

UTAH STATE BULLETIN

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

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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NOTICES OF PROPOSED RULES

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 July 02, 2024, 12:00 a.m., and July 15, 2024, 11:59 p.m. are included in this, the August 01, 2024, 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 September 02, 2024. 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 November 29, 2024, 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 SUBSTANTIVE CHANGE

TYPE OF FILING: New

Rule or Section Number:

R21-4

Filing ID: 56661

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|----------------------------------------|------------------------|
| 1. Title catchline: | Government Operations, Debt Collection | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W, FL 1 | |
| City, state: | Taylorsville, UT | |
| Mailing address: | PO Box 141001 | |
| City, state and zip: | Salt Lake City, UT 84114-1001 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Paul Bowers | 385-321-2131 | paulb@utah.gov |
| Van Christensen | 801-808-0698 | vhchristensen@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R21-4. Debtor's Request for Credit for Restitution Payments |
| 3. Purpose of the new rule or reason for the change: |
| H.B. 21 from the 2024 General Session became effective 07/01/2024. Subsection 63A-3-508(5) gives the Office of State Debt Collection (OSDC) the authority to make a rule for administering Section 63A-3-508. OSDC believes the rule is necessary to give details not addressed in the statute. |
| 4. Summary of the new rule or change: |
| This proposed rule covers: 1) eligibility requirements, 2) how requests for review must be sent and associated timelines, 3) OSDC's responsibilities in sending written notice to debtors, as well as reviewing requests and responding to them, 4) appeal options available to the debtor, and 5) details of how credits are calculated and applied. |

Fiscal Information

| |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| This proposed rule change is not anticipated to have a fiscal impact on the state's budget. OSDC is an entirely self-funded agency and receives no money from the General Fund or any other state or federal fund. Since this new law allows debtors to receive a credit, it may result in slightly less money being collected by OSDC and sent back to the General Fund. There is no way to predict how much that amount will be because OSDC cannot determine how many debtors will send a request for review and how many of those debtors will receive a credit. |

B) Local governments:

This proposed rule change may have a minimal fiscal impact on local governments.

OSDC does not charge fees to any entities for its services other than the debtors who are responsible for paying their debts. And even for those debtors,

OSDC has no plans to increase its fees because of this new statute or the administration of it. Therefore, the only anticipated impact to local governments is that this rule may provide an incentive for debtors to pay their restitution debts. Since local governments are sometimes named as restitution recipients in court cases, this may result in a slight increase in the amount of restitution collected on behalf of those entities.

However, there is no way to predict how much that amount may be, because OSDC cannot determine how many debtors will send a request for review and how many of those debtors will receive a credit.

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

This proposed rule change may have a minimal fiscal impact on small businesses.

OSDC does not charge fees to any entities for its services other than the debtors who are responsible for paying their debts. And even for those debtors, OSDC has no plans to increase its fees because of this new statute or the administration of it.

Therefore, the only anticipated impact to local governments is that this rule may provide an incentive for debtors to pay their restitution debts. Since small businesses are sometimes named as restitution recipients in court cases, this may result in a slight increase in the amount of restitution collected on behalf of those entities.

However, there is no way to predict how much that amount may be, because OSDC cannot determine how many debtors will send a request for review and how many of those debtors will receive a credit.

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

This proposed rule change may have a minimal fiscal impact on non-small businesses.

OSDC does not charge fees to any entities for its services other than the debtors who are responsible for paying their debts. And even for those debtors, OSDC has no plans to increase its fees because of this new statute or the administration of it.

Therefore, the only anticipated impact to local governments is that this rule may provide an incentive for debtors to pay their restitution debts. Since non-small businesses are sometimes named as restitution recipients in court cases, this may result in a slight increase in the amount of restitution collected on behalf of those entities.

However, there is no way to predict how much that amount may be, because OSDC cannot determine how many debtors will send a request for review and how many of those debtors will receive a credit.

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 may be a slight increase in collections on behalf of persons named as restitution recipients. Some debtors will end up receiving credit toward certain debts, so that will result in less overall debt they have to repay.

However, there is no way to predict how much that amount may be, because OSDC cannot determine how many debtors will send a request for review and how many of those debtors will receive a credit.

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

There are no anticipated compliance costs as a result of this rule. OSDC has no plans on charging any extra fees for administration.

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

| Regulatory Impact Table | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 6. 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 63A-3-508(5) | | |

Public Notice Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 8. 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: | 09/03/2024 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|---------------------------|--------------|------------|
| Agency head or designee and title: | Van Christensen, Director | Date: | 07/10/2024 |
|-------------------------------------------|---------------------------|--------------|------------|

R21. Government Operations, Debt Collection.

R21-4. Debtor's Request for Credit for Restitution Payments.

R21-4-1. Purpose.

- The purpose of this rule is to establish procedures for:
- (1) a debtor to request a review of debt payments to determine if the debtor is eligible to receive credit for amounts still owed on their debt; and
 - (2) OSDC to:
 - (a) notify debtors;
 - (b) conduct reviews to determine if a debtor is eligible to receive credit; and
 - (c) issue a credit against a qualifying debt.

R21-4-2. Authority.

This rule is established under Subsection 63A-3-508(5), which authorizes OSDC to make rules regarding the administration of Section 63A-3-508.

R21-4-3. Definitions.

- (1) "Agency management" means the manager of OSDC or an assistant director or director of the Department of Government Operations, Division of Finance.
- (2) "Debt" means an account managed by OSDC arising from a single criminal judgment.
- (3) "Debtor" means any person who currently owes, at one time owed, or believes that they owe any delinquent amounts to OSDC.
- (4) "OSDC" means the Office of State Debt Collection, created under Section 63A-3-502.
- (5) "Qualifying debt" means the same as defined in Subsection 63A-3-508(1)(c).
- (6) "Request" or "request for review" means a written request for credit submitted in accordance with Subsection 63A-3-508(2)(a).
- (7) "Restitution" means the same as defined in Section 77-38b-102.
- (8) "Voluntary payment" means the same as defined in Subsection 63A-3-508(1)(d).

R21-4-4. Notice to Debtors.

As stated in Subsection 63A-3-508(4), OSDC shall make a reasonable effort to identify and send written notice to any debtor who may be eligible to receive credit.

- (1) The notice does not guarantee a debtor will receive credit.
- (2) The notice shall be sent by first-class mail to the debtor's last known address.
- (a) Any notice returned to OSDC that has a forwarding address shall be noted, and another notice shall be sent to the forwarding address.
- (b) Any notice returned without a forwarding address shall be noted and no further notice shall be sent.
- (3) The notice shall contain language that states:
- (a) that the debtor may be eligible for a credit toward amounts still owed according to the eligibility requirements listed in Section

R21-4-6:

- (b) that receiving the notice does not guarantee the debtor will receive credit; and
- (c) that the debtor may choose to send a request for review. The notice shall include the list of requirements for sending a request for review as listed in Section R21-4-5.

R21-4-5. Requests for Review.

- (1) Once a year, a debtor may send a request for review to OSDC.
- (2) Any request must be sent before May 1, 2026.
- (3) A request must be sent either by the debtor or by a third party representative given permission by the debtor.
- (4) In the request, the debtor must include their:
- (a) full name;
- (b) date of birth;
- (c) mailing address;
- (d) email address;
- (e) primary phone number;
- (f) the last four digits of their social security number; and
- (g) if available to the debtor, any specific case or account number the debtor believes to have made restitution payments to.
- (5) The request must be sent by:
- (a) mail to Office of State Debt Collection, P.O. Box 141001, Salt Lake City, UT 84114;
- (b) email to osdcommon@utah.gov; or
- (c) personal delivery to OSDC's office at 4315 S 2700 W 1st Floor, Taylorsville, UT 84129.

R21-4-6. Eligibility Requirements.

A debtor is considered eligible to receive credit if:

- (1) they are eligible under Subsection 63A-3-508(2); and
- (2) have made voluntary payments as described in Subsection 63A-3-508(3);

R21-4-7. Conducting a Review.

- (1) After a request is received, OSDC shall conduct a review to determine if the debtor:
- (a) is eligible to receive credit; and
- (b) has a qualifying debt to which a credit may be applied.
- (2) After the review, OSDC shall reply in writing to the debtor.
- (a) If OSDC approves the request, OSDC shall send a notice to the debtor that states:
- (i) the total amount of credit applied to their debt; and
- (ii) the remaining balance of each outstanding account owed by the debtor.
- (b) If OSDC denies the request, OSDC shall send a denial notice to the debtor that states:
- (i) the reason the request is denied, including at least one eligibility requirement that is not met or that there is no qualifying debt;
- (ii) that the debtor has the right to appeal the decision; and
- (iii) instructions on how to appeal the decision.

R21-4-8. The Right to Appeal.

- (1) To appeal a denial:
 - (a) the debtor must reply to the denial notice in writing; and
 - (b) the reply must be received by OSDC within 21 days of the date the denial was sent.
- (2) If OSDC receives an appeal as described in Subsection R21-4-8(1), agency management must:
 - (a) review the appeal; and
 - (b) reply to the debtor, telling the debtor if the appeal is approved or denied.
 - (i) If the appeal is approved, the reply must include the information described in Subsection R21-4-7(2)(a).
 - (ii) If the appeal is denied, the reply must include the information described in Subsection R21-4-7(2)(b)(i).
- (3) If an appeal is denied, the denial shall be considered the agency's final decision on that request.

R21-4-9. Applying Credit.

- (1) When OSDC determines that a debtor is eligible to receive credit and there are qualifying debts to which credit may be applied, a reviewer shall calculate how much credit the debtor may receive. This amount is called the potential credit amount.
- (2) To calculate the potential credit amount, the reviewer shall:
 - (a) sum the amounts applied toward restitution from the debtor's voluntary payments; and
 - (b) multiply the sum by 75%.
- (3) OSDC will create and maintain a list of potential qualifying debts, known internally as distribution codes.
- (4) The reviewer shall adjust the debtor's account by applying credit toward any qualifying debts on the list up to the potential credit amount.
- (5) If the potential credit amount exceeds the outstanding amounts of the qualifying debts, the qualifying debts shall be reduced to zero and the debtor may not receive a refund or any other compensation for the difference.
- (6) Statutory fees, penalties, and interest assessed by OSDC are not qualifying debts.

KEY: collector, installment

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 63A-3-508(5)

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R58-2 | Filing ID: 56611 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------|----------------------|
| 1. Title catchline: | Agriculture and Food, Animal Industry | |
| Building: | Taylorsville State Office Building, South Bldg, Floor 2 | |
| Street address: | 4315 S. 2700 W. | |
| City, state: | Taylorsville, UT | |
| Mailing address: | PO Box 146500 | |
| City, state and zip: | Salt Lake City, UT 84114-6500 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Kelly Pehrson | 801-982-2200 | kwpehrson@utah.gov |
| Amber Brown | 385-245-5222 | ambermbrown@utah.gov |
| Amanda Price | 801-386-4189 | amandaprice@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|-----------------------------------------------|
| 2. Rule or section catchline: |
| R58-2. Diseases, Inspections, and Quarantines |

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

Per Subsection 4-31-113(1)(b), an owner of an animal known to be infected with a reportable disease is required to disclose the information and this update to this rule provides clarity about the disclosure to prevent the spread of reportable diseases and give the purchaser recourse.

The rule changes also provide clarifying information about feed that can be given to swine and will protect the swine industry and other livestock industries from an outbreak of a foreign animal disease.

4. Summary of the new rule or change:

The modified rule adds new definitions from 9 CFR Part 166, Swine Health Protection, and provides clarity about how a person or organization can report an animal that may have a disease on the Utah List of Reportable Conditions.

To provide further clarification, the Department of Agriculture and Food (Department) added a requirement in Section R58-2-3 that clarifies the substances that can be fed to swine under certain circumstances.

Additional changes in this rule establish the responsible party for the requirements and ensure the text aligns with the Rulewriting Manual for Utah.

Fiscal Information**5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:****A) State budget:**

The state does not anticipate any impact on its budget because the changes clarify how to disclose a reportable disease, which process the department has made available for at least a year.

Additionally, the requirement regarding substances fed to swine is solely for clarification and will assist producers in identifying issues before the department's involvement becomes necessary.

B) Local governments:

The changes in this rule will not impact local governments because they do not report animal diseases to the Department.

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

The Department anticipates costs to a small business to be minimal and involve the requirement that a swine producer who has fed animals garbage or plate waste test for disease before slaughter. All swine producers in the state qualify as small businesses.

The Department estimates that testing would cost about \$60 per swine and would likely impact a very small number of animals, as most pork producers opt to not take on the risk of feeding animals garbage or plate waste. The Department does not have any way to estimate how many swine (per small business or total) are fed garbage or plate waste in the state each year. This is not information that is collected at the time of slaughter or reported to the Department in any way.

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

Non-small businesses will not be impacted by this rule change. There are no swine producers in the state that have more than 50 employees currently.

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 Department does not anticipate that other persons will be impacted by the changes in this rule because they do not slaughter swine or feed swine.

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

The initial cost of the disease testing for swine that are fed garbage or plate waste is about \$45 per test including shipping. A producer may choose to use a veterinarian to pull samples which may increase costs by about \$15 per animal. Combined, this is an average additional cost of \$60 per hog for compliance under this rule.

As noted above, the Department does not have any way to estimate how many animals will be impacted by the new requirement.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Department of Agriculture and Food, Craig Butters, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 4-31-109 | Section 4-31-118 | Subsection 4-2-103(1)(c)(ii) |
| Subsection 4-2-103(1) | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/10/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------|--------------|------------|
| Agency head or designee and title: | Craig Butters, Commissioner | Date: | 07/09/2024 |
|-------------------------------------------|-----------------------------|--------------|------------|

R58. Agriculture and Food, Animal Industry.

R58-2. Diseases, Inspections, and Quarantines.

R58-2-1. Authority.

Promulgated under the authority of Sections 4-31-~~109~~109, 4-31-118, and Subsections 4-2-103(1)(c)(ii) and 4-2-103(1)(i).

R58-2-2. Definitions.

- (1) "Animal exhibition" means ~~[A]~~an event where animals ~~[are]~~congregate~~[d]~~ for exhibition and judging.
- (2) "Animals" -means vertebrates, except humans.

(3) "Garbage" means the same as defined in the June 2024 version of the 9 CFR Part 166, Swine Health Protection.

(4) "Plate waste" means uneaten food from an establishment or institution that serves food.

(3)5) "Terminal show" means [A] a fair or livestock judging exhibition with designated species of animals that are declared "at risk animals" and at the end of the event must be transported directly to slaughter.

R58-2-3. Reportable and Quarantinable Animal Diseases.

(1)(a) [Reporting of Diseases. It shall be the responsibility of veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners to report immediately by phone or written statement to the State Veterinarian any of the diseases or conditions listed on the Utah List of Reportable Conditions for Animals, which is available on the Department website.] Veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners shall immediately report any diseases or conditions listed on the Utah List of Reportable Conditions for Animals to the State Veterinarian.

(i) This list is available on the department website.

(ii) Reports can be made by phone, in writing, or using the Online Reportable Disease Form on the website.

(b) Any person or livestock market selling an animal affected by a disease or condition listed on the Utah List of Reportable Conditions for Animals shall disclose that information in writing to the buyer of the animal. Individuals who sell animals under a hold order or written quarantine shall comply with Subsection R58-2-3(5)(c).

(a)2) Any swine moving within Utah shall be identifiable to determine the farm of origin as per 9 CFR 71.19, October 31, 2022 version.

(b)3) Any sheep and goats moving within Utah shall comply with federal Scrapie identification requirements as listed in 9 CFR Part 79, [January 1, 2022] July 1, 2024, version, requiring official identification to determine the farm of origin.

(e)a) Sheep and goats from Scrapie infected, exposed, quarantined, or source flocks [may] are not [be-] permitted to move into or within the state, except to slaughter, unless a flock eradication and control plan, approved by the State Veterinarian [in Utah,] has been implemented in the flock where the diseased animal resides.

(d)b) Any live scrapie-positive, suspect, or high-risk sheep or goat of any age and any sexually intact exposed sheep or goat of more than one year of age shall be required to possess official individual identification as listed in 9 CFR Part 79, [January 1, 2022] July 1, 2024, version.

(2)4) [Quarantines.] The [D] department [or its agent] may issue quarantines on any:

(a) [Any] animal infected with diseases listed on the Utah List of Reportable Conditions for Animals or any other contagious or infectious disease or any epidemic or poisoning [which] that is determined to be a threat to other animals or humans[-];

(b) [Any] animal [which] that it believes may jeopardize the health of other animals[-] or humans[-]; or

(c) [Any] area within Utah to prevent the spread of infectious or contagious diseases.

(i)5)(a) The department shall issue an official [Q] quarantine[s] notice[shall be issued] to owners or caretakers of animals affected with or exposed to infectious, contagious, or communicable diseases by serving [an official notice of quarantine to the owner or caretaker.] the notice in person or by registered mail to [their] the owner or caretaker's last known address.

(ii)b) The department may place [A] a verbal hold order [may be placed-] on a facility as an immediate control measure until an official notice of quarantine is issued.

(iii)c) During the period of quarantine, the owner or caretaker of the quarantine animals may not move any[no] animals, animal products, or equipment [shall be moved-] from or onto the quarantined premises without [the owner or caretaker of the quarantined animals having first obtained-] a written permit from the [D] department [-to move the animals-], that may require [A] additional control measures [-may be required].

(iv)d) Quarantines shall be released upon compliance with Section 4-31-115[-; as well as with], the May 9, 2024, version of the 9 CFR 71.2[-, October 31, 2022 edition], and other applicable state and federal laws.

(6)(a) A person may feed garbage or plate waste to a swine that is raised, held, or sold in this state if the swine is slaughtered for home use.

(b) Swine that have been fed garbage or plate waste and are not intended to be slaughtered for home use shall be quarantined for three weeks before slaughter and tested for disease during the quarantine period.

R58-2-4. Disease Control at Animal Exhibitions and Livestock Auctions.

(1-)] To reduce the potential spread of disease from animal exhibitions and livestock auctions the [D] department may:

(a)1) [R] require an animal exhibition to be a terminal show for designated species coming to the event when the [D] department is aware that a disease risk exists in that local area or the state[-];

(b)2) [G] give each county [in the state] the authority to designate a terminal show for any animal exhibition or fair being held within the county[-];

(e)3) [G] give the specific show that is a member of the Junior Livestock Show Association the authority to designate a terminal show[-]; or

(d)4) [R] restrict movement of livestock and horses into and out of a livestock auction or temporary livestock sale when the [D] department is aware of a disease risk in that local area or the state.

KEY: quarantines

Date of Last Change: [May 23, 2023] 2024

Notice of Continuation: April 1, 2021

Authorizing, and Implemented or Interpreted Law: 4-31-1[45]09; 4-31-118; 4-2-103(1)(c)(ii); 4-2-103(1)(i)

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|--------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R307-110-13 | Filing ID: 56653 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO BOX 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Ryan Bares | 801-536-4216 | rbares@utah.gov |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R307-110-13. General Requirements: State Implementation Plan |
| 3. Purpose of the new rule or reason for the change: |
| <p>The proposed amendments to Utah State Implementation Plan Subsection IX.D.11: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area revise the Reasonable Further Progress Chapter (7) of the ozone State Implementation Plan, which requires the state to demonstrate compliance with Section 182(b)(1)(A)(i) of the Clean Air Act.</p> <p>The amendments result in the state demonstrating compliance with these requirements. An update to Section R307-110-13 is required as amendments to sections of the Utah State Implementation Plan are done so through incorporation by reference under Rule R307-110.</p> |
| 4. Summary of the new rule or change: |
| <p>This rule amendment incorporates amendments to Subsection IX.D.11: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area into the Utah State Implementation Plan (SIP). The amendments to the SIP incorporated through this rule amendment allow the state to demonstrate compliance with certain Clean Air Act requirements for a moderate nonattainment area.</p> |

Fiscal Information

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| <p>The amendments to Section R307-110-13 are not expected to create any additional costs or savings for the state budget because the proposed amendments demonstrate how existing state administrative rules and actions fulfill the Clean Air Act requirements.</p> |
| B) Local governments: |
| <p>This rule amendment is not expected to impact local governments; therefore, no cost or savings are anticipated. The proposed changes to this section of the SIP do not result in any additional regulatory requirements.</p> |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| <p>This rule amendment is not expected to impact small businesses employing between 1 and 49 persons; therefore, no cost or savings are anticipated.</p> |

The proposed changes to this section of the SIP do not result in any additional regulatory requirements.

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

This rule amendment is not expected to impact non-small businesses employing more than 50 persons; therefore, no cost or savings are anticipated.

The proposed changes to this section of the SIP do not result in any additional regulatory requirements.

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 amendment is not expected to impact persons other than small businesses, non-small businesses, state, or local government entities; therefore, no cost or savings are anticipated.

The proposed changes to this section of the SIP do not result in any additional regulatory requirements.

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

This rule amendment does not impact any entities and does not result in any additional regulatory requirements; therefore, there are no anticipated compliance costs.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly D. Shelly, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | |
|------------------|------------------------------------------------------------------------|
| Section 19-2-104 | U.S.C. Title 42 Chapter 85 Subchapter I Part A Section 7410 (a)(1)2(A) |
|------------------|------------------------------------------------------------------------|

Incorporations by Reference Information

| | |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| 7. Incorporations by Reference : | |
| A) This rule adds or updates the following title of materials incorporated by references : | |
| Official Title of Materials Incorporated (from title page) | Utah State Implementation Plan, Section IX.D.11: 2015 Ozone NAAQS Northern Wasatch Front Moderate Nonattainment Area |
| Publisher | Division of Air Quality, Utah Department of Environment Quality |
| Issue Date | October 2, 2024 |

Public Notice Information

| | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8. 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: | 09/03/2024 | |
| B) A public hearing (optional) will be held: | | |
| Date: | Time: | Place (physical address or URL): |
| 08/26/2024 | 11:30 AM | Section R307-110-13 Public Hearing: In person: MASOB, Room 1015, Air Quality Board Room Virtual: Monday, August 26 · 11:00am – 2:30pm Time zone: America/Denver Google Meet joining info Video call link: https://meet.google.com/ses-ddhr-jrm Or dial: (US) +1 386-753-7897 PIN: 243 528 443# More phone numbers: https://tel.meet/ses-ddhr-jrm?pin=1787277907303 |
| To the agency: If more than one hearing will take place, continue to add rows. | | |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director of the Division of Air Quality | Date: | 06/25/2024 |
|-------------------------------------------|--------------------------------------------------------|--------------|------------|

R307. Environmental Quality, Air Quality.

R307-110. General Requirements: State Implementation Plan.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on [~~September 12, 2023~~] October 2, 2024, pursuant to Section 19-2-104, is incorporated by reference and made a part of Rule R307-110.

KEY: air pollution, PM10, PM2.5, ozone

Date of Last Change: [~~February 7,~~] 2024

Notice of Continuation: December 1, 2021

Authorizing, and Implemented or Interpreted Law: 19-2-104

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-----------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R307-202 | Filing ID: 56636 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|----------------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO BOX 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Rachel Chamberlain | 385-414-3390 | rachelchamberlain@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| | |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R307-202. Emission Standards: General Burning |
| 3. Purpose of the new rule or reason for the change: | The Division of Air Quality (DAQ) is filing an amendment to Rule R307-202 on account of H.B.567 passed in the 2024 General Session becoming effective 05/01/2024. |
| 4. Summary of the new rule or change: | <p>This filing amends Rule R307-202 to align with the changes in statute because of H.B. 567 (2024).</p> <p>On 03/12/2024, Governor Cox signed into law H.B. 567, Fire Regulation Amendments. This bill became effective on 05/01/2024.</p> <p>The proposed amendments to Rule R307-202 result in several changes to open burning with permits in the state. The bill changes the following: 1) the areas of the state that have different permit burning windows; 2) the time frame of the burning windows; and 3) the clearing index values at which burns are allowed to occur.</p> <p>The bill also defines attainment areas to distinguish between the open burning timeframes.</p> |

Fiscal Information

| | |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: | |
| A) State budget: | <p>There are no anticipated costs or savings to the state budget.</p> <p>There will be some DAQ staff time spent reprogramming the permit interface which will be absorbed by DAQ.</p> |
| B) Local governments: | <p>There is potential for an increase in open burning permit applications that will be received and reviewed by local governments. However,</p> <p>the fiscal impact is unknown at this time due to the lack of knowledge and therefore, costs or savings to local governments cannot be calculated.</p> |

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

There are no fiscal impacts to small businesses because H.B. 567 (2024) did not account for any fiscal impact to any entity, therefore no fiscal impacts are carried forward.

