

Agency Information

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|--|-------------------------------|-----------------|--|
| 1. Department: | Workforce Services | | |
| Agency: | Unemployment Insurance | | |
| Building: | Olene Walker Building | | |
| Street address: | 140 E 300 S | | |
| City, state and zip: | Salt Lake City, UT 84111 | | |
| Mailing address: | PO Box 45244 | | |
| City, state and zip: | Salt Lake City, UT 84145-0244 | | |
| Contact person(s): | | | |
| Name: | Phone: | Email: | |
| Amanda B. McPeck | 801-526-9653 | ampeck@utah.gov | |
| Please address questions regarding information on this notice to the agency. | | | |

General Information**2. Rule catchline:**

R994-402. Extended Benefits (EB)

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 35A-1-104 authorizes the Department of Workforce Services (Department) to adopt rules and establish eligibility standards for its programs. Section 35A-4-502 authorizes the Department to adopt rules necessary for the administration of the Employment Security Act. Section 35A-4-402 describes the eligibility criteria for the payment of extended benefits.

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 during the last five years or since the last five-year review.

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

Extended benefits are benefits payable to certain claimants when the state's unemployment rate has exceeded certain thresholds as determined by the Department in accordance with federal regulations. This rule is necessary to describe the eligibility criteria for extended benefits, which are different from regular unemployment insurance benefits. Therefore, this rule should be continued.

Agency Authorization Information

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| Agency head or designee, and title: | Casey Cameron, Executive Director | Date: | 06/09/2022 |
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End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

NOTICE OF EXPIRED RULE

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|-------------------------------|----------|--------------|
| Utah Admin. Code Ref (R no.): | R277-520 | ID No. 54531 |
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Agency Information

| | | |
|-----------------------|--------------------------|----------------------|
| 1. Department: | Education | |
| Agency: | Administration | |
| Street address: | 250 E 500 S | |
| City, state, and zip: | Salt Lake City, UT 84111 | |
| Contact person(s): | | |
| Name: | Phone: | Email: |
| Nancy L. Lancaster | 801-957-7102 | rulesonline@utah.gov |

General Information

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|---|------------|
| 2. Title of rule (catchline): | |
| R277-520. Appropriate Licensing and Assignment of Teachers | |
| 3. Effective Date: | 06/07/2022 |
| 4. Summary: | |
| The five-year review and notice of continuation was not filed for this rule by the deadline. This rule has expired and was removed from the Utah Administrative Code. | |

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

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

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

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

Agriculture and Food

Administration

No. 54442 (Amendment) R51-6: Agricultural Advisory Board Electronic Meetings
Published: 04/15/2022
Effective: 06/01/2022

No. 54443 (Amendment) R51-7: Open and Public Meetings Act Electronic Meetings
Published: 04/15/2022
Effective: 06/01/2022

Conservation Commission

No. 54444 (Amendment) R64-2: Conservation Commission Electronic Meetings
Published: 04/15/2022
Effective: 06/01/2022

Plant Industry

No. 54519 (Amendment) R68-3: Utah Fertilizer Rule
Published: 05/01/2022
Effective: 06/08/2022

No. 54517 (Amendment) R68-5: Grain Inspection
Published: 05/01/2022
Effective: 06/08/2022

No. 54518 (Amendment) R68-6: Utah Nursery Act
Published: 05/01/2022
Effective: 06/08/2022

No. 54541 (Amendment) R68-9: Utah Noxious Weed Act
Published: 05/15/2022
Effective: 06/21/2022

No. 54513 (Amendment) R68-10: Quarantine Pertaining to the European Corn Borer
Published: 05/01/2022
Effective: 06/21/2022

No. 54512 (Amendment) R68-11: Quarantine Pertaining to the Emerald Ash Borer
Published: 05/01/2022
Effective: 06/08/2022

No. 54514 (Amendment) R68-14: Quarantine Pertaining to the Gypsy Moth - *Lymantria dispar*
Published: 05/01/2022
Effective: 06/08/2022