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

There are no fiscal impacts to non-small businesses because H.B. 567 (2024) did not account for any fiscal impact to any entity, therefore, no fiscal impacts are carried forward.

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

There are no cost impacts to persons other than small businesses, non-small businesses, state, or local government entities because H.B. 567 (2024) did not account for any fiscal impact to any entity, therefore, no fiscal impacts are carried forward.

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 additional compliance costs for affected persons associated with these amendments because H.B. 567 (2024) did not account for any fiscal impact to any entity, therefore, no fiscal impacts are carried forward.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kim D. Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | |
|------------------|------------------------------------------------------------------------|
| Section 19-2-104 | U.S.C. Title 42 Chapter 85 Subchapter I Part A Section 7410 (a)(1)2(A) |
|------------------|------------------------------------------------------------------------|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

B) A public hearing (optional) will be held:

| Date: | Time: | Place (physical address or URL): |
|------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08/26/2024 | 1:00 PM | Rule R307-202 Public Hearing: In Person: MASOB, Room 1015, Air Quality Boar Roome For Virtual: Monday, August 26 · 1 – 2pm Time zone: America/Denver Google Meet joining info Video call link: https://meet.google.com/ses-ddhr-jrm Or dial: (US) +1 386-753-7897 PIN: 243 528 443# More phone numbers: https://tel.meet/ses-ddhr-jrm?pin=1787277907303 In accordance with 63G-3-302, please note that if no requests for a public hearing for R307-202 are received by 2:00pm on August 22nd, 2024, then we will cancel this hearing. To determine if the hearing has been cancelled and/or view the cancellation notice, you can visit: https://deq.utah.gov/air-quality/air-quality-rule-plan-changes-open-public-comment |

To the agency: If more than one hearing will take place, continue to add rows.

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 07/02/2024 |
|-------------------------------------------|--------------------------------------------------|--------------|------------|

R307. Environmental Quality, Air Quality.

R307-202. Emission Standards: General Burning.

R307-202-1. Applicability.

Sections R307-202-4 through R307-202-8 apply to general burning within incorporated community under the authority of county or municipal fire authority.

R307-202-2. Definitions.

The following additional definitions apply only to Rule R307-202.

"Attainment areas" means any area that meets the national primary and secondary ambient air quality standard (NAAQS) for the pollutant.

NOTICES OF PROPOSED RULES

"County or municipal fire authority" means the public official so designated with the responsibility, authority, and training to protect people, property, and the environment from fire, within their respective area of jurisdiction.

"Federal Class I Area" means an area that consists of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and ~~all~~any international parks that were in existence on August 7, 1977. See Clean Air Act ~~§~~Section 162(a).

"Fire hazard" means a hazardous condition involving combustible, flammable, or explosive material that represents a substantial threat to life or property if not immediately abated, as declared by the county or municipal fire authority.

"Maintenance Area" as defined in Section R307-101-2, means an area that is subject to the provisions of a maintenance plan that is included in the Utah State Implementation Plan, and that has been redesignated by EPA from nonattainment to attainment of any NAAQS.

"Native American spiritual advisor" means a person who leads, instructs, or facilitates a Native American religious ceremony or service~~;~~, or provides religious counseling~~;~~, is an enrolled member of a federally recognized Native American tribe~~;~~, and is recognized as a spiritual advisor by a federally recognized Native American tribe. "Native American spiritual advisor" includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Subsection 107(d)(1)(A)(i), Clean Air Act for any NAAQS. The designations for Utah are listed in 40 CFR 81.345.

R307-202-3. Exclusions.

As provided in Section 19-2-114, the ~~provisions~~requirements of Rule R307-202 are not applicable to:

- (1) ~~E~~except for areas zoned as residential, burning incident to horticultural or agricultural operations of:
 - (a) ~~P~~prunings from trees, bushes, and plants; and
 - (b) ~~D~~dead or diseased trees, bushes, and plants, including stubble~~[-];~~
- (2) ~~B~~burning of weed growth along ditch banks for clearing these ditches for irrigation purposes;
- (3) ~~E~~controlled heating of orchards or other crops during the frost season to lessen the chances of their being frozen so long as the emissions from this heating do not cause or contribute to an exceedance of any ~~national ambient air quality standards~~NAAQS and is consistent with the federally approved State Implementation Plan;~~and~~
- (4) ~~T~~the controlled burning of not more than two structures per year by an organized and operating fire department for ~~the purpose of~~ training fire service personnel when the National Weather Service clearing index is above 500~~[-]~~. ~~S~~see also Subsection 11-7-1(2)(a)~~[-]; and~~
- (5) ~~E~~ceremonial burning is excluded from Subsection R307-202-4(2) when conducted by a Native American spiritual advisor.

R307-202-4. Prohibitions.

- (1) No open burning ~~shall~~may be done at sites used for disposal of community trash, garbage, and other wastes.
- (2) No person ~~shall~~may burn under this rule when the director issues a public announcement under Rule R307-302. The director ~~will~~shall distribute ~~such~~the announcement to the local media notifying the public that a mandatory no-burn period is in effect for the area where the burning is to occur.

R307-202-5. General Requirements.

(1) Except as otherwise provided in this rule, no person ~~shall~~may set or use an open outdoor fire for the ~~purpose~~disposal or burning of:~~of disposal or burning of petroleum wastes; demolition or construction debris; residential rubbish; garbage or vegetation; tires; tar; trees; wood waste; other combustible or flammable solid, liquid or gaseous waste; or for metal salvage or burning of motor vehicle bodies.]~~

- ~~(a) petroleum wastes;~~
- ~~(b) demolition or construction debris;~~
- ~~(c) rubbish;~~
- ~~(d) garbage or vegetation;~~
- ~~(e) tires;~~
- ~~(f) tar;~~
- ~~(g) trees;~~
- ~~(h) wood waste;~~
- ~~(i) other combustible or flammable solid;~~
- ~~(j) liquid or gaseous waste; or~~
- ~~(k) for metal salvage or burning of motor vehicle bodies.~~

(2) The county or municipal fire authority shall approve burning based on the predicted meteorological conditions and whether the emissions would impact the health and welfare of the public or cause or contribute to an exceedance of any ~~national ambient air quality standard~~NAAQS.

(3) Nothing in this regulation ~~shall~~may be construed as relieving any person conducting open burning from meeting the requirements of any applicable federal, state, or local requirements concerning disposal of any combustible materials.

(4) The county or municipal fire authority that approves any open burning permit ~~will~~shall retain a copy of each permit issued for one year.

R307-202-6. Open Burning - Without Permit.

The following types of open burning do not require a permit when not prohibited by other local, state, or federal laws and regulations, when it does not create a nuisance, as defined in Section 76-10-803, and does not impact the health and welfare of the public~~[-];~~

- (1) ~~D~~devices for the primary purpose of preparing food ~~such as~~including outdoor grills and fireplaces;

- (2) ~~[C]~~campfires and fires used solely for recreational purposes where ~~[such]~~the fires are under control of a responsible person and the combustible material is clean, dry, wood or charcoal; and
- (3) ~~[F]~~indoor fireplaces and residential solid fuel burning devices except as provided in Section R307-302-2.

R307-202-7. Open Burning - With Permit.

(1) No person ~~[shall]~~may knowingly conduct open burning unless the open burning activities may be conducted without a permit pursuant to Section R307-202-6 or the person has a valid permit for burning on a specified date or period, issued by the county or municipal fire authority having jurisdiction in the area where the open burning ~~[will]~~shall take place.

(2) A permit applicant shall provide information as requested by the county or municipal fire authority. No permit or authorization ~~[shall]~~may be deemed valid unless the issuing authority determines that the applicant has provided the required information.

(3) Persons seeking an open burning permit shall submit to the county or municipal fire authority an application on a form provided by the director for each separate burn.

(4) A permit shall be valid only on the lands specified on the permit.

(5) No material ~~[shall]~~may be burned unless it is clearly described and quantified as material to be burned on a valid permit.

(6) No burning ~~[shall]~~may be conducted contrary to the conditions specified on the permit.

(7) Any permit issued by a county or municipal fire authority ~~[shall be]~~is subject to the local, state, and federal rules and regulations.

(8) Open burning is authorized by the issuance of a permit, as stipulated within this rule, for specification in Subsection R307-202-7(10). These permits can only be issued when not prohibited by other local, state, or federal laws and regulations and when a nuisance as defined in Section 76-10-803 is not created and does not impact the health and welfare of the public.

(9) Except as provided in Subsection R307-202-7(10)(f)(ii), ~~[F]~~individual permits, as stipulated within this rule, for the types of burning listed in Subsection R307-202-7(10) may be issued by a county or municipal fire authority when the clearing index is 500 or greater. When the clearing index is below 500, ~~[all]~~any permits issued for that day ~~[will]~~shall be ~~[null and]~~void until further notice from the county or municipal fire authority. Additionally, anyone burning on the day when the clearing index is below 500, or is found to be violating any part of this rule, shall be liable for a fine in accordance with Rule R307-130.

(10) The following include ~~[T]~~types of open burning for which a permit may be granted~~[-are]~~:

(a) ~~[E]~~except in nonattainment and maintenance areas, open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations ~~[such as]~~including sawdust and scrap lumber~~[-]~~;

(b) ~~[O]~~open burning of trees and brush within railroad rights-of-way, provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil, tar, or other materials which can cause severe air pollution, are not present in the materials to be burned, and are not used to start fires or to keep fires burning~~[-]~~;

(c) ~~[O]~~open burning of a fire hazard that a county or municipal fire authority determines cannot be abated by any other viable option~~[-]~~;

(d) ~~[O]~~open burning of highly explosive materials when a county or municipal fire authority, law enforcement agency, or governmental agency having jurisdiction determines that onsite burning or detonation in place is the only reasonably available method for safely disposing of the material~~[-]~~;

(e) ~~[O]~~open burning for the disposal of contraband in the possession of public law enforcement personnel provided they demonstrate to the county or municipal fire authority that open burning is the only reasonably available method for safely disposing of the material~~[-]~~;

(f) ~~[O]~~open burning of clippings, bushes, plants, and pruning's from trees incident to property clean-up activities, including residential cleanup, provided that the following conditions have been met:

(i) ~~[W]~~within ~~[only]~~the counties designated as nonattainment and maintenance areas, ~~[of Washington, Kane, San Juan, Iron, Garfield, Beaver, Piute, Wayne, Grand and Emery,]~~ the county or municipal fire authority may issue a permit between ~~[March 1]~~May 1 and May 31~~[0]~~ when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 to October 31 ~~[November 15]~~for ~~[such]~~the burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater~~[-]~~;

(ii) ~~[F]~~in ~~[all other areas of the state]~~attainment areas, the county or municipal fire authority may issue a permit between ~~[March 30 and May 30]~~November 1 and March 31 for ~~[such]~~burning to occur when the clearing index is ~~[500]~~250 or greater. Additionally, in attainment areas, the county or municipal fire authority may issue a permit between April 1 and May 31 for burning to occur when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 and October 31~~[0]~~ for ~~[such]~~burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater~~[-]~~;

(iii) ~~[Such]~~burnings occur in accordance with state and federal requirements;

(iv) ~~[M]~~materials to be burned are thoroughly dry; and

(v) ~~[N]~~no trash, rubbish, tires, or oil are included in the material to be burned, used to start fires, or used to keep fires burning.

(g) ~~[E]~~except for nonattainment and maintenance areas, the director may grant a permit for types of open burning not specified in Subsection R307-202-7(3) on written application if the director finds that the burning is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any ~~[national ambient air quality standards]~~NAAQS.

(i) This permit may be granted once the director has reviewed the written application with the requirements and criteria found within this rule ~~[at]~~in Section R307-202-7.

(ii) Open ~~[B]~~burning ~~[P]~~permit ~~[C]~~criteria shall include the following requirements.

(A) The director or the county or municipal fire authority shall consider the following factors in determining whether, and upon what conditions, to issue an open burning permit:

NOTICES OF PROPOSED RULES

- (I) ~~(F)~~the location and proximity of the proposed burning to any building, other structures, the public, and federal Class I areas that might be impacted by the smoke and emissions from the burn;
- (II) ~~(B)~~burning ~~will~~shall only be conducted when the clearing index is 500 or above; and
- (III) ~~(W)~~whether there is any practical alternative method for the disposal of the material to be burned.
- (B) Methods to minimize emissions and smoke impacts may include~~[-but are not limited to]:~~
 - (I) ~~(F)~~the use of clean auxiliary fuel;
 - (II) ~~(D)~~drying the material ~~[prior to]~~before ignition; and
 - (III) ~~(S)~~separation for alternative disposal of materials that produce higher levels of emissions and smoke during the combustion process.
- (C) Open burning permits are not valid during periods when the clearing index is below 500 or publicly announced air pollution emergencies or alerts have been declared in the area of the proposed burn.
- (D) For burns of piled material, ~~(all)~~any piles shall be reasonably dry and free of dirt.
- (E) Open burns shall be supervised by a responsible person who shall notify the local fire department and have available, either on-site or by the local fire department, the means to suppress the burn if the fire does not comply with the terms and conditions of the permit.
- (F) ~~(A)~~Any open burning operations shall be subject to inspection by the director or county or municipal fire authority. The permittee shall maintain at the burn site the original or a copy of the permit that shall be made available without unreasonable delay to the inspector.
- (G) If at any time the director or the county or municipal fire authority granting the permit determines that the permittee has not complied with any term or condition of the permit, the permit is subject to partial or complete suspension, revocation, or imposition of additional conditions. ~~(A)~~Any burning activity subject to the permit shall be terminated immediately upon notice of suspension or revocation. In addition to suspension or revocation of the permit, the director or county or municipal fire authority may take any other enforcement action authorized under state or local law.

R307-202-8. Special Conditions.

- (1) Open burning for special purposes or under unusual or emergency circumstances may be approved by the director if it is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any ~~[national ambient air quality standards]~~NAAQS.
- ~~(a)~~(2) This permit may be granted once the director has reviewed the written application with the requirements and criteria in Section R307-202-7.

KEY: air pollution, open burning, fire authority

Date of Last Change: 2024~~[October 6, 2014]~~

Notice of Continuation: December 9, 2019

Authorizing, and Implemented or Interpreted Law: 19-2-104; 11-7-1(2)(a); 65A-8-211; 76-10-803

| NOTICE OF SUBSTANTIVE CHANGE | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-301 | Filing ID: 56637 |
| Agency Information | | |
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-301. Solid Waste Authority, Definitions, and General Requirements |

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

Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control.

The rule is being amended to update rule citations, amend definitions, and add new definitions.

4. Summary of the new rule or change:

Citations to Rules R315-301 through R315-320 are being amended to include two new rules, R315-321 and R315-322.

Citations to some sections of Rule R315-303 are being amended due to amendments made in Rule R315-303 that resulted in numbering being changed.

The definition of Existing facility is being amended.

Some clarifying language is being added to Subsection R315-301-2(12)(g).

Subsection R315-301-2(12)(i) is being deleted because it is a requirement and should not be part of a definition. The requirement already exists in Subsection R315-310-1(4).

Definitions for Class VII facility, Exploration and Production Waste, High liquid waste, Non-commercial solid waste management facility, and Solid waste surface impoundment are being added. The definition of Surface impoundment or impoundment is being deleted due to the addition of the definition of Solid waste surface impoundment.

Additional language is being added to the definition of New facility stating that a new facility is one that did not have an active valid permit or other approval from the Division of Oil, Gas, and Mining on 10/01/2023.

Additional clarifying language is being added to the definition of Off-site.

Additional language is being added to the definition of Solid waste disposal facility to clarify that a solid waste surface impoundment is a solid waste disposal facility.

The definition of Unstable area has been revised to make it more clear.

The word "disposal" in Section R315-301-5 is being replaced with "management" to make it clear that solid waste facilities are not just disposal facilities but manage waste.

Corrections to typographical errors and formatting are also being made.

(EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:

It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies.

B) Local governments:

It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements.

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**):

It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.

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 new compliance costs associated with the amendments to this rule.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-105 | Section 19-6-108 | Section 19-6-109 |
| 40 CFR 258 | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**R315-301. Solid Waste Authority, Definitions, and General Requirements.****R315-301-1. Authority and Purpose.**

~~[The Solid Waste Permitting and Management]~~ Rules R315-301 through R315-322 are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-32[0]2 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, the following definitions apply to Rules R315-301 through R315-32[0]2.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public use airport open to the public without ~~[prior]~~earlier permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield usable quantities of groundwater to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human induced events, results in the downslope transport of soil and rock material by gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is incorporated by reference, that if dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in groundwater upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(b)(iii) and is permitted by the director:

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10; and

(b) does not meet the standards of Subsection R315-303-3(~~[3]4~~)(e)(v).

(8) "Class II Landfill" means a non commercial landfill or a landfill that is permitted by the director:

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10; and

(b) meets the standards of Subsection R315-303-3(~~[3]4~~)(e)(v).

(9) "Class III Landfill" means a non commercial landfill that is permitted by the director to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non commercial landfill that is permitted by the director to receive for disposal only:

(a) construction or demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3;

and

(f) petroleum contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the director to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10.

NOTICES OF PROPOSED RULES

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill, as defined by Subsection 19-6-102(3), that is permitted by the director to receive for disposal only:

(a) construction or demolition waste, excluding waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or R315-320-3(2); and

(f) petroleum contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) ~~[A]~~The owner or operator of a Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction or demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

~~[_____ (i) A Class VI Landfill may not change to a Class V Landfill except by meeting each requirement for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).]~~

(13) "Class VII Facility" means a nonhazardous solid waste management facility that is permitted by the director for the treatment or disposal of exploration and production waste.

~~(13)~~(14) "Closed facility" means any solid waste management facility that no longer receives solid waste and has completed an approved closure plan, and any landfill ~~[on which]~~where an approved final cover has been installed.

~~(14)~~(15) "Commercial solid waste" means any type of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

~~(15)~~(16) "Composite liner" means a liner system consisting of two components; the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner shall have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

~~(16)~~(17) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit, 60 degrees Celsius, or higher, for at least part of each day of a consecutive seven day period, to a state ~~[in which]~~where the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

~~(17)~~(18) "Construction or demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, that may be generated by these operations.

(a) This waste may include:

(i) concrete, bricks, and other masonry materials;

(ii) soil and rock;

(iii) waste asphalt;

(iv) rebar contained in concrete; and

(v) untreated wood, and tree stumps.

(b) Construction or demolition waste does not include:

(i) friable asbestos;

(ii) treated wood; or

(iii) contaminated soils or tanks resulting from remediation or clean up at any release or spill.

~~(18)~~(19) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

~~(19)~~(20) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

~~(20)~~(21) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

~~(21)~~(22) "Energy recovery" means the recovery of energy in a usable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature, above 1,200 degrees Fahrenheit, processing.

~~(22)~~(23) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through R315-32[0] by the director[;]

and[

~~(b)]~~ received final approval to accept waste as required by Subsection R315-301-5(1)[;] or

(b) had an active valid permit or other valid approval from the Division of Oil, Gas, and Mining on October 1, 2023, for an oil and gas exploration and production waste management facility.

~~(23)~~²⁴ "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the facility's current operating permit ~~[under which the facility is operating]~~.

~~(24)~~²⁵ "Facility" means the contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, for example, one or more incinerators, landfills, container storage areas, or combinations of these.

(26) "Exploration and production waste" or "E&P waste" means solid wastes that are intrinsically derived from primary field operations associated with the exploration, development, or production of crude oil or natural gas, but only to the extent the waste is exempt from hazardous waste regulation according to Subsection R315-261-4(b)(5).

~~(25)~~²⁷ "Floodplain" means the land that has been or may be covered by flood water ~~[which]~~that has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

~~(26)~~²⁸ "Free liquids" means liquids ~~[which]~~that readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by Test Method 9095B, Paint Filter Liquids Test, as provided in EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" available at the US EPA Hazardous Waste Test Methods/SW-846 website.

~~(27)~~²⁹ "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

~~(28)~~³⁰ "Groundwater" means subsurface water that is in the zone of saturation including perched groundwater.

~~(29)~~³¹ "Groundwater quality standard" means a standard for maximum allowable contamination in groundwater as set by Section R315-308-4.

~~(30)~~³² "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-261-3.

(33) "High liquid waste" means nonhazardous solid waste that is liquid in its natural state, contains free liquids, or is expected to liquefy or vaporize under the circumstances that it is managed or disposed.

~~(34)~~³⁴ "Holocene fault" means a fracture or zone of fractures ~~[along which]~~where rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, ~~[approximately]~~about 11,000 years ago, to the present.

~~(32)~~³⁵ "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

~~(33)~~³⁶ "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

~~(34)~~³⁷ "Incineration" means a controlled thermal process that physically or chemically alters ~~[by which]~~ solid wastes ~~[are physically or chemically altered]~~ into gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

~~(35)~~³⁸ "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a very small quantity generator of hazardous waste, as defined by Section R315-260-10, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities:

- (a) electric power generation;
- (b) fertilizer or agricultural chemical industries;
- (c) food and related products or by-products industries;
- (d) inorganic chemical industries;
- (e) iron and steel manufacturing;
- (f) leather and leather product industries;
- (g) nonferrous metals manufacturing or foundry industries;
- (h) organic chemical industries;
- (i) plastics and resins manufacturing;
- (j) pulp and paper industry;
- (k) rubber and miscellaneous plastic product industries;
- (l) stone, glass, clay, and concrete product industries;
- (m) textile manufacturing;
- (n) transportation equipment manufacturing; and
- (o) water treatment industries.

(p) This term does not include mining waste, oil and gas waste, or other waste excluded by Subsection 19-6-102(19).

~~(36)~~³⁹ "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

~~(37)~~⁴⁰ "Inert waste" means noncombustible, nonhazardous solid wastes that keep their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

~~(38)~~⁴¹ "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

NOTICES OF PROPOSED RULES

(~~39~~42) "Landtreatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for biodegradation.

(~~40~~43) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current facility operating permit [~~under which the facility is operating~~]; or

(c) any horizontal expansion not consistent with past normal operating practices.

(~~41~~44) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the groundwater with similar geochemistry such that the groundwater, at that point, has not been affected by the facility.

(~~42~~45) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from the waste.

(~~43~~46) "Lithified earth material" means any rock, including any naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(~~44~~47) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius, 77 degrees Fahrenheit, and atmospheric pressure.

(~~45~~48) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on-site specific seismic risk assessment.

(~~46~~49) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(~~47~~50) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and nonhazardous sludge.

(~~48~~51) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through R315-32(~~0~~)2 by the director;

(b) did not have a permit or other valid approval issued under Rules R315-301 through R315-32(~~0~~)2 or an active valid permit or other valid approval from the Division of Oil, Gas, and Mining on October 1, 2023, for an oil and gas exploration and production waste management facility [~~at the time of when the application was submitted~~]; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(52) "Non-commercial solid waste management facility" means a facility that is not a "commercial nonhazardous solid waste treatment, storage, or disposal facility" as defined by Subsection 19-6-102(3).

(~~49~~53) "Off-site" means any [~~site which~~] area that is [not] outside of the same or geographically continuous property that is defined as "on-site".

(~~50~~54) "On-site" means the geographically contiguous property that may be divided by public or private right-of-way, where the entrance and exit between the properties is at a cross roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls[~~s~~] and [~~to which~~] the public [~~does~~] cannot [~~have~~] access, is also considered on-site property.

(~~51~~55) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(~~52~~56) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(~~53~~57) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials [~~which~~] that contain these substances.

(~~54~~58) "Permeability" means the [~~ease with which~~] ability of a porous material to allow[s] water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(~~55~~59) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the director to implement the requirements of the Utah Solid and Hazardous Waste Act.

(~~56~~60) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(~~57~~61) "Poor foundation conditions" means those areas where features exist [~~which~~] that indicate that a natural or human induced event may result in inadequate foundation support for the structural components of a landfill unit.

(~~58~~62) "Putrescible waste" means solid waste [~~which~~] that contains organic matter capable of being decomposed by microorganisms and of [~~such~~] a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(~~59~~63) "Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(~~60~~64) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate a volume of material so large that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the regulatory designation of the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels, such as coal, natural gas, and petroleum products, to generate the heat necessary to manufacture a product.

(~~64~~65) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for recycling, such as metals, paper, glass, and plastics.

(~~62~~66) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(~~63~~67) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(~~64~~68) "Scavenging" means the unauthorized removal of solid waste from a facility.

(~~65~~69) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(~~66~~70) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(~~67~~71) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. This waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(~~68~~72) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from:

- (a) municipal, commercial, or industrial wastewater treatment plants;
- (b) water supply treatment plants;
- (c) car wash facilities;
- (d) air pollution control facilities; or
- (e) any other waste having similar characteristics.

(~~69~~73) "Solid waste disposal facility" means a landfill, incinerator, ~~or~~ landtreatment ~~area~~ facility, or a solid waste surface impoundment.

(~~70~~74) "Solid waste incinerator facility" means a facility ~~at which~~ that receives solid waste ~~is received~~ from on-site or off-site sources and ~~is subjected~~ subjects the waste to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to make it non infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through R315-32~~0~~2.

(75) "Solid waste surface impoundment" means a solid waste management facility or any part of a solid waste management facility that is a natural topographic depression, human-made excavation, or a diked area that is designed to hold nonhazardous high liquid waste, leachate, or sludge, to dispose of, reduce the volume of, or otherwise separate or treat the waste. A solid waste surface impoundment does not include a surface impoundment that is:

- ~~(a) operated in connection with a permitted underground injection well;~~
- ~~(b) regulated under the authority of the Board of Oil, Gas, and Mining;~~
- ~~(c) used to manage storm water or is otherwise regulated under the authority of the Water Quality Board;~~
- ~~(d) regulated under Section R315-319-53; or~~
- ~~(e) a hazardous waste surface impoundment regulated under Rules R315-264 or R315-265.~~

(~~74~~76) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

- (i) ash;
- (ii) automobile bodies;
- (iii) furniture and appliances;
- (iv) infectious waste;
- (v) waste tires;
- (vi) dead animals;
- (vii) asbestos;
- (viii) waste exempt from the hazardous waste rules under Section R315-261-4;
- (ix) very small quantity generator hazardous waste as defined by Section R315-260-10;
- (x) waste containing PCBs;
- (xi) petroleum contaminated soils;
- (xii) waste asphalt; and
- (xiii) sludge.

(b) Special waste shall be handled and disposed according to the requirements of Rule R315-315.

(~~72~~77) Reserved.

(~~73~~78) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

~~(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.]~~

(~~75~~79) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

NOTICES OF PROPOSED RULES

(~~76~~80) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(~~77~~81) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

- (a) creosote or related compounds;
- (b) arsenic;
- (c) chromium; or
- (d) copper.

(~~78~~82) "Twenty-five year storm" means a 24-hour storm of the intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(~~79~~83) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains the features to make it capable of performing its intended function and of being closed as a separate entity.

(~~80~~84) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit ~~which~~ that is required to monitor groundwater. This vertical surface extends down into the groundwater.

(~~81~~85) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of the ~~landfill~~ structural components of a solid waste management facility that are intended to prevent ~~responsible for preventing~~ releases from ~~a~~ the facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(~~82~~86) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(~~83~~87) "Vector" means a living animal including insect or other arthropod ~~which~~ that is capable of transmitting an infectious disease from one organism to another.

(~~84~~88) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(~~85~~89) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

- (i) whole waste tires used as a fence;
- (ii) whole waste tires used as a windbreak; and
- (iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire

recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(~~86~~90) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(~~87~~91) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of ~~all~~ any solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with ~~the Utah Solid Waste Permitting and Management~~ Rules R315-301 through R315-322 and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility ~~which~~ that is in compliance with the requirements of Rules R315-301 through R315-32~~2~~⁰ and other applicable rules.

(2) If any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through R315-32~~2~~⁰, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit from the director and shall meet each of the following:

(i) submit the required permit application in the time frame specified by the director and respond promptly to any requests for information from the director related to the permit application;

(ii) shall immediately meet the operational monitoring and waste handling criteria of Rules R315-301 through R315-32~~2~~⁰; and

(iii) shall follow the requirements of Subsection R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through R315-32[0]2, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Subsection R315-301-4(2).

(4) If deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through R315-32[0]2 do not apply to:

- (a) inert waste used as fill material;
- (b) the disposal of mine tailings and overburden at the site of generation;
- (c) the disposal of vegetative material generated as a result of land clearing;
- (d) the disposal of vegetative agricultural waste;
- (e) the following waste if managed at a facility that is solely for recycling, reuse, or reprocessing:
 - (i) fly ash waste;
 - (ii) bottom ash waste;
 - (iii) slag waste;
 - (iv) flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; or
- (f) the following wastes if disposal occurs at an on-site location owned and operated by the generator:
 - (i) waste from the extraction, beneficiation, and processing of ores and minerals listed in Subsection R315-261-4(b)(7)(ii); or
 - (ii) cement kiln dust.

R315-301-5. Permit Required.

(1) No solid waste [disposal]management facility shall be established, operated, maintained, or expanded until the owner or operator of [such]the facility has [obtained]gotten a permit from the [D]director and has received a letter of approval from the [D]director to accept waste.

(2) The owner or operator of a solid waste [disposal]management facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or [city-]licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

KEY: self-inspections, solid waste management, solid waste disposal

Date of Last Change: [January 16,] 2024

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-----------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-302 | Filing ID: 56638 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, Utah 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements |

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3. Purpose of the new rule or reason for the change:</p> <p>Based on H.B. 310, passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control.</p> <p>This rule is being amended to update rule citations.</p> |
| <p>4. Summary of the new rule or change:</p> <p>A citation to Subsection R315-303-3(2)(b) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(3)(b).</p> <p>The citation to Rules R315-301 through R315-320 is being amended to include Rules R315-321 and R315-322</p> <p>Class VII landfills and solid waste surface impoundments, which are being created with the addition of the new Rules R315-321 and R315-322, are being added to the list of facilities that Rule R315-302 applies.</p> <p>Produced water from oil or gas production wells is being added to the list of activities that must be included in an annual report in Subsection R315-302-2(4)(c).</p> <p>Class VII landfills, which are being created with the addition of the new Rule R315-321, are being added throughout Section R315-302-3 as facilities that must comply with closure and post closure requirements.</p> <p>Corrections to typographical errors and formatting are also being made.</p> <p>(EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.)</p> |

Fiscal Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</p> |
| <p>A) State budget:</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies.</p> |
| <p>B) Local governments:</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements.</p> |
| <p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements.</p> |
| <p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements.</p> |
| <p>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):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.</p> |
| <p>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no new compliance costs associated with the amendments to this rule.</p> |

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-105 | Section 19-6-108 | Section 19-6-109 |
| 40 CFR 258 | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.

R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

- (i) Class I, II, and V Landfills;
- (ii) Class III Landfills as specified in Rule R315-304;
- (iii) Class IV and VI Landfills as specified in Rule R315-305;
- (iv) Class VII landfills as specified in Rule R315-321;

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(v) solid waste surface impoundments as specified in Rule R315-322;

~~([iv]vi)~~ piles that are to be closed as landfills; and

~~([v]vii)~~ incinerators as specified in Rule R315-306.

(b) These standards, except for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) hazardous waste disposal sites regulated by Rules R315-260 through R315-266, R315-268, R315-270, R315-273 and Rule R315-

101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(iv) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston[-]type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird or aircraft collisions. Each new and existing disposal facility is subject to this requirement.

(A) If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator shall notify the affected airport and the Federal Aviation Administration; or

(v) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features that could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansion of an existing facility may not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility may not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the director that any containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area shall demonstrate to the satisfaction of the director that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator shall consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local ~~human-made~~ artificial features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the director that the unit will not restrict the flow of the 100[-]year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the director that:

(i) ~~[where]~~ when applicable under ~~[s]~~ Section 404 of the Clean Water Act, Title 33 United States Code Section 1344, or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or ~~[s]~~ Section 307 of the Clean Water Act, Title 33 United States Code Section 1317;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

- (A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;
- (B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;
- (C) the volume and chemical nature of the waste managed in the unit;
- (D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;
- (E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and
- (F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under [s]Section 404 of the Clean Water Act, Title 33 United States Code Section 1344 or applicable state wetlands laws, steps have been taken to try to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through any appropriate and practicable compensatory mitigation actions, for example, restoration of existing degraded wetlands or creation of ~~man-made~~ artificial wetlands; and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Groundwater.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) ~~where~~ if the bottom of the lowest liner is less than five feet above the historical high level of groundwater; or

(B) for a landfill that is not required to install a liner, the lowest level of waste shall be at least ten feet above the historical high level of groundwater.

(C) If the aquifer beneath a landfill contains groundwater that has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the groundwater.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless each unit of the proposed facility is constructed with a composite liner or other equivalent design approved by the director:

(A) a new facility located above any aquifer containing groundwater that has a TDS content below 1,000 mg/l that does not exceed applicable groundwater quality standards for any contaminant is permitted only ~~where~~ if the depth to groundwater is greater than 100 feet; or

(B) a new facility located above any aquifer containing groundwater that has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable groundwater quality standards for any contaminant is permitted only ~~where~~ if the depth to groundwater is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of groundwater quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days groundwater travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the director, of hydraulic conductivity and other information necessary to determine the 250 days groundwater travel distance.

(vi) Groundwater Alternative.

(A) Subject to the groundwater performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the groundwater has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to groundwater, or where there is a natural impermeable barrier above the groundwater, or where there is no groundwater, the director may approve, on a site specific basis, an alternative groundwater monitoring system at the facility or may wave the groundwater monitoring requirement. If groundwater monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a groundwater monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the groundwater quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the director if the operation of the facility impacts groundwater.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation;

or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for any areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation;

or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(g) Traffic impact study requirement.

(i) For each new facility, the applicant shall pay the costs for review of a traffic impact study, any costs required by the road authority for improvements, and submit a traffic impact study that:

(A) demonstrates that requirements for safety, operation, and the condition of roadways serving the proposed facility meet locally forecasted needs;

NOTICES OF PROPOSED RULES

(B) has been reviewed and approved by the Department of Transportation, a local highway authority, or a county or municipality road authority, whichever has jurisdiction over each road serving the proposed facility; and

(C) includes any maintenance agreement with a road authority in writing.

(3) Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the director.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) Each application for an exemption shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility that is required by Section R315-310-1 to get a permit, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rule R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, ~~or~~R315-314, R315-321, or R315-322.

(b) Any facility that stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the director, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Before the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility shall receive notice from the director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the director that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Before the acceptance of waste or beginning operations at the facility, the owner or operator of a transfer station facility shall receive notice from the director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the director. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the director or the director's authorized representative. The facility shall be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the director no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if groundwater is contaminated;

(f) contingency plans for other releases, for example, release of explosive gases or failure of run[-]off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind[-]blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and groundwater monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed ~~in case of~~when equipment breaks down;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the director.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the director, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of groundwater and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by

Subsection R315-303-3(~~2~~3)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and R315-302-3(7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the director.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the director by March 1st of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and shall include, at ~~a minimum~~ least, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received, according to Subsections R315-302-2(4)(c) and R315-302-2(4)(d);

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of groundwater monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted, delivered in a compaction vehicle, - 0.30 tons per cubic yard.

(ii) Construction or demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on[-]site specific data, developed by the owner or operator of the facility.

~~(vii) Produced water from an oil or gas production well -- 1 ton per 53 barrels of produced water.~~

(d) If an owner or operator of a municipal landfill or a construction or demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste ~~when~~ if approved by the director.

(e) Each owner or operator of a facility that treats, transfers, incinerates, or disposes of solid waste, shall submit a quarterly report by the 15th day of the month following the end of each quarter, ending March 31st, June 30th, September 30th, and December 31st.

(i) The quarterly report shall include:

(A) the name and address of the facility; and

(B) the quarterly quantity, in tons, of solid waste received, according to Subsections R315-302-2(4)(c) and R315-302-2(4)(d).

(ii) Each owner or operator shall pay fees established in Subsection 19-6-119(6) upon submittal of the quarterly report, except for[-]

~~(A)]~~ a person who treats, transfers, stores, or disposes of solid waste from the extraction, beneficiation, and processing of ores and minerals on the site where the waste was generated.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges that may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator shall conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary shall be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the director or the director's authorized representative upon request.

(b) The director or any authorized officer, employee, or representative of the director may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for ascertaining compliance with Rules R315-301 through R315-32[0]2 and the approved plan of operation for the facility.

NOTICES OF PROPOSED RULES

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Before 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the director.

R315-302-3. General Closure and Post[-]Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs ~~[that meets]~~ according to the requirements of Rule R315-309.

(b) The requirements of Subsections R315-302-3(2), R315-302-3(3), and R315-302-3(4) ~~[of this section]~~ apply to any solid waste management facility as defined by Subsection 19-6-502(12). The requirements of Subsections R315-302-3(5), R315-302-3(6), and R315-302-3(7) ~~[of this section]~~ apply to:

(i) Class I, II, IV, V, ~~and VI, and VII~~ Landfills;

(ii) Class III Landfills as specified in Rule R315-304~~[-]~~; and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run[-]off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the ~~[D]~~director.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) ~~[which that, when]~~ if approved by the ~~[D]~~director, will become part of the permit.

(c) The closure plan shall project time intervals ~~[at which]~~ when sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify ~~[such]~~ amendment. If it is determined that amendment of a facility closure plan is required, the ~~[D]~~director may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the ~~[D]~~director.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and ~~[all]~~ approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the ~~[D]~~director of the intent to implement the closure plan in whole or part, 60 days ~~[prior to]~~ before the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or ~~[all of]~~ the entire facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the ~~[D]~~director if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, the owner or operator shall, within 90 days or as required by the ~~[D]~~director, submit to the ~~[D]~~director:

(i) facility or unit closure plans, except for Class IIIb, IVb, ~~and VI, and VII~~ Landfills, signed by a professional engineer registered in ~~[the state of]~~ Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, ~~and VI, and VII~~ Landfills, a professional engineer registered in ~~[the state of]~~ Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the ~~[D]~~director determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

- (i) ground water and surface water monitoring;
- (ii) leachate collection and treatment;
- (iii) gas monitoring;
- (iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;
- (v) a description of the planned use of the property; and
- (vi) any other activity required by the [D]director to protect human health and the environment for a period of 30 years or a period established by the [D]director.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the [D]director as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized, ~~[(i.e.)for example, little or no settlement, gas production or leachate generation()]~~, and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals ~~[at which]~~when post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, ~~[where]~~if applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify ~~[such]~~amendment. If it is determined that amendment of a facility or unit post-closure plan is required, the [D]director may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The [D]director may direct that post-closure activities cease until the owner or operator receives a notice from the [D]director to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the [D]director, the owner or operator shall submit a certification to the [D]director, signed by the owner or operator, and, except for Class IIIb, IVb, ~~[and]VI, and VII~~ Landfills, a professional engineer registered in ~~[the state of]~~Utah stating why post-closure activities are no longer necessary, ~~[(i.e.)for example, little or no settlement, gas production, or leachate generation()]~~.

(c) If the [D]director finds that post-closure monitoring has established that the facility or unit is stabilized, ~~[(i.e.)for example, little or no settlement, gas production, or leachate generation()]~~, the [D]director may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities or any portion of the post-closure maintenance and monitoring activities, whichever is appropriate.

KEY: solid waste management, waste disposal, solid waste permit

Date of Last Change: ~~[January 16,] 2024~~

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

| NOTICE OF SUBSTANTIVE CHANGE | | |
|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-303 | Filing ID: 56639 |
| Agency Information | | |
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|--------------------------------------|
| 2. Rule or section catchline: |
| R315-303. Landfilling Standards |

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

Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control (Division).

This rule is being amended to update rule citations, clarify rule language and requirements, and make technical changes based on H.B. 310 (2019).

4. Summary of the new rule or change:

There are several locations throughout this rule that contain citations to subsections of Section R315-303-3 that are being amended because some rule numbering was changed in Section R315-303-3.

The citation to Rules R315-301 through R315-320 found in Subsection R315-303-3(4)(e)(v)(E) is being amended to include Rules R315-321 and R315-322.

Class VII landfills is being added to Section R315-303-1 to indicate that this rule is applicable to those types of facilities. Language is being added to Subsection R315-303-3(1) to make it clear that the rule applies to owners and operators of facilities that dispose of nonhazardous solid waste.

Requirements for the disposal of high liquid waste are being added at Subsection R315-303-3(2). This addition then results in the renumbering of the remainder of the subsections under Section R315-303-3.

Subsection R315-303-3(3)(c) is being added to provide the ability for management of leachate in a solid waste surface impoundment.

An exception is being added at Subsection R315-303-3(4) to allow for the use of liners designed to the standard provided in the new Rule R315-322.

The word "landfill" is being replaced by the word "facility" in several locations through Sections R315-303-3 and R315-303-4 to incorporate all types of solid waste facilities.

The word "cell" is being inserted in several locations after the word "landfill" in Section R315-303-3 to clarify a permitted area in a solid waste facility.

The new facility type, VII, created by the new Rule R315-321 is being added to the list of facility types in Subsection R315-303-3(5).

A requirement to ensure that waste containers and tanks are functional and in good condition and compatible with the waste is being added in Subsection R315-303-4(2)(h).

Additionally, a requirement for open tanks with an accumulation of hydrocarbons to have netting, fencing or other deterrents to prevent harm to animals is being added here.

The word "disposal" found in Subsection R315-303-4(7) is being changed to "management" to reflect the fact that some solid waste facilities are not disposal facilities. The word "accept" is also being added to clarify that facilities shall not knowingly accept, dispose, treat or store hazardous waste.

Corrections to typographical errors and formatting are also being made.

(EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:

Any new costs created by implementing these rule amendments will be absorbed by the existing budget of the Division.

It is not anticipated that the amendments to this rule will result in any costs or savings to the budgets of other state agencies because they do not add any new or remove any existing requirements for other state agencies.

| B) Local governments: | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-------------------|------------|
| It is not anticipated that the amendments to this rule will result in any costs or savings to local governments because they do not add any new or remove any existing requirements for any government agencies. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| The amendments to this rule will result in a cost to new or existing facilities requiring a solid waste permit for the management of Exploration and Production Waste regulation transfer from the Division of Oil Gas and Mining to the Division of Waste Management and Radiation Control. | | | |
| The costs for permitting range from \$0 through \$5,000 depending on the facility size, type, and other factors. | | | |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to non-small business because they do not add any new or remove any existing requirements for non-small business. | | | |
| E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because they do not add any new or remove any existing requirements for any persons other than small businesses, non-small businesses, state, or local government entities. | | | |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): | | | |
| The cost of the permit ranges from \$0 through \$5,000 depending on the facility size, type and other factors. | | | |
| It is anticipated that up to 15 facilities will be applying for a Solid Waste Class VII permit. Facilities will be required to get a permit within a year of the rule becoming effective so it is anticipated that the majority of the permit applications will be received in FY2025. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$75,000 | \$75,000 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Cost | \$75,000 | \$75,000 | \$0 |
| Fiscal Benefits | FY2025 | FY2026 | FY2027 |
| 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 | (\$75,000) | (\$75,000) | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-108 |
| 40 CFR 258 | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-303. Landfilling Standards.

R315-303-1. Applicability.

The standards of Rule R315-303 apply to:

- (1) Class I, II, and V Landfills;
- (2) Class III Landfills as specified in Rule R315-304;~~and~~
- (3) Class IV, and VI Landfills as specified in Rule R315-305~~[-]; and~~
- (4) Class VII Landfills as specified in Rule R315-321.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a ~~landfill~~ facility that disposes of nonhazardous solid waste in landfill cells shall minimize liquids admitted to active areas by:

- (a) covering according to Subsection R315-303-4(4);
- (b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;
- (c) designing the landfill to prevent run[-]on of ~~all~~ surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and
- (d) designing the landfill to collect and treat the run[-]off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.
- (e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the ~~D~~ director, from the run[-]on and run[-]off control requirements of Subsections R315-303-3(1)(c) and R315-303-3(1)(d).

(2) High liquid wastes.

(a) The direct disposal of high liquid wastes in landfill cells is prohibited unless the owner or operator implements appropriate measures described in a high liquid waste management plan approved by the director and included in the plan of operation, that includes the following information:

- (i) waste acceptance criteria;
- (ii) dewatering unit design and techniques, if proposed;
- (iii) other stabilization or treatment techniques, if proposed; and
- (iv) a communication plan to inform customers of high liquid waste acceptance criteria, and costs associated with treatment of high liquids waste at the facility.

(b) An owner or operator of a solid waste management facility that utilizes processes such as dewatering or other stabilization or treatment techniques shall:

(i) install and maintain a containment system having a permeability of no more than 1 x 10⁻⁷ cm/sec, that is capable of maintaining integrity under the operation of heavy equipment for:

- (A) all high liquid waste unloading areas and structures;
- (B) staging areas for high liquid wastes before dewatering, stabilization, or other treatment; and
- (C) areas used for dewatering, stabilization, or other treatment; and

(ii) appropriately manage leachates derived from the dewatering or stabilization of high liquid wastes, including through evaporation in a permitted solid waste surface impoundment.

(c) The director may require as a condition of approval of a high liquid waste management plan, that the owner or operator submit appropriate engineering reports demonstrating that disposal of stabilized or dewatered high liquid wastes in a landfill cell will not result in unacceptable geotechnical risks of landfill cell slope or final cover failures.

~~(2)3~~ Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods, either of which shall be approved by the ~~(D)~~director;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(c) Leachate may be managed or disposed of in a solid waste surface impoundment designed and operated in accordance with Rule R315-322.

~~(3)4~~ Liner Designs. ~~[An owner or operator of a landfill]~~ Except as provided in Section R315-322-5, liner design for any landfill cell or solid waste surface impoundment shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of at least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Equivalent Design.

(i) The ~~(D)~~director may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the equivalent design will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liner design required in Subsection R315-303-3(~~3)4~~(a).

(ii) ~~[When]~~ While approving an equivalent liner design, the ~~(D)~~director shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate; or

(c) Alternative Design.

(i) The owner or operator may use, as approved by the ~~(D)~~director, an alternative design.

(ii) The owner or operator ~~[must]~~ shall demonstrate that the ground water quality protection standard of Subsection R315-303-2(1) can be met. The demonstration ~~[must]~~ shall be approved by the ~~(D)~~director, and ~~[must]~~ shall be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; and

(E) predictions of leachate flow from the base of the waste to the uppermost aquifer; or

(d) Stringent Design. ~~[When]~~ If conditions of location, hydrogeology, or waste stream justify, the ~~(D)~~director may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-~~3)4~~(3)(a).

(e) Small ~~[Landfill]~~ Facility Design.

(i) ~~[The s]~~ Small [landfill] facility design applies only to a Class II ~~[Landfill]~~ Facility.

(ii) Each new Class II ~~[Landfill]~~ Facility and any existing Class II ~~[Landfill]~~ Facility seeking facility expansion shall meet the location standards of Section R315-302-1.

(iii) Each new and existing Class II ~~[Landfill]~~ Facility shall meet the performance standards of Section R315-303-2.

(iv) A Class II ~~[Landfill]~~ Facility, which meets the requirements of Subsection R315-303-3(~~3)4~~(e)(v), is exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(v) A Class II ~~[Landfill]~~ Facility will be approved only if:

(A) there is no evidence of existing ground water contamination;

(B) the ~~[landfill]~~ facility serves a community that has no practicable waste management alternative as determined by the ~~(D)~~director;

(C) the ~~[landfill]~~ facility is located in an area ~~[which]~~ that receives less than 25 inches of annual precipitation;

(D) the ~~[landfill]~~ facility receives, on a yearly average, no more than 20 tons of waste per day, or if a tonnage cannot be determined, serves a population of no more than 8,900; and

(E) the ~~[landfill]~~ facility meets ~~[all]~~ the requirements in Rules R315-301 through ~~R315-32[0]2~~ applicable to Class II ~~[landfills]~~ facilities.

(vi) A Class II ~~[Landfill]~~ Facility may lose the exemptions of the small ~~[landfill]~~ facility design if at any time the ~~[landfill]~~ facility receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

NOTICES OF PROPOSED RULES

(~~4~~5) Closure. At closure, an owner or operator of a Class I, II, IIIa, IVa, ~~and~~ V, or VII ~~Landfill~~ Facility shall use one of the following designs for the final cover ~~for each associated landfill cell~~.