No. 54515 (Amendment) R68-15: Quarantine Pertaining to Japanese Beetle, *Popillia japonica*
Published: 05/01/2022
Effective: 06/08/2022

No. 54516 (Amendment) R68-18: Quarantine Pertaining to Karnal Bunt
Published: 05/01/2022
Effective: 06/08/2022

No. 54511 (Amendment) R68-19: Compliance Procedures
Published: 05/01/2022
Effective: 06/08/2022

No. 54504 (Amendment) R68-20: Utah Organic Standards
Published: 05/01/2022
Effective: 06/08/2022

No. 54534 (Amendment) R68-27: Cannabis Cultivation
Published: 05/01/2022
Effective: 06/08/2022

No. 54535 (Amendment) R68-30: Independent Cannabis Testing Laboratory
Published: 05/01/2022
Effective: 06/08/2022

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No. 54536 (Amendment) R68-32: Sale and Transfer of Industrial Hemp Waste Material to Medical Cannabis Cultivators
Published: 05/01/2022
Effective: 06/08/2022

Regulatory Services

No. 54446 (Amendment) R70-520: Standards of Identity and Labeling Requirements for Honey
Published: 04/15/2022
Effective: 06/01/2022

Education

Administration

No. 54526 (Amendment) R277-110: Educator Salary Adjustment
Published: 05/01/2022
Effective: 06/07/2022

No. 54525 (New Rule) R277-124: Teacher Bonuses for Extra Assignments
Published: 05/01/2022
Effective: 06/07/2022

No. 54527 (Amendment) R277-301: Educator Licensing
Published: 05/01/2022
Effective: 06/07/2022

No. 54528 (Amendment) R277-312: Online Educator Licensure
Published: 05/01/2022
Effective: 06/07/2022

No. 54529 (Amendment) R277-433: Disposal of Textbooks in the Public Schools
Published: 05/01/2022
Effective: 06/07/2022

No. 54530 (Amendment) R277-489: Kindergarten Entry and Exit Assessment - Enhanced Kindergarten Program
Published: 05/01/2022
Effective: 06/07/2022

Government Operations

Risk Management

No. 54473 (Amendment) R37-4: Adjusted Utah Governmental Immunity Act Limitations on Judgments Amendments
Published: 05/01/2022
Effective: 07/01/2022

Human Resource Management

No. 54556 (Amendment) R477-1: Definitions
Published: 05/15/2022
Effective: 07/01/2022

No. 54557 (Amendment) R477-2: Administration
Published: 05/15/2022
Effective: 07/01/2022

No. 54558 (Amendment) R477-3: Classification
Published: 05/15/2022
Effective: 07/01/2022

No. 54559 (Amendment) R477-4: Filling Positions
Published: 05/15/2022
Effective: 07/01/2022

No. 54560 (Amendment) R477-5: Employee Status and Probation
Published: 05/15/2022
Effective: 07/01/2022

No. 54561 (Amendment) R477-6: Compensation
Published: 05/15/2022
Effective: 07/01/2022

No. 54562 (Amendment) R477-7: Leave
Published: 05/15/2022
Effective: 07/01/2022

No. 54563 (Amendment) R477-8: Working Conditions
Published: 05/15/2022
Effective: 07/01/2022

No. 54564 (Amendment) R477-9: Employee Conduct
Published: 05/15/2022
Effective: 07/01/2022

No. 54565 (Amendment) R477-10: Employee Development
Published: 05/15/2022
Effective: 07/01/2022

No. 54566 (Amendment) R477-11: Discipline
Published: 05/15/2022
Effective: 07/01/2022

No. 54567 (Amendment) R477-12: Separations
Published: 05/15/2022
Effective: 07/01/2022

No. 54568 (Amendment) R477-13: Volunteer Programs
Published: 05/15/2022
Effective: 07/01/2022

No. 54569 (Amendment) R477-14: Substance Abuse and Drug-Free Workplace
Published: 05/15/2022
Effective: 07/01/2022

No. 54570 (Amendment) R477-15: Workplace Harassment Prevention
Published: 05/15/2022
Effective: 07/01/2022