(a) Standard Design. The standard design of the final cover ~~for landfill cells within the facility~~ shall consist of two layers:

(i) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent, with a permeability of 1×10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts;

(A) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(B) the grade of surface slopes ~~shall~~ may not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(ii) a layer to minimize erosion, consisting of:

(A) at least ~~6~~ six inches of soil capable of sustaining vegetative growth placed over the compacted soil cover and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(B) other suitable material, approved by the ~~D~~ director.

(b) Requirements for any Earthen Final Cover ~~are~~ on a ~~L~~ landfill cell.

(i) Markers or other benchmarks shall be installed in any final earthen cover to indicate the thickness of the final cover. These markers shall be observed during each quarterly inspection and the earthen cover shall be raised to the appropriate thickness as necessary.

(ii) Erosion channels deeper than 10% of the total cover thickness shall be repaired as soon as possible following their discovery.

(c) Alternative Final Cover Design. The ~~D~~ director may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the alternative final cover achieves an equivalent reduction in infiltration as achieved by the standard design in Subsection R315-303-3(~~4~~5)(a)(i); and

(ii) the alternative final cover provides equivalent protection from wind and water erosion as achieved by the standard design in Subsection R315-303-3(~~4~~5)(a)(ii).

(d) The expected performance of an alternative final cover design shall be documented by the use of an appropriate mathematical model.

(i) The input for the modeling shall include the climatic conditions at the specific ~~landfill~~ facility site and the soil types that will make up the final cover.

(ii) The model shall:

(A) be run to show the expected performance of the final cover at normal precipitation for a period ~~of time~~ until stability has been reached; and

(B) shall be run to show the expected performance of the final cover during the five wettest years on record at the site or the nearest weather station.

(e) The ~~D~~ director shall use the following criteria as part of the basis for determining if an alternative final cover will be approved:

(i) If the landfill cell has a liner design that does not use a synthetic material such as HDPE, the model will compare the infiltration through the standard cover as required in Subsection R315-303-3(~~4~~5)(a) and shall show that the alternative cover performs as well as the standard cover; or

(ii) If the landfill cell has a liner composed in part of a synthetic material such as HDPE, the model ~~must~~ shall show an infiltration rate of no greater than ~~3~~ three millimeters of water per year during any year of the model run.

(f) If a landfill cell has been constructed using an approved alternative landfill cell design, the ~~D~~ director may require, on a site-specific basis, the landfill cell closure design to be more stringent than the standard design specified in Subsection R315-303-3(~~4~~5)(a) to protect human health or the environment.

(g) In no case shall any modification be made to the final cover, as placed and approved at closure by the ~~D~~ director, unless that modification:

(i) is a necessary repair of the approved final cover;

(ii) maintains or improves the effectiveness of the final cover; and

(iii) is approved by the ~~D~~ director.

(~~5~~6) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator ~~must~~ shall:

(i) immediately take ~~all~~ the necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the ~~D~~ director;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the ~~D~~ director, for the explosive gas release, place a copy of the plan in the operating record, and notify the ~~D~~ director that the plan has been implemented.

(c) Collection and handling of explosive gases ~~shall~~ may not be required if it can be shown that the explosive gases will not support combustion.

(d) The ~~D~~ director may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II ~~Landfill~~ Facility. The waiver may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The [D]director may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste, or other waste with potential to generate methane during decomposition, is exempt from the gas monitoring requirement of Subsection R315-303-3([5]6)(a).

([6]7) Design Drawings.

(a) Design drawings and as built drawings of any engineered structure, including landfill cell liners, leachate collection systems, run[-]on[+] or run[-]off control systems, final covers, ground water monitoring systems, and gas collection systems, shall be signed and sealed by a professional engineer registered in ~~the State of~~ Utah.

(b) As built drawings shall be submitted to the [D]director on or before 90 days following the completion of the engineered structures associated with the facility ~~at the landfill~~.

([7]8) Other Requirements. An owner or operator shall design each ~~landfill~~ solid waste management facility to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the ~~landfill~~ facility;

(b) monitoring ground water according to Rule R315-308 using a design approved by the [D]director. The [D]director may also require monitoring of:

(i) surface waters, including run[-]off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of ~~all~~ the incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours ~~during which~~ that the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on[-]site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on[-]site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the ~~landfill~~ facility and management offices on[-]site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct reclamation of facility property in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that ~~landfill~~ facility personnel, trained in ~~landfill~~ facility operations, are on site when the site is open to the public:

(i) at least one person on site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on site, with one person at the active landfill cell face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year;

(g) control insects, rodents, and other vectors; ~~and~~

(h) ensure that waste containers and storage tanks are functional by:

(i) using containers or tanks that are not deteriorating and are free of cracks, rust, leaks, or other conditions that may compromise the integrity of the containers or tanks;

(ii) using containers or tanks that are made of or lined with materials that will not react with and are otherwise compatible with the waste in the container; and

(iii) using appropriate netting, fencing, or other deterrents to prevent harm to animals if open tanks or containers with an accumulation of hydrocarbons or any other substance are a risk to wildlife or migratory birds; and

([h]i) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit by placing permanent posts or by using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or an alternative daily cover as allowed in Subsections R315-303-4(4)(b) through R315-303-4(4)(c).

(b) The following are approved for use as alternative daily covers:

NOTICES OF PROPOSED RULES

- (i) nonhazardous contaminated soil; and
- (ii) subject to the conditions contained in Subsection R315-303-4(4)(c):
 - (A) tarps;
 - (B) plastic sheets, if designed for landfill cover use;
 - (C) foam products, if designed for landfill cover use;
 - (D) products created from cement kiln dust, if designed for landfill cover use;
 - (E) incinerator ash;
 - (F) nonhazardous auto shredder residue not otherwise regulated by 40 CFR Part 761;
 - (G) chipped waste tires, two inches square or smaller; and
 - (H) spray-on materials, if designed for landfill cover use.
- (c) The use of an approved alternative daily cover is subject to the following conditions:
 - (i) the alternative daily cover may not present a threat to human health or the environment; and
 - (ii) the alternative daily cover may be used only on a schedule as established by the facility owner or operator and recorded in the facility operating record.
 - (iii) The facility owner or operator shall establish the schedule for use of the approved alternative cover based on the alternative cover's performance in controlling vectors, fires, odors, blowing, and scavenging. The schedule shall contain the following requirements:
 - (A) any schedule established by the facility owner or operator shall provide for the placing of six inches of soil cover at least once per week;
 - (B) no approved alternative daily cover may be used on the day preceding a day the landfill will be closed;
 - (C) no alternative daily cover may be used on an area of the landfill that will not be covered with waste or an intermediate cover, as required in Subsection R315-303-4(4)(g), within two days; and
 - (D) the director may require the use of six inches of soil cover upon finding that use of an alternative cover is not controlling vectors, fires, odors, blowing litter or scavenging.
 - (iv) The landfill operating record shall clearly document the days when an alternative cover was used and the days when soil cover was used.
 - (v) The director may revoke the use of any alternative daily cover at any landfill facility if any condition of Subsection R315-303-4(4)(c) is not met or if the alternative daily cover is determined to present a threat to human health or the environment.
 - (d) Materials not listed in Subsection R315-303-4(4)(b) may be used as alternative daily cover on an infrequent basis if the material meets the requirements of Subsection R315-303-4(4)(c) and the use is documented in the facility operating record.
 - (e) Materials not listed in Subsection R315-303-4(4)(b) that a facility owner or operator wants to use on an ongoing basis shall be approved by the director. Director approval is based on the material meeting the requirements of Subsection R315-303-4(4)(c).
 - (f) The director may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration from the owner or operator of the landfill shall include at least the following:
 - (i) certification that the landfill accepts no municipal waste;
 - (ii) a detailed list of the waste types accepted by the landfill;
 - (iii) the alternative schedule for when the waste will be covered; and
 - (iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.
 - (v) In granting any waiver from the daily cover requirement, the director may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.
 - (vi) The director may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.
 - (g) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the director.
 - (i) No alternative intermediate cover will be approved by the director without application from the owner or operator.
 - (ii) Approval for an alternative intermediate cover may be granted after:
 - (A) considering the design of the landfill, waste stream accepted, and waste handling practices; and
 - (B) taking into account climatic, hydrogeologic, and soil conditions of the site.
 - (iii) In granting approval for an alternative intermediate cover, the director may place conditions on the owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.
 - (iv) The director may revoke the approval of an alternative intermediate cover if any condition is not met or if the use of the alternative intermediate cover is determined to present a threat to human health or the environment.
- (5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(7)(b).
- (6) Recycling Required.
 - (a) An owner or operator of a landfill where the general public delivers household solid waste shall provide containers where the general public may place recyclable materials that have a market. The containers shall be placed at a location convenient to the public and shall be accessible to the public during normal hours of facility operation.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste [disposal]management facility [shall]may not knowingly accept, dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in [Subsections]Section R315-261-4; or

(B) the waste meets the conditions specified in Subsection R315-262-13(f)(1) or Section R315-262-14; or

(ii) waste containing PCBs:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the requirements specified in Subsection[s] R315-315-7(2) or R315-315-7(3)(b).

(b) An owner or operator of a solid waste [disposal]management facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the director, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the director, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

KEY: solid waste management, waste disposal

Date of Last Change: 2024[November 20, 2023]

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108; 40 CFR 258

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R315-304-5

Filing ID: 56640

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

2. Rule or section catchline:

R315-304-5. Industrial Landfill Requirements

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3. Purpose of the new rule or reason for the change:</p> <p>Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control.</p> <p>This rule is being amended to update rule citations.</p> |
| <p>4. Summary of the new rule or change:</p> <p>A citation to Subsection R315-303-3(4) found in Subsection R315-304-5(2)(a) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(5).</p> <p>A citation to Subsection R315-303-3(7) found in Subsection R315-304-5(3)(b) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(8).</p> <p>Corrections to typographical errors and formatting are also being made.</p> |

Fiscal Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</p> |
| <p>A) State budget:</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies.</p> |
| <p>B) Local governments:</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements.</p> |
| <p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements.</p> |
| <p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements.</p> |
| <p>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):</p> <p>It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.</p> |
| <p>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no new compliance costs associated with the amendments to this rule.</p> |

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

| | | |
|------------------|------------------|------------|
| Section 19-6-105 | Section 19-6-108 | 40 CFR 257 |
|------------------|------------------|------------|

Public Notice Information**8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**R315-304. Industrial Solid Waste Landfill Requirements.****R315-304-5. Industrial Landfill Requirements.**

(1) Each Class III Landfill shall meet the following applicable requirements, as determined by the [D]director:

(a) the plan of operation requirements of Subsections R315-302-2(2)(a), R315-302-2(2)(b), R315-302-2(2)(c), R315-302-2(2)(d), R315-302-2(2)(g), R315-302-2(2)(i), R315-302-2(2)(j), R315-302-2(2)(k), R315-302-2(2)(l), R315-302-2(2)(m), R315-302-2(2)(n), and R315-302-2(2)(o);

(b) the recordkeeping requirements of Subsections R315-302-2(3)(a), R315-302-2(3)(b)(i), R315-302-2(3)(b)(iii), R315-302-2(3)(b)(iv), and R315-302-2(3)(b)(vi);

(c) the reporting requirements of Subsection R315-302-2(4); and

(d) the inspection requirements of Subsection R315-302-2(5).

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care [e]found in Subsections R315-302-2(6)[;], R315-302-3(2)[;], R315-302-3(3)[;], R315-302-3(4)(a)[;] and R315-302-3(4)(b)[;], R315-302-3(5)[;], R315-302-3(6)(a)(iv) through R315-302-3(6)(a)(vi), R315-302-3(6)(b)[;] and R315-302-3(6)(c)[;], and R315-302-3(7)(a) as determined by the [D]director.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3([4]5).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5)(b).

(c) If a Class III Landfill is already subject to the closure and post-closure requirements of another [F]federal or state agency [which]that are as stringent as specified in Subsection[s] R315-304-5(2)(a) or R315-304-5(2)(b), the landfill may be exempt, upon approval of the [D]director, from the closure requirements of Subsection[s] R315-304-5(2)(a) or R315-304-5(2)(b).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall design the landfill to minimize the acceptance of liquids and control storm water run[-] or on[-]run[-]off as specified in Subsections R315-303-3(1)(b), R315-303-3(1)(c), and R315-303-3(1)(d).

NOTICES OF PROPOSED RULES

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of Subsections R315-303-3(~~7~~8)(a), R315-303-3(8)(c), R315-303-3(8)(e), R315-303-3(8)(f), R315-303-3(8)(g), R315-303-3(8)(h), and R315-303-3(8)(i) as determined by the ~~D~~director.

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the ~~D~~director, from the ground water monitoring requirements of Rule R315-308.

(c) A Class IIIb Landfill is exempt from the ground water monitoring requirements of Rule R315-308.

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsections R315-303-4(2)(f) and R315-303-4(6); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Subsections R315-305-4(7) and R315-305-5(2) through R315-305-5(4) as determined by the ~~D~~director.

(6) Financial Assurance.

(a) The owner or operator of each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class III Landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the landfill as required by another ~~F~~federal or state agency ~~which~~that is as stringent as the requirements of Rule R315-309, the landfill may be exempt, upon approval of the ~~D~~director, from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

Each Class III Landfill shall apply for and ~~obtain~~get a permit to operate by meeting the applicable requirements of Rule R315-310.

KEY: solid waste management, solid waste disposal

Date of Last Change: ~~January 16,~~ 2024

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 40 CFR 257

| NOTICE OF SUBSTANTIVE CHANGE | | |
|-------------------------------------|-----------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-305 | Filing ID: 56641 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-305. Class IV and VI Landfill Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. |

This rule is being amended to update rule citations.

4. Summary of the new rule or change:

A citation to Subsection R315-303-3(7) found in Subsection R315-305-4(5) and Subsection R315-305-5(3)(a) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(8).

A citation to Subsection R315-303-3(4) found in Subsection R315-305-5(5)(a) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(5).

A citation to Subsection R315-303-3(4)(a)(i)(B) found in Subsection R315-305-5(5)(b)(iii) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(5)(a)(i)(B).

Corrections to typographical errors and formatting are also being made.

Fiscal Information

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

A) State budget:

It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies.

B) Local governments:

It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements.

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**):

It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.

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 new compliance costs associated with the amendments to this rule.

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 |

NOTICES OF PROPOSED RULES

| | | | |
|------------------------------|---------------|---------------|---------------|
| Total Fiscal Cost | \$0 | \$0 | \$0 |
| Fiscal Benefits | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-108 |
| Section 19-6-109 | 40 CFR 257 | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-305. Class IV and VI Landfill Requirements.

R315-305-4. General Requirements.

- (1) Location Standards.
 - (a) A new Class IVa Landfill shall meet the location standards of Subsection R315-302-1(2).
 - (b) A new Class IVb or VI Landfill or the expansion of an existing Class IVb or VI Landfill shall be subject to the following location standards:
 - (i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);
 - (ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);
 - (iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B);
 - (iv) the standards with respect to geology as specified in Subsections R315-302-1(2)(b)(i) and R315-302-1(2)(b)(iv);
 - (v) if the permit application for a new Class IVb, or VI Landfill requests approval to accept dead animals for disposal, the application shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), R315-302-1(2)(a)(ii), R315-302-1(2)(a)(iv), and R315-302-1(2)(a)(v); and
 - (vi) ~~[F]~~the requirements of Subsection R315-302-1(2)(f).
 - (c) Exemptions from the location standards of Subsections R315-305-4(1)(b)(i), R315-305-4(1)(b)(ii), R315-305-4(1)(b)(iii), R315-305-4(1)(b)(iv), and R315-305-4(1)(b)(v) may be granted by the ~~[D]~~director for a new Class IVb or VI Landfill, on a site specific bases, if it is determined that the exemption will cause no adverse impact to human health or the environment.
 - (i) No exemption may be granted without application to the ~~[D]~~director.
 - (ii) If an exemption is granted, the landfill may be required to meet more stringent design, construction, monitoring, or operation requirements than the minimum described in Rule R315-305 to protect human health or the environment.
 - (d) An existing Class IVa, IVb, or VI Landfill:

- (i) ~~shall~~ may not be subject to the location standards of Subsection[s] R315-305-4(1)(a) or R315-305-4(1)(b)(i), R315-305-4(1)(b)(ii), R315-305-4(1)(b)(iii), or R315-305-4(1)(b)(iv); but
- (ii) if the current permit of an existing Class IVa, IVb, or VI Landfill does not allow the acceptance of dead animals and the owner or operator requests approval to accept dead animals for disposal, the request to the [D]director shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), R315-302-1(2)(a)(ii), R315-302-1(2)(a)(iv), and R315-302-1(2)(a)(v).
- (2) An owner or operator of a Class IV or VI Landfill shall ~~obtain~~ get a permit, as set forth in Rule R315-310.
- (3) An owner or operator of a Class IV or VI Landfill shall design and operate the landfill to:
 - (a) prevent the run[-]on of ~~at~~ surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill;
 - and
 - (b) collect and treat, if necessary, the run[-]off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.
 - (4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.
 - (5) An owner or operator of a Class IV or VI Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3([7]8)(d).
 - (6) An owner or operator of a Class IV or VI Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).
 - (7) An owner or operator of a Class IV or VI Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

- (1) The owner or operator of a Class IV or VI Landfill ~~shall~~ may not accept any other form of waste except the wastes specified in Subsection R315-305-1(1).
- (2) The owner or operator of a Class IV or VI Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry[-,-,-] with a lockable gate or barrier, when the facility is not open.
- (3) The owner or operator of a Class IV or VI Landfill shall:
 - (a) minimize the size of the working face as required by Subsection R315-303-3([7]8)(g);
 - (b) ~~employ~~ use measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;
 - (c) meet the requirements of Subsections R315-303-3(1)(a) and R315-303-3(1)(b) to minimize liquids admitted to the landfill;
 - (d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and
 - (e) prohibit scavenging.
- (4) The owner or operator of a Class IV or VI Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.
- (5) The owner or operator of a Class IV or VI Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the [D]director.
 - (a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3([4]5).
 - (b) The owner or operator of a Class IVb or VI Landfill shall close the facility by:
 - (i) leveling the waste to the extent practicable;
 - (ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;
 - (iii) contouring the cover as specified in Subsection R315-303-3([4]5)(a)(i)(B); and
 - (iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the [D]director to minimize erosion.
 - (v) The [D]director may approve an alternative final cover design for a Class IVb or VI Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

KEY: solid waste management, solid waste disposal

Date of Last Change: 2024[August 31, 2017]

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108; 19-6-109; 40 CFR 257

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|---------------------------------------------------------------------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-307-2 | Filing ID: 56642 |
| Agency Information | | |
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |

NOTICES OF PROPOSED RULES

| | | |
|---------------------------------------------------------------------------------------------------|-------------------------------|-----------------|
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-307-2. Standards for Design |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| A citation to Subsection R315-303-3(7) found in Subsection R315-307-24(6) is being amended because some rule numbering was changed in Rule R315-303. The new citation is Subsection R315-303-3(8). Corrections to typographical errors and formatting are also being made. |

Fiscal Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. |
| B) Local governments: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. |
| 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): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. |

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 new compliance costs associated with the amendments to this rule.

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

Regulatory Impact Table

| Fiscal Cost | FY2025 | FY2026 | FY2027 |
|------------------------------|------------|------------|------------|
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-108 |
|------------------|------------------|------------------|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-307. Landtreatment Disposal Standards.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat any run[-]off from a 25 year storm, and divert any run[-]on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

NOTICES OF PROPOSED RULES

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(7)(8).

KEY: solid waste management, waste disposal

Date of Last Change: 2024[February 14, 2022]

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R315-308

Filing ID: 56643

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-308. Grondwater Monitoring Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The term "landfill, pile, or landtreatment disposal" is being replaced by the term "solid waste management unit" everywhere it appears in Sections R315-308-1 and R315-308-2 to align the rule with changes made throughout the solid waste management rules due to the creation of the two new rules, R315-321 and R315-322. Corrections to typographical errors and formatting are also being made. (EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.) |

Fiscal Information

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

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|
| A) State budget: | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. | | | |
| B) Local governments: | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. | | | |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. | | | |
| E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. | | | |
| 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 new compliance costs associated with the amendments to this rule. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|
| 6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement: | | |
| Section 19-6-105 | 40 CFR 258 | |

Public Notice Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 8. 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: | 09/03/2024 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-308. Groundwater Monitoring Requirements.

R315-308-1. Applicability.

(1) Each existing [~~landfill, pile, or landtreatment disposal~~]solid waste management facility that is required to perform groundwater monitoring shall comply with the groundwater monitoring requirements according to the compliance schedule as established by the director during the permitting or the permit renewal process.

(2) Before the acceptance of waste, each new [~~landfill, pile, or landtreatment disposal~~]solid waste management facility that is required to perform groundwater monitoring shall have:

- (a) a site specific groundwater monitoring plan approved by the director; and
- (b) the groundwater monitoring system complete and operational.

(3) Groundwater monitoring requirements may be waived by the director if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the groundwater during the active life of the facility and the post-closure care period. This demonstration shall be certified by a qualified groundwater scientist and approved by the director, and [§]shall be based upon:

- (a) site[-]specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and
- (b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a groundwater monitoring system and program has been established at a disposal facility, groundwater monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the director.

(5) A facility that has a groundwater monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the director if the operation of the facility impacts groundwater.

R315-308-2. Ground[-W]water Monitoring Requirements.

(1) Each facility owner or operator that is required to conduct ground[-]water monitoring shall formulate a ground[-]water monitoring plan that addresses the requirements of Section R315-308-2.

(2) The ground[-]water monitoring system [~~must~~]shall consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground[-]water samples from the uppermost aquifer and [~~all~~]each hydraulically connected aquifer[s] below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and [~~must~~]shall be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters, [~~(~~]500 feet[~~)~~], and [~~must~~]shall also be on the property of the owner or operator:

- (a) the upgradient well [~~must~~]shall represent the [~~quality of~~]background [~~water~~]concentration that has not been affected by leakage from the active area; and
- (b) the downgradient wells [~~must~~]shall represent the quality of ground[-]water passing the point of compliance. Additional wells may be required by the [D]director in complicated hydrogeological settings or to define the extent of contamination detected.

(3) [~~All~~]Each monitoring well[s] [~~must~~]shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing [~~must~~]shall allow collection of representative ground[-]water samples. Wells [~~must~~]shall be constructed in [~~such~~]a manner [~~as to~~]that prevents contamination of the samples, the sampled strata, and between aquifers and water-bearing strata. [~~All~~]Each monitoring well[s] and [~~all~~]any other devices and equipment used in the monitoring program [~~must~~]shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The ground[-]water monitoring program [~~must~~]shall include at a minimum, procedures and techniques for:

- (a) well construction and completion;
- (b) decontamination of drilling and sampling equipment;
- (c) sample collection;
- (d) sample preservation and shipment;
- (e) analytical procedures and quality assurance;
- (f) chain of custody control or sample tracking, as approved by the [D]director; and
- (g) procedures to ensure employee health and safety during well installation and monitoring.

(5) Each facility shall utilize a laboratory, that is certified by the state for the test methods used, to ~~complete~~ finish tests, using methods with appropriate detection levels, on samples for the following:

(a) ~~[d]~~During the first year of facility operation after wells are installed or an alternative schedule as approved by the [D]director, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for ~~[a]~~each parameter[s] listed in Section R315-308-4 to establish background concentrations[;].

(b) ~~[a]~~After background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for ~~[a]~~each parameter[s] listed in Section R315-308-4 as a detection monitoring program[;]. In the detection monitoring program:

(i) ~~[In the detection monitoring program,]~~the owner or operator ~~[must]~~shall determine ground[-]water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period[-]; and

(ii) ~~[F]~~the owner or operator ~~[must]~~shall express the ground[-]water quality at each monitoring well in a form appropriate for the determination of statistically significant changes[;].

(c) ~~[f]~~Field[-]measured pH, water temperature, and water conductivity ~~[must]~~shall accompany each sample collected[;].

(d) ~~[a]~~Analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples[; and].

(e) ~~[t]~~The [D]director may specify additional or fewer constituents depending upon the nature of the ground[-]water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the ~~[landfill]~~solid waste management unit;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the ~~[landfill]~~solid waste management unit;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground[-]water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground[-]water.

(f) The following information shall be placed in the facility's operating record and a copy submitted to the [D]director as the ground[-]water monitoring results to be included in the annual report required by Subsection R315-302-2(4):

(i) a report on the procedures, including the quality control[;] and quality assurance, followed during the collection of the ground[-]water samples;

(ii) the results of the field measured parameters required by Subsections R315-308-2(5)(c) and R315-308-2(7);

(iii) a report of the chain of custody and quality control[;] and quality assurance procedures of the laboratory;

(iv) the results of the laboratory analysis, including a list of the detection limits and test methods used, of the constituents listed by name and CAS number specified in Section R315-308-4 or an alternative list of constituents by name and CAS number approved by the [D]director[;]

~~(A) the results of the laboratory analysis shall list the constituents by name and CAS number; and~~

~~(B) a list of the detection limits and the test methods used]; and~~

(v) the statistical analysis of the results of the ground[-]water monitoring as required by Subsection R315-308-2(8).

(vi) The results of the ground[-]water monitoring may be submitted in electronic format.

(6) After background constituent levels have been established, a ground[-]water quality protection standard shall be set by the [D]director ~~[which]~~that shall become part of the ground[-]water monitoring plan. The ground[-]water quality protection standard will be set as follows.

(a) For constituents with background levels below the standards listed in Section R315-308-4 or as listed in Section R315-308-5, which presents the ground[-]water protection standards that are available for the constituents listed as Appendix II in 40 CFR 258, the ground[-]water quality standards of Sections R315-308-4 and R315-308-5 shall be the ground[-]water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground[-]water quality standard for the constituent is not included in Section R315-308-4 or Section R315-308-5 the ground[-]water quality protection standard for that constituent shall be set according to health risk standards.

(c) If a constituent is detected and a background level is established and the established background level is higher than the value listed in Section R315-308-4, R315-308-5 or the level established according to Subsection R315-308-2(6)(b), the ground[-]water quality protection standard shall be the background concentration.

(7) The ground[-]water monitoring program ~~[must]~~shall include a determination of the ground[-]water surface elevation each time ground[-]water is sampled.

(8) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The [D]director will approve ~~[such a]~~the method as part of the ground[-]water monitoring plan. Possible statistical methods include:

NOTICES OF PROPOSED RULES

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method ~~[must]~~shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method ~~[must]~~shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure ~~[in which]~~that has an interval for each constituent ~~[is]~~established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the ~~[D]~~director.

(9) For both detection monitoring, as described in Subsection R315-308-2(5), and assessment monitoring, as described in Subsection R315-308-2(12), the ~~[D]~~director may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground[-]water or the waste on a site[-]specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground[-]water flow rates;

(d) minimum distance between upgradient edge of the ~~[landfill]~~solid waste management unit and downgradient monitoring well screen, ~~[a]~~minimum distance of travel~~];~~ and

(e) resource value of the aquifer.

(10) The owner or operator ~~[must]~~shall determine and report the ground[-]water flow rate and direction in the upper most aquifer each time the ground[-]water is sampled.

(11) If the owner or operator determines that there is a statistically significant increase over background in any parameter or constituent at any monitoring well at the compliance point, the owner or operator ~~[must]~~shall:

(a) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, enter the information in the operating record and notify the ~~[D]~~director of this finding in writing. The notification ~~[must]~~shall indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground[-]water in ~~[all]~~each monitoring well~~[s]~~, both background and downgradient, or in a subset of wells specified by the ~~[D]~~director, and determine:

(i) the concentration of ~~[all]~~the constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground[-]water monitoring plan;

(ii) if there is a statistically significant increase over background of any parameter or constituent in any monitoring well at the compliance point; and

(iii) notify the ~~[D]~~director in writing within seven days of the completion of the statistical analysis of the sample results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground[-]water quality. A report documenting this demonstration ~~[must]~~shall be certified by a qualified ground[-]water scientist and approved by the ~~[D]~~director and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(5)(b).

(12) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(11)(c) is not made, the owner or operator ~~[must]~~shall initiate the assessment monitoring program required as follows:

(a) ~~[w]~~Within 14 days of the determination that a successful demonstration is not made, take one sample from each downgradient well and analyze for ~~[all]~~the constituents listed as Appendix II in 40 CFR Part 258, 2001 ed., which is ~~[adopted and]~~incorporated by reference.

(b) ~~[f]~~For any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of four independent samples from the upgradient and four independent samples from each downgradient well ~~[must]~~shall be collected, analyzed, and statistically evaluated to establish background concentration levels for the constituents~~[-and]~~.

(c) ~~[w]~~Within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, place a notice in the operation record and notify the ~~[D]~~director in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The ~~[D]~~director shall establish a ground[-]water quality protection standard pursuant to Subsection R315-308-2(6) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) at a minimum, ~~[all]~~each downgradient well~~[s]~~ on a quarterly basis for ~~[all]~~the constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258;

(ii) the downgradient wells on an annual basis for ~~[all]~~the constituents in Appendix II, 40 CFR Part 258; and

(iii) statistically analyze the results of ~~[all]~~the ground[-]water monitoring samples.

(e) The ~~[D]~~director may specify additional or fewer constituents depending upon the nature of the ground[-]water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the ~~[landfill]~~solid waste management unit;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the ~~[landfill]~~solid waste management unit;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground[-]water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground[]water.

(f) If after two consecutive sampling events, the concentrations of [all]the constituents being analyzed in Subsection R315-308-2(12)(d)(i) are shown to be at or below established background values, the owner or operator [must]shall notify the [D]director of this finding and may, upon the approval of the [D]director, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(5)(b).

(13) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground[-]water quality protection standard as established pursuant to Subsection R315-308-2(6) in any sampling event, the owner or operator [must]shall:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground[-]water quality standard. Within [the same time]that period, the owner or operator [must]shall also notify the [D]director and [all]the appropriate local governmental and local health officials that the ground[-]water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify [all]each person[s] who owns the land or resides on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(13)(b) and (13)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground[-]water quality. A report documenting this demonstration [must]shall be certified by a qualified ground[-]water scientist and approved by the [D]director and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(12)(d) or Subsection R315-308-2(12)(e) [when]if applicable.

KEY: solid waste management, waste disposal

Date of Last Change: ~~2024~~November 20, 2023

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 40 CFR 258

| NOTICE OF SUBSTANTIVE CHANGE | | |
|------------------------------|----------|------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-310 | Filing ID: 56644 |

Agency Information

| | | |
|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-310. Permit Requirements for Solid Waste Facilities |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. |

This rule is being amended to update rule citations, clarify rule language and requirements, and make technical changes based on H.B. 310 (2019).

4. Summary of the new rule or change:

The citations to subsections of Section R315-303-3 found in R315-310-4(2)(c)(vii) and R315-310-10(1)(a)(ii) are being amended because some rule numbering was changed in Section R315-303-3.

The citation to Rules R315-301 through R315-320 found in Section R315-310-1 and Subsection R315-310-1(5) is being amended to include Rules R315-321 and R315-322.

Class VII is being added to Subsection R315-310-1(1)(a)(i), R315-310-1(1)(a)(i), and solid waste surface impoundments regulated under Rule R315-322 is being added to Subsection R315-310-1(a)(vi) because the requirements of Sections R315-310-2 through R315-310-12 apply to these facilities.

The language of Subsection R315-310-3(1)(b) is being amended to better clarify the types of facilities that must have drawings and plans signed and sealed by a professional engineer and the types that do not have this requirement.

Class VII and solid waste surface impoundment facilities are being added to Section R315-310-4 because these types of facilities are required to submit a permit application that must contain at least some of the information required in this section.

Class VII Landfill and Solid waste surface impoundment is being added as a facility type in Section R315-310-5 as a type of facility that must comply with the rules in this section.

Class VII and solid waste surface impoundment facilities are being added to Section R315-310-10 to provide the requirements for these types of facilities when they submit an application for post-closure care.

Corrections to typographical errors and formatting are also being made.

(EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:

Any new costs created by implementing the amendments to this rule will be absorbed in the existing budget of the division. It is not anticipated that the amendments to this rule will result in any costs or savings to the budgets of other state agencies because they do not add any new or remove any existing requirements for other state agencies.

B) Local governments:

It is not anticipated that the amendments to this rule will result in any costs or savings to local governments because they do not add any new or remove any existing requirements for any government agencies.

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

The amendments to this rule may result in a cost to new or existing facilities requiring professional engineering certification of elements in their application for the management of Exploration and Production Waste regulation transfer from the Division of Oil Gas and Mining to the Division of Waste Management and Radiation Control. Due to the number of variables involved it is not possible to estimate these costs.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to non-small business because they do not add any new or remove any existing requirements for non-small business.

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):

It is not anticipated that the amendments to this rule will result in any costs or savings to Persons other than small businesses, non-small businesses, state, or local government entities because they do not add any new or remove any existing requirements for any persons other than small businesses, non-small businesses, state, or local government entities.

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

The cost of professional engineering is dependent on the facility size, type and other factors so these costs will vary on a case-by-case basis. It is anticipated that up to 15 facilities may be applying for a Solid Waste Class VII permit.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-105 | Section 19-6-108 | Section 19-6-109 |
| 40 CFR 258 | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-310. Permit Requirements for Solid Waste Facilities.

R315-310-1. Applicability.

(1) Solid waste facilities subject to the requirements of Rules R315-301 through R315-32[0]2 require a permit as follows:

(a) The following solid waste facilities are subject to the requirements of Sections R315-310-2 through R315-310-12:

(i) New and existing Class I, II, III, IV, V, VI, VII, and coal combustion residual (CCR) Landfills and coal combustion residual surface impoundments;

(ii) Class I, II, III, IV, V, [~~and~~]VI, and VII Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(iii) incinerator facilities that are regulated by Rule R315-306;

(iv) landtreatment disposal facilities that are regulated by Rule R315-307; [~~and~~]

(v) waste tire storage facilities[~~]; and~~

(vi) solid waste surface impoundments that are regulated by Rule R315-322.

(b) Solid waste facilities not listed in Subsection R315-310-1(1)(a) are subject to the permitting requirements of Sections R315-310-2, R315-310-3, R315-310-9, and R315-310-11.

(c) The following solid waste facilities are subject to Subsection R315-310-1(b) and the post-closure permit requirements of Section R315-310-10:

(i) compost facilities; and

(ii) waste piles, [~~when~~]if post-closure monitoring is required under Subsection R315-314-2(f)(ii).

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of Sections R315-310-2 through R315-310-12 apply to each existing and new solid waste facility as indicated.

(a) The director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, [~~where~~]if the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility before receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting each requirement for the desired class, or subclass, to include getting a new permit from the director for the desired class, or subclass, of landfill.

(5) Any facility that is in operation when a permit is required for the facility by Subsection R315-310-1(1) and has submitted a permit application within six months of the date the facility became subject to the permit requirements of Subsection R315-310-1(1) may continue to operate during the permit review period but shall meet the applicable requirements of Rules R315-301 through R315-32[0]2 unless an alternative requirement has been approved by the director.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application for a new facility or a facility seeking expansion shall contain the following:

(a) the name and address of the applicant, property owner, and responsible person for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings signed and sealed by a professional engineer registered in Utah[~~and~~] except that, unless required by the director,[~~for~~] Class IIIb, IVb, and Class VI Landfills, Class VII landfills that do not accept hazardous waste from a very small quantity generator, facilities addressed in Subsection R315-310-1(1)(b) and, waste tire storage facilities[~~, unless required by the director, the~~] are not required to have facility plans and drawings [~~shall be~~]signed and sealed by a professional engineer registered in Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the director of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any wastewater treatment facility, such as a run[~~]~~off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality;

(j) a proposed financial assurance plan that meets the requirements of Rule R315-309; and

(k) a historical and archeological identification efforts, which may include an archaeological survey conducted by a person holding a valid license to conduct surveys issued under Rule R694-1.

(l) An application for a new facility that is owned or operated by a local government shall include financial information that discloses the costs of establishing and operating the facility, including:

(i) land acquisition and leasing;

(ii) construction;

- (iii) estimated annual operation;
- (iv) equipment;
- (v) ancillary structures;
- (vi) roads;
- (vii) transfer stations; and
- (viii) other operations not contiguous to the proposed facility that are necessary to support the facility's construction and operation.

(2) Public Participation Requirements.

(a) Each permit application shall provide:

(i) the name and address of each owner of property within 1,000 feet of the proposed solid waste facility; ~~and~~

(ii) documentation that a notice of intent to apply for a permit for a solid waste facility has been sent to each property owner identified in Subsection R315-310-3(2)(a)(i); and

(iii) the name of the local government with jurisdiction over the site and the mailing address of that local government office.

(b) The director shall send a letter to each person identified in Subsections R315-310-3(2)(a)(i) and R315-310-3(2)(a)(iii) requesting that the person reply, in writing, if the person desires to be placed on an interested persons list to receive further public information concerning the proposed facility.

(3) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsection 19-6-108(10), including information to demonstrate that the requirements of Subsection 19-6-108(11) are satisfied.

(b) After the issuance of a solid waste permit by the director, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the director that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the commercial solid waste disposal facility may not begin until the requirements of Subsection R315-310-3(2)(b) are met and approval to begin construction has been granted by the director.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(3)(a), R315-310-3(3)(b), and R315-310-3(3)(c).

(e) The governor's approval and legislative approval may be automatically revoked in accordance with Subsections 19-6-108(3)(c)(iv) and 19-6-108(3)(c)(v).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, ~~and~~ VI and VII Landfill Facility, or a Solid Waste Surface Impoundment as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, ~~and~~ VI, and VII Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals ~~where~~ if the relief exceeds 20 feet and two foot contour intervals ~~where~~ if the relief is less than 20 feet, showing the boundaries of the landfill unit, ground[]water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds[-];

(b) a permit application for a Class I, II, IIIa, IVa, ~~and~~ or V [-] landfill, and a Class VII landfill or solid waste surface impoundment that accepts hazardous waste from a very small quantity generator, shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground[-]water or aquifers;

(iv) direction and flow rate of ground[-]water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of ~~all~~ the water rights for ground[-]water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of ~~all~~ the surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground[-]water and surface water monitoring system, including proposed installation methods for these devices and, ~~where~~ if applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, ~~and~~ or V [-] landfill, and a Class VII landfill or solid waste surface impoundment that accepts hazardous waste from a very small quantity generator, shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

NOTICES OF PROPOSED RULES

- (iv) identification of borrow sources for daily and final cover, and for soil liners;
 - (v) interim and final leachate collection, treatment, and disposal;
 - (vi) ground[-]water monitoring plan that meets the requirements of Rule R315-308;
 - (vii) landfill gas monitoring and control that meets the requirements of Subsection R315-303-3(~~5~~6);
 - (viii) design and location of run[-]on and run[-]off control systems;
 - (ix) closure and post-closure design, construction, maintenance, and land use; and
 - (x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground[-]water monitoring[-];
- (d) a permit application for a Class I, II, III, IV, V, ~~and VI, and VII~~ Landfill, or a solid waste surface impoundment shall contain a closure plan to address:
- (i) closure schedule;
 - (ii) capacity of the solid waste disposal facility in volume and tonnage;
 - (iii) final inspection by regulatory agencies; and
 - (iv) identification of closure costs including cost calculations and the funding mechanism[-]; and
- (e) a permit application for a Class I, II, III, IV, V, ~~and VI, and VII~~ Landfill, or solid waste surface impoundment shall contain a post-closure plan to address, as appropriate for the specific landfill facility:
- (i) site monitoring of:
 - (A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or ~~Subsection~~ R315-302-3(7)(c) are met;
 - (B) ground[-]water on a semiannual basis, or other schedule as determined by the ~~D~~ director, until the conditions of either Subsection R315-302-3(7)(b) or ~~Subsection~~ R315-302-3(7)(c) are met; and
 - (C) surface water, if required, on the schedule specified by the ~~D~~ director and until the ~~D~~ director determines that the monitoring of surface water may be discontinued;
 - (ii) inspections of the landfill facility by the owner or operator:
 - (A) for landfills that are required to monitor landfill gas, and Class II Landfills, on a quarterly basis; and
 - (B) for other landfills facilities that are not required to monitor landfill gas, on a semiannual basis;
 - (iii) maintenance activities to maintain cover and run[-]on and run[-]off systems;
 - (iv) identification of post-closure costs including cost calculations and the funding mechanism;
 - (v) changes to record of title as specified by Subsection R315-302-2(6); and
 - (vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanding Class III, IV, ~~or VI, and VII~~ Landfill, and a Solid Waste Surface Impoundment.

- (1) Each application for a permit for a new Class III, IV, or VI Landfill or for a permit to expand an existing Class III, IV, or VI Landfill, or a solid waste surface impoundment, shall contain the information required in Section R315-310-3.
- (2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:
 - (a) the information and maps required by Subsections R315-310-4(2)(a)(i) and R315-310-4(2)(a)(ii);
 - (b) the design and location of the run[-]on and run[-]off control systems;
 - (c) the information required by Subsections R315-310-4(2)(d) and R315-310-4(2)(e);
 - (d) the area to be served by the facility; and
 - (e) how the facility will meet the requirements of Rule R315-304[7] for a Class III Landfill, ~~or~~ Rule R315-305[7] for a Class IV or VI Landfill, Rule R315-321 for a Class VII landfill, or Rule R315-322 for a solid waste surface impoundment.
- (3) Each application for a Class IIIa or Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b) and R315-310-4(2)(c).

R315-310-10. Contents of an Application for a Permit for a Facility in Post-Closure Care.

- ~~(4)~~ The application for a ~~P~~ post-~~C~~ closure ~~C~~ care permit shall contain the applicable information required in Subsections R315-310-3(1)(a) through R315-310-3(1)(c), and R315-310-3(1)(g) through R315-310-3(1)(j), and:
- ~~(a)~~ for landfills, except CCR facilities:
 - ~~(i)~~ proof of recording with the county recorder as required by Subsection R315-302-2(6);
 - ~~(ii)~~ for Class I, II, IIIa, IVa, ~~and V, and VII~~ Landfills, demonstrate that the applicable requirements of Subsection R315-303-3(~~4~~5) have been met;
 - ~~(iii)~~ for each Class III Landfill, the applicable requirements of Section R315-304-5;
 - ~~(iv)~~ for each Class IV or VI Landfill, the applicable requirements of Section R315-305-5;
 - ~~(e)~~ for each Class VII Landfill, the applicable requirements of Section R315-321-4;
 - ~~(f)~~ for each solid waste surface impoundment, the applicable requirements of Section R315-322-7;
 - ~~(v)~~ the applicable requirements for groundwater monitoring according to Rule R315-308; and
 - ~~(vi)~~ the financial assurance update requirements of Subsection R315-311-1(5);
 - ~~(b)~~ for incinerator facilities, the required financial assurance for incinerators according to Section R315-306-2 or R315-306-3, as applicable;
 - ~~(c)~~ for landtreatment disposal facilities, the applicable information required in Section R315-307-4;
 - ~~(d)~~ for composting facilities, the applicable information required in Subsection R315-312-3(5);

([e]5) for waste piles subject to Rule R315-314 that are likely to produce leachate, the applicable information required in Subsection R315-314-2(2)(f); and
 ([f]6) for CCR facilities, the applicable information required in Sections R315-319-100 through R315-319-104.

KEY: solid waste management, waste disposal

Date of Last Change: ~~June 17,~~ 2024

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 258

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number: R315-311-1 **Filing ID:** 56645

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-311-1. General Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The citation to Rules R315-301 through R315-320 found in Subsection R315-311-1(1) is being amended to include Rules R315-321 and R315-322. Corrections to typographical errors and formatting are also being made. (EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.) |

Fiscal Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| . Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. |

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|
| B) Local governments: | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. | | | |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. | | | |
| 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): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. | | | |
| 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 new compliance costs associated with the amendments to this rule. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|
| 6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement: | | |
| Section 19-6-104 | Section 19-6-105 | Section 19-6-108 |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.**R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.****R315-311-1. General Requirements.**

(1) Unless otherwise stated in Rules R315-301 through R315-32[0]2, permit actions taken by the director are subject to Rules R315-311 and R315-124. Upon submittal of the complete information required by Rule R315-310 the application will be reviewed in accordance with Section R315-124-3 and a draft permit or permit denial will be prepared in accordance with Sections R315-124-5 through R315-124-6.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit that will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction may not begin before the receipt of the permit.

(2) Reserved.

(3) A permit can be granted for up to ten years by the director, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, if the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-9, 180 days before the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities that require financial assurance in accordance with Section R315-309-1, submit, for review and approval by the director on a schedule of no less than five years, a complete update of the financial assurance required in Rule R315-309 that shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost that has been received by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(a) may be issued for the life of the post-closure care period; and

(b) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

KEY: solid waste management, waste disposal

Date of Last Change: [January 16,] 2024

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number: R315-314-1 **Filing ID:** 56646

Agency Information

| | | |
|-----------------------------|---------------------------------------------------------------------------------|----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |

| | | |
|---------------------------------------------------------------------------------------------------|--------------|-----------------|
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-314-1. Applicability |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| A citation to Subsection R315-301-2(36) found in Subsection R315-314-1(2)(c) is being amended because the numbering changed to Subsection R315-301-2(40) due to the addition of new definitions in Rule R315-301. |

Fiscal Information

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: | | | |
| A) State budget: | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. | | | |
| B) Local governments: | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. | | | |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. | | | |
| 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): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. | | | |
| 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 new compliance costs associated with the amendments to this rule. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-104 | Section 19-6-105 | Section 19-6-108 |
|------------------|------------------|------------------|

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

**R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
 R315-314. Facility Standards for Piles Used for Storage and Treatment.**

R315-314-1. Applicability.

- (1) The requirements of Rule R315-314 apply to the following:
 - (a) a pile of solid waste containing garbage that has been in place for more than seven days;
 - (b) a pile of solid waste that does not contain garbage that has been in place for more than 90 days;
 - (c) a pile of material derived from waste tires if more than 1,000 passenger tire equivalents are stored at one site; and
 - (d) a pile of whole waste tires if more than 1,000 tires are stored at one site.
- (2) The requirements of Rule R315-314 do not apply to the following:
 - (a) solid waste stored or treated in piles before recycling including compost piles and wood waste;
 - (b) solid waste stored in fully enclosed buildings, provided that no liquids or sludge containing free liquids are added to the waste;
 - (c) a pile of inert waste, as defined by Subsection R315-301-2(~~36~~40); and
 - (d) a pile of whole waste tires located at a permitted waste disposal facility that is stored for not longer than one year.
- (3) A site where crumb rubber, an ultimate product derived from waste tires, or waste tires that have been reduced to materials for beneficial use are stored for not longer than one year may receive a waiver of the requirements of Rule R315-314 from the director on a site specific basis.

(a) No waiver of the requirements of Rule R315-314 will be granted by the director without application from the owner or operator of the storage site.

NOTICES OF PROPOSED RULES

(b) In granting a waiver of the requirements of Rule R315-314, the director may place conditions on the owner or operator of the storage site as to the sizes of piles, distance between piles, or other operational practices that will minimize fire danger or a risk to human health or the environment.

- (c) The director may revoke a waiver of the Requirements of Rule R315-314 if the director finds that:
 - (i) any condition of the waiver is not met; or
 - (ii) the operation of the storage site presents a fire danger or a threat to human health or the environment.

KEY: solid waste management, waste disposal
Date of Last Change: [January 16,] 2024
Notice of Continuation: November 30, 2022
Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-----------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-315 | Filing ID: 56647 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-315. Special Waste Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. |
| This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The citations to Rules R315-301 through R315-320 found in Subsections R315-315-1(2), R315-315-2(3)(e), R315-315-7(1), R315-315-7(3), and R315-315-7(3)(a)(ii) are being amended to include Rules R315-321 and R315-322. |
| Corrections to typographical errors and formatting are also being made. |

Fiscal Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. |

| B) Local governments: | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. | | | |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. | | | |
| 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): | | | |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. | | | |
| 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 new compliance costs associated with the amendments to this rule. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement: | | |
| Section 19-6-105 | | |

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-315. Special Waste Requirements.

R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions may include, ~~where~~if required and approved by the ~~D~~director, a separate area for disposal of the wastes, designated by appropriate signs.

(2) Sections R315-315-2 through R315-315-9 are applicable to all solid waste facilities regulated by Rules R315-301 through R315-32~~0~~2.