No. 54571 (Amendment) R477-16: Abusive Conduct Prevention
Published: 05/15/2022
Effective: 07/01/2022

No. 54572 (Amendment) R477-101: Administrative Law Judge Conduct Committee
Published: 05/15/2022
Effective: 07/01/2022

Health

Child Care Center Licensing Committee
No. 54342 (Amendment) R381-40: Commercial Preschool Programs
Published: 02/01/2022
Effective: 06/01/2022

No. 54343 (Amendment) R381-60: Hourly Child Care Centers
Published: 02/01/2022
Effective: 06/01/2022

No. 54344 (Amendment) R381-70: Out of School Time Child Care Programs
Published: 02/01/2022
Effective: 06/01/2022

No. 54345 (Amendment) R381-100: Child Care Centers
Published: 02/01/2022
Effective: 06/01/2022

Disease Control and Prevention, Environmental Services
No. 54412 (Amendment) R392-101: Food Safety Manager Certification
Published: 04/01/2022
Effective: 06/21/2022

No. 54409 (Amendment) R392-105: Agritourism Food Establishment Sanitation
Published: 04/01/2022
Effective: 06/21/2022

No. 54382 (Amendment) R392-301: Recreational Vehicle Park Sanitation
Published: 03/15/2022
Effective: 05/31/2022

No. 54381 (Amendment) R392-702: Cosmetology Facility Sanitation
Published: 03/15/2022
Effective: 05/31/2022

Family Health and Preparedness, WIC Services
No. 54399 (Repeal and Reenact) R406-100: Special Supplemental Nutrition Program for Women, Infants and Children
Published: 04/01/2022
Effective: 06/21/2022

No. 54400 (Repeal) R406-200: Program Overview
Published: 04/01/2022
Effective: 06/21/2022

No. 54401 (Repeal) R406-201: Outreach Program
Published: 04/01/2022
Effective: 06/21/2022

No. 54402 (Repeal) R406-202: Eligibility
Published: 04/01/2022
Effective: 06/21/2022

No. 54403 (Repeal) R406-301: Clinic Guidelines
Published: 04/01/2022
Effective: 06/21/2022

Health Care Financing, Coverage and Reimbursement Policy
No. 54413 (Amendment) R414-308: Application, Eligibility Determinations, Improper Medical Assistance, and Suspension of Benefits
Published: 04/01/2022
Effective: 05/31/2022

Family Health and Preparedness, Emergency Medical Services
No. 54386 (Amendment) R426-2: Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews
Published: 03/15/2022
Effective: 05/31/2022

No. 54387 (Amendment) R426-5: Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards
Published: 03/15/2022
Effective: 05/31/2022

Family Health and Preparedness, Child Care Licensing
No. 54346 (Amendment) R430-8: Exemptions from Child Care Licensing
Published: 02/01/2022
Effective: 06/01/2022

No. 54347 (Amendment) R430-50: Residential Certificate Child Care
Published: 02/01/2022
Effective: 06/01/2022

No. 54348 (Amendment) R430-90: Licensed Family Child Care
Published: 02/01/2022
Effective: 06/01/2022

Family Health and Preparedness, Primary Care and Rural Health
No. 54496 (Repeal) R434-20: Repeal - R434-20. Behavioral Health Workforce Reinvestment Initiative
Published: 05/01/2022
Effective: 06/07/2022

No. 54497 (Amendment) R434-40: Utah Health Care Workforce Financial Assistance Program
Published: 05/01/2022
Effective: 06/07/2022

NOTICES OF RULE EFFECTIVE DATES

Human Services

Aging and Adult Services

No. 54291 (Repeal and Reenact) R510-100: Funding

Formulas

Published: 02/01/2022

Effective: 06/01/2022

Insurance

Administration

No. 54581 (Amendment) R590-102: Insurance Department

Fee Payment Rule

Published: 05/15/2022

Effective: 06/21/2022

No. 54582 (Amendment) R590-152: Health Discount Programs and Value Added Benefit Rule