R315-315-2. Asbestos Waste.

(1) Regulated asbestos-containing material to be disposed of shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and ~~must~~shall otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154.

(2) No transporter or disposal facility shall accept regulated asbestos-containing material unless the waste has been adequately wetted and containerized.

(a) Regulated asbestos-containing material is adequately wetted ~~when~~if its moisture content prevents fiber release.

(b) Regulated asbestos-containing material is properly containerized ~~when~~if it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak[-]proof and air[-]tight, and the amount of void space or air in the bags is minimized. Regulated asbestos-containing material slurries ~~must~~shall be packaged in leak[-]proof and air[-]tight rigid containers if ~~such~~the slurries are too heavy for the plastic bag containers. Upon submittal of a request, including documentation demonstrating safety, the ~~D~~director may authorize other proper methods of containment ~~which~~that may include double bagging, plastic[-]lined cardboard containers, plastic[-]lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) ~~All e~~Containers holding regulated asbestos-containing material shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold regulated asbestos-containing material.

(3) The following standards apply to the disposal of ~~R~~regulated ~~A~~asbestos-~~C~~containing ~~M~~material~~s~~:

(a) upon entering the disposal site, the transporter of the regulated asbestos-containing material shall notify the landfill operator that the load contains regulated asbestos-containing material by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days; and

(b) upon receipt of the regulated asbestos-containing material, the landfill operator shall inspect the loads to verify that the regulated asbestos-containing material is properly contained in leak[-]proof containers and labeled appropriately. The operator shall notify the local health department and the ~~D~~director if the operator believes that the regulated asbestos-containing material is in a condition that may cause fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the regulated asbestos-containing material with a water spray ~~prior to~~before unloading, rinse out the truck, and immediately cover the regulated asbestos-containing material with material ~~which~~that prevents fiber release ~~prior to~~before compacting the regulated asbestos-containing material in the landfill.

(c) During deposition and covering of the regulated asbestos-containing material, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only regulated asbestos-containing material, or may dispose of the regulated asbestos-containing material at the working face of the landfill;

(ii) shall place the regulated asbestos-containing material containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours or at the end of the operating day, shall completely cover the containerized regulated asbestos-containing material with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no regulated asbestos-containing material. If the regulated asbestos-containing material is improperly containerized, it ~~must~~shall be completely covered immediately with six inches of material containing no regulated asbestos-containing material; and

(iv) shall not compact regulated asbestos-containing material until completely covered with a minimum of six inches of material containing no regulated asbestos-containing material.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

- (i) limit access to the regulated asbestos-containing material management site to no more than two entrances by gates that can be locked ~~when~~ if left unattended and by fencing adequate to restrict access by the general public; and
- (ii) place warning signs at the entrances and at intervals no greater than 330 feet along the perimeter of the sections where regulated asbestos-containing material is deposited that comply with the requirements of 40 CFR 61.154(b) ~~and~~.
- (e) The operator shall close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3([4]5) with the required signs in place.

R315-315-7. PCB Containing Waste.

- (1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through R315-32[0]2.
- (2) The following wastes containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; permitted energy recovery facility; or a facility permitted by rule under Rule R315-318:
 - (a) waste, as specified by 40 CFR 761.61, containing PCBs at concentrations less than 50 ppm;
 - (b) PCB household waste as defined by 40 CFR 761.3; and
 - (c) small quantities, ten or fewer, of intact, non[-]leaking, small PCB capacitors, including capacitors from fluorescent lights x-ray machines, and other machines and test equipment.
- (3) Waste containing PCBs at concentrations of 50 ppm or higher are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through R315-32[0]2, except:
 - (a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:
 - (i) a facility permitted before July 15, 1993 under 40 CFR 761.70, 40 CFR 761.75 or 40 CFR 761.77; or
 - (ii) a facility permitted after July 15, 1993 under 40 CFR 761.70, 40 CFR 761.71, 40 CFR 761.72, 40 CFR 761.75, or 40 CFR 761.77 and approved by the director under Rules R315-301 through R315-32[0]2; or
 - (b) a Class I or V landfill that has a liner and groundwater monitoring or an incinerator that meets the requirements of Subsection R315-315-7(3)(a)(i) or R315-315-7(3)(a)(ii) and if approved by the director, may dispose of the following PCB wastes:
 - (i) PCB bulk products regulated by 40 CFR 761.62(b);
 - (ii) drained PCB contaminated equipment as defined by 40 CFR 761.3;
 - (iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3;
 - (iv) non[-]liquid cleaning materials remediation wastes containing PCBs regulated by 40 CFR 761.61(a)(5)(v)(A);
 - (v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and 40 CFR 761.62(b)(1)(ii); or
 - (vi) non[-]liquid PCB containing waste, initially generated as a non[-]liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2).
 - (c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:
 - (i) shall modify the approved groundwater monitoring plan to include the testing of the groundwater samples for PCB containing constituents at appropriate detection levels; and
 - (ii) shall test the leachate generated at the unit of the landfill for PCBs.

KEY: solid waste management, waste disposal
Date of Last Change: 2024[November 20, 2023]
Notice of Continuation: November 30, 2022
Authorizing, and Implemented or Interpreted Law: 19-6-105

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-316-5 | Filing ID: 56648 |

| Agency Information | | |
|-----------------------------|---------------------------------------------------------------------------------|----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |

| | | |
|---------------------------------------------------------------------------------------------------|--------------|-----------------|
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-316-5. Infectious Waste Treatment and Disposal Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The citations to Rules R315-301 through R315-320 found in Subsections R315-316-5(2)(a) and R315-316-5(3) are being amended to include Rules R315-321 and R315-322. Corrections to typographical errors and formatting are also being made. |

Fiscal Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. |
| B) Local governments: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. |
| 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): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements. |
| 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 new compliance costs associated with the amendments to this rule. |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) |

| Regulatory Impact Table | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement: | | |
| Section 19-6-105 | | |

Public Notice Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 8. 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: | 09/03/2024 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-316. Infectious Waste Requirements.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) Any material that has been made non[-]infectious through an approved treatment method may be handled as non[-]infectious solid waste~~[, provided]~~ if it is not otherwise a hazardous waste or a radioactive waste excluded from disposal in a solid waste facility by Rules R315-301 through R315-32[0]2.

(b) Except for incineration and steam sterilization, no treatment method may be used to make materials non[-]infectious without receiving earlier approval from the director.

(3) Infectious waste may be incinerated in an incinerator ~~[provided]~~ if the incinerator is permitted or approved under Rules R315-301 through R315-32[0]2.

(4) Infectious waste may be sterilized by heating in a steam sterilizer to make the waste non[-]infectious.

NOTICES OF PROPOSED RULES

(a) The operator shall have available, and shall certify in writing that ~~he~~the operator understands, written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure of container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate Bacillus stearothermophilus spores in the center of the waste load at a 6 Log₁₀ reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature[-]sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste ~~shall~~may not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit, 121 degrees Celsius, was reached and a pressure of at least 15 psi was maintained during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less frequent.

(e) A written log for each load shall be maintained for each sterilization unit that shall contain at a minimum:

- (i) the time of day and the date of each load and the operator's name;
- (ii) the amount and type of infectious waste placed in the sterilizer; and
- (iii) the temperature, pressure, and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis if the director finds the proposed alternative treatment method makes the material non[-]infectious.

(b) The determination shall be based on the results of laboratory tests, submitted by the person proposing the use of the treatment method, meeting the following requirements:

(i) the laboratory tests shall be conducted:

- (A) by qualified laboratory personnel;
- (B) using recognized microbial techniques;

(C) on samples that have been inoculated with the test organisms, then subjected to the proposed treatment method and processed in an identical way to the treatment process being proposed for approval; and

(ii) the results of the tests shall document that the proposed treatment method inactivates:

(A) vegetative bacteria - Staphylococcus aureus₂ [~~{~~ATCC 6538~~}~~]₂ or Pseudomonas aeruginosa₂ [~~{~~ATCC 15442~~}~~]₂ at a 6 Log₁₀ reduction or greater, a 99.9999% reduction or greater of the organism population;

(B) fungi - Candida albicans₂ [~~{~~ATCC 18804~~}~~]₂, Penicillium chrysogenum₂ [~~{~~ATCC 24791~~}~~]₂, or Aspergillus niger at a 6 Log₁₀ reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage₂ [~~{~~ATCC15597-B1~~}~~]₂ at a 6 Log₁₀ reduction or greater;

(D) parasites - Cryptosporidium spp. oocysts or Giardia spp. cysts at a 6 Log₁₀ reduction or greater;

(E) mycobacteria - Mycobacterium terrae or Mycobacterium phlei at a 6 Log₁₀ reduction or greater; and

(F) Bacterial spores - Bacillus stearothermophilus spores₂ [~~{~~ATCC 7953~~}~~]₂ or Bacillus subtilis spores₂ [~~{~~ATCC 19659~~}~~]₂ at a 4 Log₁₀ reduction or greater, a 99.99% reduction or greater of the organism population.

(iii) The director shall review the submitted materials and reply in writing within 30 days of the receipt of the treatment studies.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers in the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal

Date of Last Change: 2024~~November 20, 2023~~

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R315-317

Filing ID: 56649

Agency Information

| | |
|----------------------------|---------------------------------------------------------------------------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management |
| Building: | MASOB |

| | | |
|---------------------------------------------------------------------------------------------------|-------------------------------|-----------------|
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-317. Other Processes, Variances, Violations, and Petition for Rule Change |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The citations to Rules R315-301 through R315-320 found in Section R315-317-1 and Subsection R315-317-3(1) are being amended to include Rules R315-321 and R315-322. Corrections to typographical errors and formatting are also being made. (EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.) |

Fiscal Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies. |
| B) Local governments: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements. |
| 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): |

It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.

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 new compliance costs associated with the amendments to this rule.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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 19-6-105 | | |
|---------------------|--|--|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
 R315-317. Other Processes, Variances, Violations, and Petition for Rule Change.

R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through R315-32[0]2 will be considered on an individual basis by the [D]director upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-3. Violations, Orders, and Hearings.

(1) When[ever] the [D]director or [~~his duty~~]the director's appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through R315-32[0]2, the [D]director may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The [D]director may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county [in which]where the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through R315-32[0]2.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is issued, the person to whom the order is addressed challenges the order as provided in Section 19-1-301 and the Utah Administrative Procedures Act, Title 63G, Chapter 4 and shall be governed by [~~UAC~~]Rule R305-7.

KEY: solid waste management, waste disposal

Date of Last Change: 2024[April 25, 2013]

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 19-6-111; 19-6-112

| NOTICE OF SUBSTANTIVE CHANGE | | |
|------------------------------|------------|------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R315-318-1 | Filing ID: 56650 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-318-1. General Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. This rule is being amended to update rule citations. |
| 4. Summary of the new rule or change: |
| The citations to Rules R315-301 through R315-320 found in Subsections R315-318-1(1) and R315-318-1(4) are being amended to include Rules R315-321 and R315-322. |

Corrections to typographical errors and formatting are also being made.

(EDITOR'S NOTE: The proposed new Rule R315-321 is under ID 56651 and the proposed new Rule R315-322 is under ID 56652 in this issue, August 1, 2024, of the Bulletin.)

Fiscal Information

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

A) State budget:

It is not anticipated that the amendments to this rule will result in any costs or savings to the state budget because they do not add any new or remove any existing requirements for any state agencies.

B) Local governments:

It is not anticipated that the amendments to this rule will result in any costs or savings to any local governments because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any small businesses because they do not add any new or remove any existing requirements.

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

It is not anticipated that the amendments to this rule will result in any costs or savings to any non-small businesses because they do not add any new or remove any existing requirements.

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):

It is not anticipated that the amendments to this rule will result in any costs or savings to any persons other than small businesses, non-small businesses, state or local government entities because they do not add any new or remove any existing requirements.

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 new compliance costs associated with the amendments to this rule.

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |

| | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| 6. 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 19-6-105 | | |

Public Notice Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 8. 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: | 09/03/2024 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/16/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-318. Permit by Rule.

R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste, including an incinerator, may be permitted by rule upon application to the [D]director if the [D]director determines the facility is regulated by [F]federal or state agencies [which]that have regulations or rules as stringent as, or more stringent than, Rules R315-301 through R315-32[0]2.

(2) No permit by rule may be granted to a facility that began receiving waste after July 15, 1993 without application to the [D]director.

(3) Any facility permitted by rule is not required to [obtain]get a permit as required by Subsections R315-301-5(1) and [Subsection]R315-310-1(1) but may be required to follow operational practices, as determined by the [D]director, to minimize risk to human health or the environment.

(4) In no case may a facility operating under a permit by rule approved by the [D]director conduct disposal operations that are in violation of the Utah Solid and Hazardous Waste Act or Rules R315-301 through R315-32[0]2.

KEY: solid waste management, waste disposal

Date of Last Change: 2024[April 25, 2013]

Notice of Continuation: November 30, 2022

Authorizing, and Implemented or Interpreted Law: 19-6-104; 19-6-105; 19-6-108

NOTICE OF SUBSTANTIVE CHANGE

| | | |
|--------------------------------|-----------------|-------------------------|
| TYPE OF FILING: New | | |
| Rule or Section Number: | R315-321 | Filing ID: 56651 |

Agency Information

| | |
|-----------------------------|---------------------------------------------------------------------------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management |
| Building: | MASOB |
| Street address: | 195 N 1950 W |
| City, state: | Salt Lake City, UT |
| Mailing address: | PO Box 144880 |
| City, state and zip: | Salt Lake City, UT 84114-4880 |

| | | |
|---------------------------------------------------------------------------------------------------|---------------|-----------------|
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-321. Class VII Exploration and Production Waste Facility Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. |
| 4. Summary of the new rule or change: |
| Rule R315-321 is a completely new rule that creates requirements for Class VII Exploration and Production waste facilities. The rule includes performance standards, location standards, and facility requirements. |

Fiscal Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| Any new costs created by implementing this new rule will be absorbed in the existing budget of the division. It is not anticipated that the amendments to this rule will result in any costs or savings to the budgets of other state agencies because they do not add any new or remove any existing requirements for other state agencies. |
| B) Local governments: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to local governments because they do not add any new or remove any existing requirements for any government agencies. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| The amendments to this rule will result in a cost to new or existing facilities requiring a solid waste permit for the management of Exploration and Production Waste regulation transfer from the Division of Oil Gas and Mining to the Division of Waste Management and Radiation Control. |
| The costs for permitting range from \$0 through \$5,000 depending on the facility size, type, and other factors. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to non-small business because they do not add any new or remove any existing requirements for non-small business. |
| 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): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because they do not add any new or remove any existing requirements for any persons other than small businesses, non-small businesses, state, or local government entities. |

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

The cost of the permit ranges from \$0 through \$5,000 depending on the facility size, type and other factors. It is anticipated that up to 15 facilities will be applying for a Solid Waste Class VII permit. Facilities will be required to get a permit within a year of this rule becoming effective so it is anticipated that most of the permit applications will be received in FY2025.

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

| Regulatory Impact Table | | | |
|------------------------------|-------------------|-------------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$75,000 | \$75,000 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Cost | \$75,000 | \$75,000 | \$0 |
| Fiscal Benefits | FY2025 | FY2026 | FY2027 |
| 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 | (\$75,000) | (\$75,000) | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------------|
| Section 19-6-105 | Section 19-6-108 | Section 19-6-109 |
| 40 CFR 257 | | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management. R315-321. Class VII Exploration and Production Waste Landfill Requirements.

R315-321-1. Applicability.

The requirements of Rule R315-321 apply to each Class VII Facility designed and operated as a landfill as defined in Subsection R315-301-2(41). Each unit in a Class VII Facility that qualifies as a solid waste surface impoundment shall meet the applicable standards specified in Rule R315-322.

R315-321-2. Class VII Landfill Standards for Performance.

Each Class VII landfill shall meet the standards for performance as specified in Section R315-303-2.

R315-321-3. Class VII Landfill Location Standards.

(1) A new Class VII landfill or the lateral expansion of an existing Class VII landfill shall be subject to the following location standards:

- (a) the ecologically and scientifically significant natural area standards of Subsection R315-302-1(2)(a)(ii); and
- (b) the standards found in Subsections R315-302-1(2)(c) through R315-302-1(2)(f).

(2) An existing Class VII landfill shall be subject to the following location standards:

- (a) the ecologically and scientifically significant natural area standards of Subsection R315-302-1(2)(a)(ii);
- (b) the floodplain standards of Subsection R315-302-1(2)(c)(ii); and

(c) the standards listed in Subsection R315-321-3(1) in effect at an existing facility to protect municipal drinking water, wetlands, and groundwater, before applying for a permit, shall be maintained for the life of the facility unless otherwise determined by the director.

(3) Location Standards Exemptions.

(a) Except for the standards listed in Subsection R315-321-3(3)(b), the director may grant an exemption from any location standard of Subsection R315-302-1(2) for a Class VII landfill, on a site-specific basis if the director determines that the exemption will cause no adverse impacts to human health or the environment. If an exemption is granted, the director may require that the facility have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(b) No exemptions shall be given for the following location standards at a Class VII landfill:

- (i) ecologically and scientifically significant natural area standards of Subsection R315-302-1(2)(a)(ii);
- (ii) floodplain standards, unless the exemption meets the criteria of Subsection R315-302-1(2)(c)(ii);

(iii) the location standards for wetlands for a new facility or lateral expansion of an existing facility, unless the exemption meets the criteria of Subsection R315-302-1(2)(d); or

(iv) the location standards for groundwater for a new facility or lateral expansion of an existing facility that accepts hazardous waste from very small quantity generators as defined in Subsection R315-260-10(c), unless the exemption meets the criteria of Subsection R315-302-1(2)(e)(vi).

R315-321-4. Class VII Landfill Requirements.

(1) Each Class VII landfill shall meet the following applicable requirements, as determined by the director:

(a) the plan of operation requirements of Subsection R315-302-2(2), except plans to control wind-blown litter and disease vectors as found in Subsections R315-302-2(2)(h) and R315-302-2(2)(k) are not required;

(b) the recordkeeping requirements of Subsections R315-302-2(3)(a), R315-302-2(3)(b)(i), R315-302-2(3)(b)(iii), R315-302-2(3)(b)(iv), and R315-302-2(3)(b)(vi);

(c) the reporting requirements of Subsection R315-302-2(4);

(d) the inspection requirements of Subsection R315-302-2(5); and

(e) for Class VII facilities with landfill cells that do not accept hazardous waste from a very small quantity generator as defined by Subsection R315-260-10(c), submit details of controls and employee training programs used to prevent the acceptance of hazardous waste.

(2) Standards for Design.

(a) The owner or operator of a Class VII landfill shall design the facility to control storm water run-on or run-off as specified in Subsections R315-303-3(1)(c) and R315-303-3(1)(d).

(b) Any container or tank storage area used to manage waste containing free liquids shall have secondary containment that:

(i) is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(ii) is sloped or otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation;

(iii) has sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater.

Containers that do not contain free liquids need not be considered in this determination;

(iv) is designed and operated to prevent run-on into the containment system unless the system has sufficient excess capacity in addition to that required in Subsection R315-322-4(3)(b)(iii) to contain any run-on that might enter the system; and

(v) is operated to remove spilled or leaked waste and accumulated precipitation from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

(c) The owner or operator of a Class VII landfill shall comply with the requirements relating to the management of high liquid wastes set forth in Subsection R315-303-3(2).

(d) The owner or operator of a Class VII landfill shall design the facility to meet the requirements of Subsection R315-303-3(8)(a), R315-303-3(8)(c), R315-303-3(8)(d), and additional requirements of Subsection R315-303-3(8) as determined by the director.

(e) In addition to the signage requirements of Subsection R315-303-3(8)(d), the owner or operator of a Class VII landfill shall erect a sign displaying the facility operator, and for those located in Duchesne County or Uintah County, the location using the Public Land Survey System.

(3) Groundwater Monitoring.

The owner or operator of a Class VII landfill that receives hazardous waste from a very small quantity generator as defined in Subsection R315-260-10(c) shall prevent contamination of groundwater by either:

- (a) monitoring the groundwater beneath the facility as required by Rule R315-308; or
- (b) applying for and receiving approval for a groundwater alternative or waiver according to Subsection R315-302-1(2)(e)(vi).

(4) Standards for Operation.

(a) Each Class VII landfill shall meet the maintenance and operation standards of Section R315-303-4 except:

- (i) daily cover requirements of Subsection R315-303-4(4) upon demonstration that uncovered waste is not a threat to human health, the environment, wildlife, or other receptors; and
- (ii) recycling container requirements of Subsection R315-303-4(6).
- (b) Class VII Facilities may receive and manage the following types of wastes and materials:
 - (i) exploration and production waste;
 - (ii) nonhazardous materials received in regular quantities used for the absorption of free liquids and stabilization in connection with the disposal of E&P Waste, such as ash, saw dust, gypsum, and nonhazardous petroleum contaminated soils;
 - (iii) nonhazardous solid waste generated incidental to oil and gas exploration and production and related operations; and
 - (iv) hazardous waste from very small quantity generators as defined in Subsection R315-260-10(c) generated incidental to oil and gas exploration and production and related operations.

(5) Closure and Post-Closure.

(a) Each Class VII landfill shall meet the applicable general requirements for closure and post-closure care found in Subsection R315-302-2(6) and Section R315-302-3, as determined by the director.

(b) If a Class VII landfill is already subject to the closure and post-closure requirements of another federal or state agency that are as stringent as the requirements specified in Subsection R315-321-4(5), the director may exempt the facility from the closure requirements of Subsection R315-321-4(5).

(c) The owner or operator of a Class VII landfill shall meet the closure requirements of Subsection R315-303-3(5).

(d) Upon approval from the director that the facility has been closed in accordance with an approved closure plan, the owner or operator of a Class VII landfill shall apply for a post-closure care permit in accordance with Section R315-310-10.

(e) Post-closure care shall continue until all waste disposal units at the facility have stabilized and the finding detailed in Subsection R315-302-3(7)(c) is made.

(6) Financial Assurance.

(a) The owner or operator of each Class VII landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class VII landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the facility as required by another federal or state agency that is as stringent as the requirements of Rule R315-309, the director may exempt the facility from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

The owner or operator of a Class VII landfill shall apply for and receive a permit to operate by meeting the applicable requirements of Rule R315-310 and is subject to the requirements of Rule R315-311.

(8) Temporary Permits.

(a) The owner or operator of an existing exploration and production facility as defined in Subsection R315-301-2(22)(a) may apply for a temporary permit from the director by submitting a complete application and any other relevant information required by the director. If the director determines that a temporary permit is protective of human health and the environment a temporary permit may be issued to facilitate the owner's or operator's good faith transition from regulation under Rule R649-9 to regulation under Rule R315-321 or R315-322. The temporary permit may contain any conditions the director determines are warranted under the circumstances.

(b) The owner or operator of an existing Class VII facility shall submit an application for a temporary permit to the director no less than 30 days before October 1, 2024.

(c) The owner or operator of an existing exploration and production facility applying for a temporary permit under Subsection R315-321-4(8) shall provide financial assurance in an amount determined appropriate by the director. In calculating the appropriate financial assurance amount, the director may, but is not required to, rely on bond calculations performed by the Division of Oil, Gas, and Mining.

(d) Except as otherwise required by the director, a temporary permit application for an existing exploration and production facility shall be exempt from the applicable requirements of Rule R315-310.

(e) Temporary permits issued under Subsection R315-321-4(8) shall be subject to enforcement by the director, pursuant to Sections 19-6-112 through 19-6-113, Section R315-317-3, and other applicable procedures.