Published: 05/15/2022

Effective: 06/21/2022

No. 54481 (Amendment) R590-170: Fiduciary and Trust Account Obligations

Published: 04/15/2022

Effective: 05/26/2022

No. 54524 (Repeal and Reenact) R590-173: Credit for Reinsurance

Published: 05/01/2022

Effective: 06/07/2022

No. 54520 (Amendment) R590-196: Bail Bond Premium and Fee Standards, Collateral Standards, and Disclosure Form

Published: 05/01/2022

Effective: 06/07/2022

No. 54521 (Amendment) R590-199: Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans

Published: 05/01/2022

Effective: 06/07/2022

No. 54482 (Amendment) R590-203: Health Grievance Review Process

Published: 04/15/2022

Effective: 05/26/2022

No. 54483 (Amendment) R590-241: Preferred Mortality Tables to Determine Minimum Reserve Liabilities

Published: 04/15/2022

Effective: 05/26/2022

No. 54583 (Amendment) R590-243: Commercial Motor Vehicle Insurance Coverage

Published: 05/15/2022

Effective: 06/21/2022

No. 54584 (Amendment) R590-245: Self-Service Storage Insurance

Published: 05/15/2022

Effective: 06/21/2022

No. 54522 (Amendment) R590-271: Data Reporting for Consumer Quality Comparison

Published: 05/01/2022

Effective: 06/07/2022

Natural Resources

Water Resources

No. 54485 (New Rule) R653-10: 2021 Grant Money for Metering Existing Secondary Water Systems

Published: 04/15/2022

Effective: 06/01/2022

Pardons (Board of)

Administration

No. 54489 (Amendment) R671-203: Victim Input and Notification

Published: 05/01/2022

Effective: 06/09/2022

No. 54490 (Amendment) R671-205: Credit for Time Served

Published: 05/01/2022

Effective: 06/09/2022

No. 54509 (Repeal and Reenact) R671-207: Custody Transfer for Mentally Ill Offenders and Mentally Decompensating Offenders

Published: 05/01/2022

Effective: 06/09/2022

No. 54487 (Amendment) R671-308: Offender Hearing Assistance

Published: 05/01/2022

Effective: 06/09/2022

No. 54488 (Amendment) R671-311: Special Attention Reviews, Hearing and Decisions

Published: 05/01/2022

Effective: 06/09/2022

No. 54493 (Amendment) R671-315: Pardons

Published: 05/01/2022

Effective: 06/09/2022

No. 54492 (Amendment) R671-403: Restitution

Published: 05/01/2022

Effective: 06/09/2022

No. 54508 (New Rule) R671-404: Restitution and Other Costs Applicable to Persons Sentenced on or After July 1, 2021

Published: 05/01/2022

Effective: 06/09/2022

No. 54491 (Amendment) R671-405: Parole Termination

Published: 05/01/2022

Effective: 06/09/2022

Public Safety

Driver License

No. 54538 (Repeal and Reenact) R708-37: Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests

Published: 05/15/2022

Effective: 06/22/2022

No. 54539 (Amendment) R708-46: Refugee, Asylee, or Covered Humanitarian Parolee Knowledge Test in Applicant's Native Language

Published: 05/15/2022

Effective: 06/22/2022

Transportation

Administration

No. 54542 (Amendment) R907-66: Procurement of Consultant Services - Procedures and Contract Administration

Published: 05/15/2022

Effective: 06/21/2022

Workforce Services

Employment Development

No. 54576 (Amendment) R986-100: Employment Support Programs

Published: 05/15/2022

Effective: 07/01/2022

No. 54577 (Amendment) R986-300-306: Time Limits

Published: 05/15/2022

Effective: 06/21/2022

No. 54585 (Amendment) R986-700: Child Care Assistance

Published: 05/15/2022

Effective: 07/01/2022

Housing and Community Development

No. 54555 (Repeal) R990-12: State Small Business Credit Initiative Program Fund

Published: 05/15/2022

Effective: 07/01/2022

End of the Notices of Rule Effective Dates Section