KEY: solid waste management, solid waste disposal

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 19-6-109; 40 CFR 257

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: New

Rule or Section Number:

R315-322

Filing ID: 56652

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------|
| 1. Title catchline: | Environmental Quality, Waste Management and Radiation Control, Waste Management | |
| Building: | MASOB | |
| Street address: | 195 N 1950 W | |
| City, state: | Salt Lake City, UT | |
| Mailing address: | PO Box 144880 | |
| City, state and zip: | Salt Lake City, UT 84114-4880 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Tom Ball | 385-454-5574 | tball@utah.gov |
| Brian Speer | 385-499-0010 | bspeer@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R315-322. Solid Waste Surface Impoundment Requirements |
| 3. Purpose of the new rule or reason for the change: |
| Based on H.B. 310 passed in the 2019 General Session, wastes generated during the exploration, development, or production of oil, gas, or geothermal energy are now regulated by the Division of Waste Management and Radiation Control. |
| 4. Summary of the new rule or change: |
| Rule R315-322 is a completely new rule that creates requirements for solid waste surface impoundments. This rule includes location standards, facility requirements, standards for performance, standards for design, standards for operation and requirements for closure and post-closure. |

Fiscal Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| Any new costs created by implementing this new rule will be absorbed in the existing budget of the division. It is not anticipated that the amendments to this rule will result in any costs or savings to the budgets of other state agencies because they do not add any new or remove any existing requirements for other state agencies. |
| B) Local governments: |
| It is not anticipated that the amendments to this rule will result in any costs or savings to local governments because they do not add any new or remove any existing requirements for any local government agencies. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| The amendments to this rule will result in a cost to new or existing facilities requiring a solid waste permit for the management of Exploration and Production Waste regulation transfer from the Division of Oil Gas and Mining to the Division of Waste Management and Radiation Control. The costs for permitting range from \$0 through \$5,000 depending on the facility size, type, and other factors. |
| D) Non-small businesses ("non-small business" means a business employing 50 or more persons): |
| It is not anticipated that the amendments to this rule will result in any costs or savings to non-small businesses because they do not add any new or remove any existing requirements for non-small businesses. |

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

It is not anticipated that the amendments to this rule will result in any costs or savings to persons other than small businesses, non-small businesses, state, or local government entities because they do not add any new or remove any existing requirements for any persons other than small businesses, non-small businesses, state, or local government entities.

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

There will be a cost to facilities that apply for a Solid Waste Class VII permit. The cost of the permit ranges from \$0 through \$5,000 depending on the facility size, type and other factors.

It is anticipated that up to 15 facilities will be applying for a Solid Waste Class VII permit. Facilities will be required to get a permit within a year of the rule becoming effective so it is anticipated that most of the permit applications will be received in FY2025.

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

| Regulatory Impact Table | | | |
|------------------------------|-------------------|-------------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$75,000 | \$75,000 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Cost | \$75,000 | \$75,000 | \$0 |
| Fiscal Benefits | FY2025 | FY2026 | FY2027 |
| 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 | (\$75,000) | (\$75,000) | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Executive Director of the Department of Environmental Quality, Kimberly Shelley, has reviewed and approved this regulatory impact analysis.

Citation Information

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

| | | |
|------------------|------------------|------------|
| Section 19-6-105 | Section 19-6-108 | 40 CFR 257 |
|------------------|------------------|------------|

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/16/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------|--------------|------------|
| Agency head or designee and title: | Douglas J. Hansen, Division Director | Date: | 07/11/2024 |
|-------------------------------------------|--------------------------------------|--------------|------------|

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-322. Solid Waste Surface Impoundment Requirements.

R315-322-1. Applicability.

Unless otherwise determined by the director, the standards set forth in Rule R315-322 shall apply to any solid waste surface impoundment, whether operated in connection with a solid waste management facility or on a stand-alone basis.

R315-322-2. Solid Waste Surface Impoundment Location Standards.

(1) A new solid waste surface impoundment or the expansion of an existing solid waste surface impoundment shall meet the location standards of Subsection R315-302-1(2).

(2) An existing solid waste surface impoundment shall be subject to the following location standards:

(a) the ecologically and scientifically significant natural area standards of Subsection R315-302-1(2)(a)(ii);

(b) the floodplain standards of Subsection R315-302-1(2)(c)(ii); and

(c) the standards listed in Subsection R315-302-1(2) in effect at an existing facility for protecting municipal drinking water, wetlands, and groundwater, before applying for a permit, shall be maintained for the life of the facility unless otherwise determined by the director.

(3) Location Standards Exemptions.

(a) Except for the standards listed in Subsection R315-322-3(3)(b), the director may grant an exemption from any location standard of Subsection R315-302-1(2) for a solid waste surface impoundment, on a site-specific basis if the director determines that the exemption will cause no adverse impacts to human health or the environment. If an exemption is granted, the director may require that the solid waste surface impoundment have a more stringent design, construction, monitoring program, or operational practices to protect human health or the environment.

(b) No exemptions shall be given for the following location standards at a solid waste surface impoundment:

(i) ecologically and scientifically significant natural area standards of Subsection R315-302-1(2)(a)(ii);

(ii) floodplain standards, unless the exemption meets the criteria of Subsection R315-302-1(2)(c)(ii);

(iii) the location standards for wetlands for a new or lateral expansion of an existing facility, unless the exemption meets the criteria of Subsection R315-302-1(2)(d); or

(iv) the location standards for groundwater for a new or lateral expansion of an existing solid waste surface impoundment that accepts hazardous waste from a very small quantity generator as defined in Subsection R315-260-10(c), unless the exemption meets the criteria of Subsection R315-302-1(2)(e)(vi).

R315-322-3. Solid Waste Surface Impoundment General Requirements.

(1) Each new solid waste surface impoundment shall meet the following applicable requirements, as determined by the director:

(a) The plan of operation requirements of Subsection R315-302-2(2), except plans to control wind-blown litter and disease vectors as found in Subsections R315-302-2(2)(h) and R315-302-2(2)(k) are not required.

(b) For solid waste surface impoundments that use enhanced evaporation systems, a plan to control overspray, including corrective actions to cleanup waste shall be included in the plan of operation.

(c) The recordkeeping requirements of Subsections R315-302-2(3)(a), R315-302-2(3)(b)(i), R315-302-2(3)(b)(iii), R315-302-2(3)(b)(iv), and R315-302-2(3)(b)(vi).

(d) The reporting requirements of Subsection R315-302-2(4).

(e) The inspection requirements of Subsection R315-302-2(5).

(2) Permit Application.

(a) The director may issue a temporary permit for an existing Class VII solid waste surface impoundment to facilitate the owner's or operator's good faith transition from regulation under Rule R649-9 to regulation under Rule R315-322 according to the requirements of Subsection R315-321-4(8).

(b) The owner or operator of any solid waste surface impoundment shall apply for and get a permit to operate by meeting the applicable requirements of Rule R315-310.

(c) The permit application shall include detailed construction and installation diagrams of the surface impoundment, including details of side slopes, liners, surface impoundment storage capacity, leak detection systems, dikes or levees, wind fences, piping, enhanced evaporation systems with justification, water treatment systems and tanks.

(d) Contingencies for releases shall be included in the plan required by Subsection R315-302-2(2)(f) and shall include procedures for repair of liners as specified in Subsection R315-322-5(12)(d).

(e) The owner or operator of a solid waste surface impoundment that does not accept hazardous waste from a very small quantity generator as defined by Subsection R315-260-10(c), shall submit details of controls and employee training programs used to prevent the acceptance of hazardous waste.

R315-322-4. Solid Waste Surface Impoundment Standards for Performance.

(1) Each solid waste surface impoundment shall meet the standards for performance as specified in Section R315-303-2.

(2) The owner or operator of a Class VII solid waste surface impoundment shall plan for and implement appropriate measures to protect waterfowl and other wildlife receptors that may reasonably be expected to come into contact with exploration and production wastes managed in Class VII solid waste surface impoundments.

(3) The solid waste surface impoundment shall be fenced and maintained to deter access by livestock and wildlife and, if determined necessary by the director, equipped with flagging, netting, or other measures, to deter entry by birds and waterfowl.

R315-322-5. Standards for Design.

(1) Surface impoundments shall be designed, maintained, and operated to meet the following requirements found in Section R315-322-5.

(2) Surface impoundments shall be designed for 55 acre-feet of water or less, unless otherwise approved by the director.

(3) Surface impoundment levees shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1.

(a) The top of the levee shall have a 2% cross slope toward the surface impoundment and be of sufficient width to allow for adequate anchoring of liner components and compaction.

(b) Vertical height of the levees may not exceed 25% of the total vertical depth of the surface impoundment.

(4) Unloading structures.

(a) The owner or operator shall submit detailed construction and installation diagrams of each unloading structure and an explanation of methods that control flow and prevent undesired waste from entering the solid waste surface impoundment, including hydrocarbons.

(b) Unloading structures shall be designed, maintained, and operated to adequately process the waste received each day.

(c) Unloading structures shall be designed with a leak detection system unless determined unnecessary by the director.

(5) The design, construction, and operation of any dewatering or other stabilization or treatment technique used in association with a solid waste surface impoundment shall comply with the requirements in Subsection R315-303-3(2)(b).

(6) Solid waste surface impoundments and associated enhanced evaporation systems shall be designed to prevent surface or subsurface discharge of water, and detailed information shall be submitted to demonstrate control features. Enhanced evaporation systems shall be located no closer than 100 feet from a facility's exterior boundary.

(7) Any container or tank storage area used to manage waste containing free liquids shall have secondary containment that:

(a) is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(b) is sloped or otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation;

(c) has sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(d) is designed and operated to prevent run-on into the containment system unless the system has sufficient excess capacity in addition to that required in Subsection R315-322-5(7)(c) to contain any run-on that might enter the system; and

(e) is operated to remove spilled or leaked waste and accumulated precipitation from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

(8) The owner or operator of a solid waste surface impoundment shall design the facility to control storm water run-on and run-off as specified in Subsections R315-303-3(1)(c) and R315-303-3(1)(d).

(9) The owner or operator of a solid waste surface impoundment shall design the impoundment to meet the applicable requirements of Subsection R315-303-3(8), except that the standards for groundwater protection are found in Subsection R315-322-5(11).

(a) In addition to the signage requirements of Subsection R315-303-3(8)(d), the owner or operator of Class VII solid waste surface impoundment shall erect a sign displaying the facility operator.

(b) In addition to the signage requirements of Subsection R315-303-3(8)(d), the owner or operator of Class VII solid waste surface impoundment located in Duchesne County or Uintah County shall erect a sign displaying the facility operator and the location using the Public Land Survey System.

(10) The owner or operator of a solid waste surface impoundment shall provide design drawings and as built drawings signed and sealed by a professional engineer according to Subsection R315-303-3(7).

(11) Groundwater Protection.

(a) The owner or operator of a solid waste surface impoundment shall comply with the groundwater standard for performance in Subsection R315-303-2(1) and shall be subject to the corrective action requirements of Section R317-6-6.15 as applicable.

(b) The owner or operator of a new solid waste surface impoundment or lateral expansion of an existing solid waste surface impoundment shall either:

(i) meet the groundwater alternative or waiver found in Subsection R315-302-1(2)(e)(vi);

(ii) monitor the groundwater beneath the impoundment as specified in Rule R315-308; or

(iii) install and maintain leak detection equipment and conduct monitoring according to Subsection R315-322-5(13).

(c) The owner or operator of an existing solid waste surface impoundment may not receive hazardous waste from a very small quantity generator unless the requirements of Subsection R315-322-5(11)(a) are met and no groundwater assessment or corrective action measures are required under Section R317-6-6.15.

(d) The owner or operator of an existing solid waste surface impoundment shall maintain existing groundwater monitoring wells or leak detection equipment and associated monitoring programs for the life of the facility, unless otherwise determined by the director.

(e) Groundwater monitoring wells, leak detection equipment, associated monitoring programs, or other groundwater monitoring controls may be required for an existing solid waste surface impoundment as determined by the director.

(12) Synthetic Liners.

NOTICES OF PROPOSED RULES

(a) Materials used in lining solid waste surface impoundments shall be impervious and resistant to weather, tears and punctures, sunlight, and substances that might be contained in the waste including hydrocarbons, aqueous acids, alkalies, salt, fungi, or other produced water.

(b) If rigid materials are used as a liner, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction, and settling movements in the underlying earth, without cracking.

(c) Information regarding the type, thickness, strength, and life span of materials to be used for lining the surface impoundment and the method of installation shall be included in the quality control and quality assurance construction plan required by Subsection R315-310-4(2)(c)(x).

(d) The owner or operator shall submit procedures to the director for repair of the liner, should leakage occur. Repair procedures shall be reviewed and signed by a professional engineer and may include repair procedures prepared by the liner manufacturer. Repair procedures shall include:

(i) methods used to remove liquids and solids as necessary from the surface impoundment;

(ii) management of waste removed;

(iii) location of the leak;

(iv) repair of the leak;

(v) testing of the repair; and

(vi) procedures for resuming operations.

(e) Solid waste surface impoundments following the groundwater monitoring requirements of Subsection R315-322-5(11)(b)(ii) shall either meet the liner design requirements of Subsection R315-303-3(4), or the dual liner design standards of Subsection R315-322-5(12)(f).

(f) Solid waste surface impoundments following the leak detection monitoring requirements of Subsection R315-322-5(11)(b)(iii) shall be designed with two synthetic liners, an upper primary and lower secondary liner, with a leak detection system between them. Synthetic liners shall be installed according to the manufacturer's instructions.

(i) The upper primary liner shall be impervious with a hydraulic conductivity no greater than 1×10^{-7} cm/sec and constructed with a minimum 60-mil HDPE or equivalent liner approved by the director.

(ii) The lower secondary liner shall be impervious and constructed with a minimum 40-mil HDPE or equivalent liner approved by the director.

(iii) The leak detection system between the upper primary and lower secondary liners shall be constructed with a HDPE geonet or equivalent liner to provide separation between the upper primary and lower secondary liners and to enable flow of any leaked fluid through the upper primary liner to the leak detection observation sump.

(13) Leak Detection System.

(a) The point of compliance shall be the space between the upper primary and lower secondary liners. The owner or operator shall submit detailed construction and installation diagrams for the leak detection system to the director.

(b) The leak detection design shall include a drainage and collection system placed between the upper primary and lower secondary liners and sloped to facilitate the earliest possible detection of a leak.

(c) The leak detection design shall include a vertical riser outside the dike allowing direct visual inspection of the sump from the surface. The sump shall be designed:

(i) to be large enough in diameter to allow for visual observation and sampling of any fluid, and extend to the lowest elevation of the lower secondary liner of the solid waste surface impoundment;

(ii) with a removable top for the sump riser that prevents entry of fluids; and

(iii) with leak detection piping capable of withstanding destruction resulting from contact with waste, structural loading from stresses and disturbances from overlying waste and cover materials, equipment operation, expansion or contraction, and facilitate clean-out maintenance.

(d) Leak detection monitoring shall be performed at each riser when liquid waste is present inside of the impoundment, and shall be:

(i) performed with no greater than five days between monitoring surveys, and on each day that waste is received in the impoundment; and

(ii) recorded in the facility operating record.

(e) Upon detecting a leak, the owner or operator of a solid waste surface impoundment shall:

(i) provide verbal notification to the director within 24 hours of detection;

(ii) submit written notification to the director within five days of detection; and

(iii) submit a written schedule for conducting repair within 15 days of detection, including the steps required by the repair plan specified in Subsection R315-322-5(12)(d).

R315-322-6. Standards for Operation.

(1) Each surface impoundment shall meet the operation and maintenance standards of Section R315-303-4 except the daily cover requirements of Subsection R315-303-4(4) and recycling container requirements of Subsection R315-303-4(6).

(2) Each solid waste surface impoundment shall be operated with a minimum of three feet of freeboard, unless otherwise determined by the director.

(3) The director may permit an owner or operator of a solid waste surface impoundment to sell, reclaim, recycle, or reuse materials in connection with its operations, as provided in the plan of operation.

(4) Oil Separation.

- (a) Class VII solid waste surface impoundments shall be operated to separate oil from the produced water fraction of exploration and production waste, and owners and operators may not discharge the oil into the impoundment.
- (b) Hydrocarbon accumulation, other than de minimis quantities, on a Class VII solid waste surface impoundment is prohibited. Any hydrocarbon accumulation shall be removed within 24 hours of the time accumulation began.
- (5) Overspray including foam from sprinklers, wind, or enhanced evaporation systems, outside of lined areas shall be prevented.
 - (a) Operation of enhanced evaporation systems is prohibited when wind speeds at the unit are equal to or greater than 15 mph.
 - (b) If overspray outside of the lined area occurs, it shall be corrected and cleaned up to soil background levels immediately, or as soon as wind speeds allow.
 - (c) Sampling and analysis of soils suspected to be contaminated from overspray may be required by the director.

R315-322-7. Closure and Post-Closure.

- (1) Financial Assurance.
 - (a) The owner or operator of each solid waste surface impoundment shall establish financial assurance as required by Rule R315-309.
 - (b) If the owner or operator of a solid waste surface impoundment has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the surface impoundment as required by another federal or state agency that is as stringent as the requirements of Rule R315-309, the director may exempt the solid waste surface impoundment from the financial assurance requirements of Rule R315-309.
 - (2) Upon closure, the owner or operator of each solid waste surface impoundment shall:
 - (a) excavate, remove, and dispose of any liners, sludges, stained soils, and other solid wastes associated with the solid waste surface impoundment for disposal in a permitted solid waste management facility and install soil and seed according to Subsection R315-303-3(5)(a)(ii); or
 - (b) get a permit from the director to dispose of residual nonhazardous solid wastes associated with the solid waste surface impoundment on site, in compliance with Subsection R315-303-3(5) relating to closure requirements; or
 - (c) a combination of Subsections R315-322-7(2)(a) and R315-322-7(2)(b), as approved by the director; and
 - (d) make the required recording with the county recorder specified in Subsection R315-302-2(6).
 - (3) The post-closure care and monitoring shall be for five years or as long as determined necessary by the director, and shall consist of:
 - (a) the maintenance of any monitoring equipment and sampling and testing schedules as required by the director; and
 - (b) inspection and maintenance of any cover material, including repair as soon as possible of any erosion channels, and reseedings as required by the director.

KEY: solid waste management, solid waste disposal

Date of Last Change: 2024

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-108; 40 CFR 257

| NOTICE OF SUBSTANTIVE CHANGE | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R590-142 | Filing ID: 56654 |
| Agency Information | | |
| 1. Title catchline: | Insurance, Administration | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 146901 | |
| City, state and zip: | Salt Lake City, UT 84114-6901 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|--------------------------------------|
| 2. Rule or section catchline: |
| R590-142. Continuing Education Rule |

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3. Purpose of the new rule or reason for the change: |
| This rule contains references to Rule R590-102, which was recently repealed. The changes are necessary to notify insurance licensees about how the Department of Insurance (Department) sets its fees. |
| 4. Summary of the new rule or change: |
| The rule filing updates three references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. |

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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. | | | | | | | | |
| B) Local governments: | | | | | | | | |
| There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way. | | | | | | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | | | | | | |
| There is no anticipated cost or savings to small businesses. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. | | | | | | | | |
| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. | | | | | | | | |
| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. | | | | | | | | |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): | | | | | | | | |
| There is no compliance cost for any affected persons. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. | | | | | | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | | | | | | |
| Regulatory Impact Table | | | | | | | | |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Fiscal Cost</th> <th style="text-align: center;">FY2025</th> <th style="text-align: center;">FY2026</th> <th style="text-align: center;">FY2027</th> </tr> </thead> <tbody> <tr> <td>State Government</td> <td style="text-align: center;">\$0</td> <td style="text-align: center;">\$0</td> <td style="text-align: center;">\$0</td> </tr> </tbody> </table> | Fiscal Cost | FY2025 | FY2026 | FY2027 | State Government | \$0 | \$0 | \$0 |
| Fiscal Cost | FY2025 | FY2026 | FY2027 | | | | | |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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-23a-202 | Section 31A-23b-205 |
| Section 31A-23b-206 | Section 31A-26-206 | |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/10/2024
 NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R590. Insurance, Administration.

R590-142. Continuing Education Rule.

R590-142-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-23a-202, 31A-23b-205, 31A-23b-206, and 31A-26-206.

R590-142-2. Purpose and Scope.

(1) The purpose of this rule is to implement the continuing education requirements of Sections 31A-23a-202, 31A-23b-206, and 31A-26-206.

(2) This rule applies to a continuing education provider, and an individual producer, consultant, navigator, and adjuster licensee under Sections 31A-23a-202, 31A-23b-206, and 31A-26-206.

R590-142-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, and 31A-35-102. Additional terms are defined as follows:

- (1) "Classroom course" means:
 - (a) a course of study that:
 - (i) is taught on-site by a live instructor at the same location;

NOTICES OF PROPOSED RULES

- (ii) requires monitoring of a student; and
- (iii) may require examination of course content by a student; or
- (b) an interactive course of study that:
 - (i) is taught by a live instructor from a separate location;
 - (A) is delivered to a student via:
 - (I) computer;
 - (II) teleconference;
 - (III) webinar; or
 - (IV) another method acceptable to the commissioner; or
 - (ii) is not taught by a live instructor;
 - (A) is delivered to a student via computer; or
 - (B) another method acceptable to the commissioner;
- (iii) requires two-way interaction between a student and the instrument of instruction;
- (iv) requires monitoring of a student; and
- (v) requires examination of course content by a student.
- (2) "Credit hour" means one 50-minute period of insurance-related instruction consisting of:
 - (a) a classroom course;
 - (b) a home study course; or
 - (c) another method acceptable to the commissioner.
- (3) "Designated internet site" means an internet site that is designated by the commissioner for a registered provider to submit a student's course completion information.
- (4) "Home study course" means a non-interactive course of study that:
 - (a) is not taught by a live instructor;
 - (b) is completed by a student via:
 - (i) computer;
 - (ii) video recording, if the video is professionally produced;
 - (iii) textbook; or
 - (iv) another method acceptable to the commissioner;
 - (c) does not require two-way interaction between a student and the instrument of instruction;
 - (d) does not require monitoring of a student; and
 - (e) requires examination of course content by the student.
- (5) "Insurance-related instruction" means the amount of time assigned by the commissioner to a course of study to satisfy the requirements of continuing education credit hours under this rule, when the assignment of value shall be made based on:
 - (a) content;
 - (b) presentation; and
 - (c) format.
- (6) "Monitoring of a student" means a person or system that verifies participation in and completion of a course.
- (7) "Nonprofit provider" means an organization that fits the definition of nonprofit corporation as defined in Subsection 16-6a-102(35).
- (8) "Registered provider" means a person who:
 - (a) satisfies the requirements of Sections R590-142-8 and R590-142-9; and
 - (b) offers a course of study or a program for credit that satisfies the continuing education requirements of this rule.

R590-142-4. Continuing Education Requirements.

- (1) A producer, consultant, adjuster, and navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:
 - (a) upon renewal of a license, continuing education credit hours in excess of the number required to renew the license may not be carried over or applied to any subsequent licensing period;
 - (b) a licensee shall attend a course in its entirety to receive credit for the course; and
 - (c) a licensee may repeat a course for credit but may not take a course for credit more than once in a license continuation period.
- (2) A producer, consultant, and adjuster licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:
 - (a) the number of credit hours of continuing education insurance-related instruction required to be completed every two years as a prerequisite to a license renewal shall be in accordance with Sections 31A-23a-202 and 31A-26-206;
 - (b) a producer, consultant, or adjuster licensee may obtain continuing education credit hours at any time during the two-year licensing period;
 - (c) not more than half of the total credit hours required shall be satisfied by courses provided to a producer, consultant, or adjuster licensee by one or more insurers;
 - (d) a nonresident producer, consultant, or adjuster licensee who satisfies the licensee's home state's continuing education requirement is considered to have satisfied Utah's continuing education requirement; and
 - (e) a producer, consultant, or adjuster licensee with a professional designation may use the continuing education credit hours required to maintain the designation to satisfy the requirement of the commissioner if:

- (i) the hours are sufficient to meet the current continuing education requirement of Sections 31A-23a-202 and 31A-26-206; and
- (ii) the professional designation consists of one or more of the following:
 - (A) Accredited Customer Service Representative (ACSR);
 - (B) Accredited Financial Examiner (AFE) or Certified Financial Examiner (CFE);
 - (C) Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE);
 - (D) Certified Financial Planner (CFP);
 - (E) Certified Insurance Counselor (CIC);
 - (F) Certified Risk Manager (CRM);
 - (G) Registered Employee Benefits Consultant (REBC);
 - (H) Chartered Property Casualty Underwriter (CPCU) with completion of the Continuing Professional Development (CPD) program;

or

(I) Certified Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Registered Health Underwriter (RHU) with completion of the Professional Achievement in Continuing Education (PACE) recertification program.

(f) Continuing education requirements may be administered by:

- (i) the commissioner; or
- (ii) a continuing education provider approved by and registered with the commissioner.

(3) A continuing education provider, including a state or national professional producer or consultant association, may:

(a) offer a qualified program on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(4)(a) A navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(i) the number of credit hours of continuing education instruction required to be completed annually as a prerequisite to license renewal shall be in accordance with Section 31A-23b-206; and

(ii) a navigator licensee may obtain continuing education credit hours at any time during the one-year licensing period;

(b) To act as a navigator, a person must successfully complete the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training and certification or recertification requirements under that program.

(c) A person has successfully completed the required continuing education requirements for a navigator license in accordance with Section 31A-23b-206 if the person has:

(i) met the requirements of Subsection (4)(b); and

(ii) completed at least 2 hours of ethics course.

(d) Continuing education requirements may be administered by:

(i) the commissioner;

(ii) a continuing education provider approved by and registered with the commissioner; or

(iii) a navigator-related training program administered through the United States Department of Health and Human Services.

R590-142-5. Experience Credit.

(1) Continuing education credit hours may be granted to a producer, consultant, or adjuster licensee at the discretion of the commissioner for experience credit including credit for experience such as the authoring of an insurance book, course, or article.

(2) Membership by a producer or consultant in a state or national professional producer or consultant association is a substitute for two credit hours for each year during which the producer or consultant is a member of the association, except as provided in Subsection (3).

(3) No more than two hours of continuing education credit may be granted per year during the two-year license continuation period, regardless of the number of professional association memberships a producer or consultant maintains.

(4) An approved continuing education course taught by an approved instructor holding a Utah producer, consultant, or adjuster license shall receive twice the number of credit hours allocated by the commissioner for the course, except as provided in Subsection (5).

(5) Credit for instruction of a course shall be granted no more than once per license renewal period for each course taught.

(6) Continuing education experience credit may not be granted for committee service.

R590-142-6. Controls and Reporting of Credit Hours.

(1) Within 14 days of completion of a course of study, the registered provider shall:

(a) furnish each student successfully completing the course with a certificate of completion; and

(b) submit through Sircon a course completion record identifying the:

(i) student that completed the course;

(ii) name and identifying course number of the course completed; and

(iii) number of credit hours completed by the student.

(2) If the registered provider fails to notify the commissioner of a student's course completion, the licensee may use the certificate of completion as proof of having successfully completed the course.

(3) The registered provider shall keep proof of successful electronic attendance submission on file for at least the current calendar year plus two years.

NOTICES OF PROPOSED RULES

R590-142-7. Course Requirements.

(1) Except as permitted in Subsection R590-142-4(3), before offering a course for credit in Utah, a person must register as a provider and submit a completed continuing education course filing form and course outline for review by the commissioner.

(2) Upon receipt of a completed continuing education course filing form and course outline from a registered provider, the commissioner shall:

(a)(i) approve a course as qualifying for credit in accordance with the standards of this rule;

(ii) issue a course number; and

(iii) assign the number of hours to be awarded to the approved course; or

(b)(i) disapprove a course as not qualifying for credit; and

(ii) furnish an explanation of the reason for disapproval of the course.

(3) A new course offered by a registered provider must be submitted to and approved by the commissioner at least 30 days before being offered, except that post-approval of a course may be granted by the commissioner upon submission of a written request and supporting documentation of a course attended.

(4) A course advertisement ~~shall~~ may not state or imply that a course has been approved by the commissioner unless written confirmation of the approval has been received by the registered provider.

(5) A department employee may attend a course at no cost ~~[for the purpose of auditing]~~ to audit the course for compliance.

(6) The following course topics are examples of subject areas that qualify for approval if they contribute to the knowledge and professional competence of an individual licensee as a producer, consultant, or adjuster, and demonstrate a direct and specific application to insurance:

(a) a particular line of insurance;

(b) investments or securities in connection with variable contracts;

(c) principles of risk management;

(d) insurance laws and administrative rules;

(e) tax laws related to insurance;

(f) accounting or actuarial considerations in insurance;

(g) business or legal ethics; and

(h) other course subject areas may be acceptable if the registered provider can demonstrate that the course contributes to professional competence and otherwise meets the standards set forth in this rule.

(7) The following course topics are examples of subject areas that do not qualify for approval:

(a) computer training and software presentations;

(b) motivation;

(c) psychology;

(d) sales training;

(e) communication skills;

(f) recruiting;

(g) prospecting;

(h) personnel management;

(i) time management; and

(j) any course not in accordance with this rule.

(8) The following continuing education standards must be met for a course offered by a registered provider to qualify for continuing education credit:

(a) the course must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of a participant;

(b) the course must be developed by persons who are qualified in the subject matter and instructional design;

(c) the course content must be up to date;

(d) the instructor must be qualified with respect to course content and teaching methods;

(e) the instructor may be considered qualified if, through formal training or experience, the instructor has obtained sufficient knowledge to competently instruct the course;

(f) the number of participants and physical facilities for a course must be consistent with the teaching method specified;

(g) the course must include some means for evaluating the quality of the course content;

(h) the course must provide for a method to authenticate each student's identity; and

(i) the course must be taught in a manner that complies with the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, to enable licensees with a physical or mental disability to complete the continuing education requirements.

(9) The following are additional requirements for an interactive computer course of study offered by a registered provider that is not taught by a live instructor:

(a) the course shall provide one or more of the following types of exam questions at the end of each section of course material presented:

(i) multiple choice;

(ii) matching; or

(iii) true or false;

(b) the exam questions shall cover material from the applicable section of the course that was presented to the student;

- (c) only upon completion of an exam and not before or during the exam, the course shall identify all incorrect responses and inform the student of the correct response with an explanation of the correct answer;
- (d) the course shall require answering 70% of the inquiries for each exam correctly to demonstrate mastery of the current section before the student is allowed by the program to proceed to the next section or complete the course;
- (e) in the event a student does not achieve the 70% correct response rate necessary to advance to the next section, the course shall generate a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis;
- (f) the course shall provide a method to authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course;
- (g) the course shall provide a method to ensure that the amount of time necessary for a student to complete course instruction and exam is no less than the amount of credit hours approved for the course; and
- (h) the course shall provide for a method to directly transmit the final course completion results to the registered provider or a printed course completion receipt to be sent to the registered provider for issuance of a completion certificate.
- (10) A continuing education course may not be offered or taught by a person who has:
 - (a) a lapsed, surrendered, suspended, or revoked provider registration;
 - (b) a suspended or revoked insurance license; or
 - (c) been prohibited from teaching a course.
- (11) Continuing education credit may not be granted for a course offered by a registered provider in which the course is:
 - (a) not approved by the commissioner; or
 - (b) offered or taught by a person who has:
 - (i) a lapsed, surrendered, suspended, or revoked provider registration; or
 - (ii) been prohibited from teaching a course.

R590-142-8. Registered Provider Requirements.

- (1) A registered provider, or a state or national professional producer, consultant, adjuster, or navigator association, may:
 - (a) offer a qualified course for a license type or line of authority on a geographically accessible basis; and
 - (b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.
- (2) A person shall register with the commissioner as a provider before acting as a registered provider in Utah.
- (3) Except as provided in Subsection (4), to initially register as a provider, a person must:
 - (a) submit a completed provider registration form via Sircon; and
 - (b) pay an initial registration fee [~~as identified in Rule R590-102~~] in an amount annually established by the Utah Legislature under Section 63J-1-504.
- (4)(a) To initially register as a nonprofit provider, a person must submit a completed provider registration form via:
 - (i) Sircon; or
 - (ii) facsimile, or as a PDF attachment to an email, using a form available on the department's website: <https://insurance.utah.gov>.
- (b) A person initially registering as a nonprofit provider is not required to pay a registration fee.
- (5) To renew a provider registration, a provider, other than a nonprofit provider, must:
 - (a) submit a completed provider renewal form via Sircon; and
 - (b) pay an annual renewal fee [~~as identified in Rule R590-102~~] in an amount annually established by the Utah Legislature under Section 63J-1-504, before the annual renewal date.
- (6)(a) To renew a nonprofit provider registration, a nonprofit provider must:
 - (i) submit a completed provider renewal form via:
 - (A) Sircon; or
 - (B) facsimile, or as a PDF attachment to an email using a form available on the department's website: <https://insurance.utah.gov>.
 - (b) A nonprofit provider is not required to pay an annual renewal fee.
- (7) Before teaching a course, a registered provider shall:
 - (a) submit via Sircon, before offering the course, an outline that includes information regarding the course content and the number of credit hours requested;
 - (b) post the course offering to a designated internet site;
 - (c) provide to the commissioner the name and resume of each instructor who will be teaching the course; and
 - (d) include identifying information about any insurance license previously or currently held by each instructor who will be teaching the course.
 - (8) A registered provider shall report to the commissioner:
 - (a) an administrative action taken against the registered provider in any jurisdiction; and
 - (b) a criminal prosecution taken against the registered provider in any jurisdiction.
- (9) The report required by Subsection (8) shall:
 - (a) be filed:
 - (i) when submitting the initial provider registration; and
 - (ii) within 30 days of the:
 - (A) final disposition of the administrative action; or
 - (B) initial appearance before a court; and

NOTICES OF PROPOSED RULES

- (b) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (8).
- (10) The commissioner may prohibit any person from acting as a registered provider or instructor in Utah if the commissioner determines that:
 - (a) the person is not competent and trustworthy; or
 - (b) the person or course of study fails to meet the qualifying standards.

R590-142-9. Loss of Provider Registration and Course Disapproval.

- (1) A provider registration, other than a nonprofit provider registration, shall lapse if a provider fails to:
 - (a) submit a completed provider renewal form via Sircon; and
 - (b) pay an annual renewal fee before the annual renewal date.
- (2) A nonprofit provider registration shall lapse if a nonprofit provider fails to submit a completed provider renewal form via:
 - (a) Sircon; or
 - (b) facsimile, or as a PDF attachment to an email, using a form available on the department's website: <https://insurance.utah.gov>.
- (3) To reinstate a lapsed or surrendered provider registration, other than a nonprofit provider registration, a provider must:
 - (a) submit a completed provider reinstatement form via Sircon; and
 - (b) pay a reinstatement fee [~~as identified in Rule R590-102~~] in an amount annually established by the Utah Legislature under Section 63J-1-504.
- (4)(a) To reinstate a lapsed or surrendered nonprofit provider registration, a nonprofit provider must submit a completed provider registration form via:
 - (i) Sircon; or
 - (ii) facsimile, or as a PDF attachment to an email, using a form available on the department's website: <http://insurance.utah.gov>.
- (b) A nonprofit provider is not required to pay a reinstatement fee.
- (5) A provider registration may be denied, suspended, or revoked; an instructor prohibited from teaching a course; or a course disapproved, if the commissioner determines that:
 - (a) a course teaching method or course content fails to meet the standards of this rule;
 - (b) a registered provider reports that an individual completed a course in accordance with the standards furnished for course credit, when in fact the individual has not done so;
 - (c) a registered provider or instructor conducting a course instructs for less than the number of credit hours approved by the commissioner, but reports the full credits for the individual attending the course;
 - (d) credit for a course is not electronically reported to a designated internet site in a timely manner for an individual who satisfactorily completes a course in accordance with the standards furnished for course credit;
 - (e) a registered provider or instructor:
 - (i) lacks sufficient education or experience in the subject matter of the course;
 - (ii) has had a provider registration suspended or revoked in another jurisdiction;
 - (iii) has had an insurance license suspended or revoked;
 - (iv) uses course material that has been plagiarized; or
 - (v) is otherwise no longer qualified in accordance with the standards of this rule; or
 - (f) there is other good cause showing that:
 - (i) a provider registration should be suspended or revoked;
 - (ii) an instructor should be disallowed from teaching a course; or
 - (iii) a course should be disapproved.
- (6) The commissioner may disapprove any course, even if it has been previously approved, if:
 - (a) the commissioner determines that the course of study fails to meet the qualifying standards;
 - (b) the commissioner determines that the course material has been plagiarized; or
 - (c) a change of 50% or more has been made in the course content since the initial approval of the course, subject to resubmission of the course for review and subsequent approval of the course by the commissioner.
- (7) A registered provider may re-apply for a course that has been disapproved upon providing satisfactory proof to the commissioner that the conditions responsible for the disapproval have been corrected.
- (8) To reinstate a suspended or revoked provider registration, a provider must:
 - (a) submit a completed provider registration form;
 - (b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course;
 - (c) pay a reinstatement fee [~~as identified in Rule R590-102~~] in an amount annually established by the Utah Legislature under Section 63J-1-504, except as provided in Subsection R590-142-8(4); and
 - (d) provide satisfactory proof to the commissioner that each condition responsible for the suspension or revocation has been corrected.
- (9) A person with a revoked provider registration may not apply for a new registration for five years from the date the registration was revoked without the express approval of the commissioner, unless otherwise specified in the revocation order.

R590-142-10. Severability.

If any provision of this rule, Rule R590-142, 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 continuing education

Date of Last Change: ~~2024~~ ~~February 8, 2022~~

Notice of Continuation: February 28, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-202; 31A-23b-205; 31A-23b-206; 31A-26-206; 31A-26-209; 31A-35-401.5

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R590-186-4

Filing ID: 56655

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|-----------------|
| 1. Title catchline: | Insurance, Administration | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 146901 | |
| City, state and zip: | Salt Lake City, UT 84114-6901 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R590-186-4. Initial and Renewal Agency License |
| 3. Purpose of the new rule or reason for the change: |
| This rule contains a reference to Rule R590-102, which was recently repealed. The change is necessary to notify bail bond agencies about how the Department of Insurance (Department) sets its fees. |
| 4. Summary of the new rule or change: |
| The rule filing updates a reference to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. |

Fiscal Information

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| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| B) Local governments: |
| There is no anticipated cost or savings to local governments. |

This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way.

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

There is no anticipated cost or savings to small businesses.

The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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

There is no compliance cost for any affected persons.

The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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

Regulatory Impact Table

| Fiscal Cost | FY2025 | FY2026 | FY2027 |
|------------------------------|---------------|---------------|---------------|
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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-35-104 | Section 31A-35-301 | |
|--------------------|--------------------|--|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R590. Insurance, Administration.**R590-186. Bail Bond Business.****R590-186-4. Initial and Renewal Agency License.**

(1) An application for an initial or a renewal bail bond agency license shall be filed with the commissioner.

(2) An application shall include:

(a) an initial or renewal license fee ~~[as set forth in Rule R590-102]~~ in an amount annually established by the Utah Legislature under Section 63J-1-504; and

(b) proof that an applicant satisfies the minimum financial requirements for a bail bond agency license under Section 31A-35-404.

KEY: insurance

Date of Last Change: ~~2024~~ May 11, 2022

Notice of Continuation: July 7, 2023

Authorizing, and Implemented or Interpreted Law: 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

| | | |
|--------------------------------|-----------------|-------------------------|
| Rule or Section Number: | R590-238 | Filing ID: 56656 |
|--------------------------------|-----------------|-------------------------|

Agency Information

| | |
|----------------------------|---------------------------|
| 1. Title catchline: | Insurance, Administration |
|----------------------------|---------------------------|

| | |
|------------------|-----------------------------------|
| Building: | Taylorville State Office Building |
|------------------|-----------------------------------|

| | |
|------------------------|---------------|
| Street address: | 4315 S 2700 W |
|------------------------|---------------|

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|--------------------|-----------------|
| City, state | Taylorville, UT |
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| Mailing address: | PO Box 146901 |
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| | |
|-----------------------------|-------------------------------|
| City, state and zip: | Salt Lake City, UT 84114-6901 |
|-----------------------------|-------------------------------|

Contact persons:

| | | |
|--------------|---------------|---------------|
| Name: | Phone: | Email: |
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| | | |
|-------------|--------------|-----------------|
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
|-------------|--------------|-----------------|

Please address questions regarding information on this notice to the persons listed above.

General Information

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|--------------------------------------|
| 2. Rule or section catchline: |
|--------------------------------------|

| |
|---------------------------------------|
| R590-238. Captive Insurance Companies |
|---------------------------------------|

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3. Purpose of the new rule or reason for the change:</p> <p>This rule contains references to Rule R590-102, which was recently repealed.</p> <p>The change is necessary to notify captive insurance companies about how the Department of Insurance (Department) sets its fees.</p> <p>It also removes a word that incorrectly describes a certain type of asset.</p> |
| <p>4. Summary of the new rule or change:</p> <p>The rule filing updates references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504.</p> <p>It also removes the word "admitted" from a description of assets described in a financial statement, because GAAP accounting does not account for admitted assets.</p> |

Fiscal Information

| |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</p> |
| <p>A) State budget:</p> <p>There is no anticipated cost or savings to the state budget.</p> <p>The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.</p> |
| <p>B) Local governments:</p> <p>There is no anticipated cost or savings to local governments.</p> <p>This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way.</p> |
| <p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>There is no anticipated cost or savings to small businesses.</p> <p>The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.</p> |
| <p>D) Non-small businesses ("non-small business" means a business employing 50 or more persons):</p> <p>There is no anticipated cost or savings to non-small businesses.</p> <p>The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.</p> |
| <p>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):</p> <p>There is no anticipated cost or savings to any other persons.</p> <p>The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.</p> |
| <p>F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There is no compliance cost for any affected persons.</p> <p>The Department's fees will continue to apply, they will just be set by the Legislature in statute instead of the Department setting them in rule.</p> |

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:
 The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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-37-106 | |
|-------------------|--------------------|--|

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/10/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R590. Insurance, Administration.

R590-238. Captive Insurance Companies.

R590-238-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-37-106.

R590-238-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the financial, reporting, record-keeping, and other requirements for the regulation of captive insurance companies and special purpose financial captive insurance companies.

(2) This rule applies to:

(a) a captive insurance company licensed under Title 31A, Chapter 37, Captive Insurance companies Act; and

(b) a special purpose financial captive insurance company licensed under Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act.

R590-238-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301, 31A-37-102, and 31A-37a-102. Additional terms are defined as follows:

(1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Captive insurance manager" means a person who:

(a) is on the Utah Approved Captive Management Firms list, available on the department's website, [https://insurance.utah.gov/captive](https://insurance.utah.gov/captive;);

(b) pursuant to a written contract with a company, provides and coordinates services including:

(i) accounting;

(ii) statutory filings;

(iii) signed annual statements; and

(iv) coordination of related services; and

(c) acts as an intermediary that facilitates and assists the company in meeting its statutory requirements under Title 31A, Insurance Code.

(3) "Company" means:

(a) a captive insurance company as defined in Section 31A-1-301; and

(b) a special purpose financial captive insurance company as defined in Section 31A-37a-102.

(4) "GAAP" means generally accepted accounting procedures.

(5) "Work papers" or "working papers" include schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant and the accountant's employees in the conduct of their audit of the company.

R590-238-4. Annual Reporting Requirements.

(1) A company shall file an annual report of its financial condition with the commissioner as required by Section 31A-37-501.

(2) The report required in Subsection (1) shall be:

(a) verified by oath of at least two individuals who are executive officers of the company and by the captive manager or a appointed representative;

(b) prepared using GAAP; and

(c) filed electronically using the department's website, <https://insurance.utah.gov/captive>.

(3)(a) A company, except for a company under Subsection (3)(b), shall use the Captive Insurance Company Annual Statement Form.

(b) A risk retention group and a special purpose financial captive shall use the NAIC's Annual and Quarterly Statements.

(4) An annual report shall include a Statement of Actuarial Opinion setting forth the qualified actuary's opinion relating to loss and loss adjustment expense reserves.

R590-238-5. Annual Audit.

(1) A company shall have an annual audit by an independent certified public accountant, approved by the commissioner, and shall file the annual audit report with the commissioner on or before June 30 for the preceding year.

(2) The annual audit report is part of the company's annual report of financial condition except for the date by which it must be filed with the commissioner.

(3) The annual audit report shall include:

(a) an opinion of an independent certified public accountant that:

(i) includes financial statements examined by the independent certified public accountant in accordance with GAAP, as determined by the AICPA;

(ii) covers all years presented; and

(iii) is on the accountant's stationery showing the address of issuance, date of issuance, and bearing original signatures;

(b) a report of evaluation of internal controls, including:

(i) an evaluation of the methods and procedures used in the securing of assets and the reliability of the financial records, including controls of the system of authorization and approval, and the separation of duties; and

(ii) a review conducted in accordance with GAAP and filed with the commissioner;

(c) an accountant's letter furnished to the company, for inclusion in the filing of the audited annual report, stating:

(i) that the accountant is independent from the company and conforms to the standards of the accountant's profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and pronouncements of the Financial Accounting Standards Board;

(ii) the general background and experience of the staff engaged in the audit, including their experience in auditing captive or other insurance companies;

(iii) that the accountant understands that the audited annual report and the accountant's opinions thereon will be filed in compliance with this rule;

(iv) that the accountant consents to the requirements of Section R590-238-9;

(v) that the accountant consents and agrees to make the work papers available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent; and

(vi) that the accountant is properly licensed by an appropriate state licensing authority;

(d) financial statements, including:

(i) a balance sheet;

(ii) a statement of gain or loss from operations;

- (iii) a statement of changes in financial position;
- (iv) a statement of cash flow;
- (v) a statement of changes in capital paid up, gross paid in, and contributed surplus and unassigned funds; and
- (vi) notes to financial statements required by GAAP, including:
 - (A) a reconciliation of any differences between the audited financial report and the statement or form filed with the commissioner;
 - (B) a summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive;

and

(C) a narrative explanation of each material transaction with the company that involves 3% or more of a company's [~~admitted~~]assets as of the December 31 next preceding; and

(e) a certification of loss reserves and loss expense reserves of the company's opining actuary, including:

(i) an actuarial opinion of the reasonableness of the company's loss reserves and loss expense reserves, unless waived by the commissioner; and

(ii) a certification by the individual who certifies the reasonableness of reserves.

(4) The actuary who certifies the reasonableness of reserves under Subsection (3)(e) shall be:

(a) approved by the commissioner;

(b) a member in good standing of the American Academy of Actuaries; and

(c) a fellow or an associate of:

(i) the Casualty Actuarial Society, for property and casualty companies; or

(ii) the Society of Actuaries, for life and health companies.

(5) A certification under Subsection (3)(e) shall be in a form prescribed by the commissioner.

R590-238-6. Designation of Independent Certified Public Accountant.

(1) A company shall appoint an independent certified public accountant retained to conduct the independent annual audit from the list of approved certified public accounting firms or individual certified public accountants maintained by the commissioner.

(2) A company that terminates the appointment of an independent certified public accountant retained to conduct the annual audit required in this rule shall, within 90 days of termination, report to the commissioner in writing:

(a) the name and address of the certified public accountant that is terminated; and

(b) the name and address of the certified public accountant that is subsequently retained.

R590-238-7. Notification of Adverse Financial Condition.

(1) A company shall require an independent certified public accountant to immediately notify an officer and the board of directors, in writing, of any determination that the company has materially misstated its financial condition in its report to the commissioner.

(2) The company shall notify the commissioner of the adverse financial condition within five business days.

R590-238-8. Additional Capital Requirement.

(1) If the commissioner determines that the financial condition of a company warrants additional capital, the commissioner may require the company to deposit, in trust for the company:

(a) cash;

(b) a security approved by the commissioner; or

(c) an irrevocable letter of credit issued by a bank, as defined in Section 7-1-103.

(2) The commissioner shall return the deposit or letter of credit if the company ceases to do business, but only after being satisfied that the company has discharged all of its obligations.

(3) A company may receive interest or dividends from the deposit or exchange of the deposits for another deposit of equal value, upon approval of the commissioner.

R590-238-9. Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.

(1) A company's independent certified public accountant shall:

(a) make available for review by the commissioner, or the commissioner's appointed agent, all work papers prepared in the conduct of the audit or examination of the company;

(b) retain the work audit papers for a period of not less than seven years after the period reported upon; and

(c) provide photocopies of any working papers that the department considers relevant to its audit or examination.

(2) The department may retain photocopies of any working papers.

R590-238-10. Documentation Required to be Held in Utah by a Licensed Captive.

(1)(a) A company shall maintain and make available for inspection by the commissioner, or the commissioner's appointed agent, all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each company.

(b) A company shall keep the original documents in the offices of the company's captive manager, the company's parent, or the company itself.

(2) A company shall hold complete copies of the documents under Subsection (1)(a) in an office located in Utah that is designated by the company and approved by the commissioner.

R590-238-11. Reinsurance.

- (1) A company may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:
 - (a) credit may not be allowed for reinsurance when the reinsurance contract does not result in the transfer of the risk or liability to the reinsurer; and
 - (b) credit may not be allowed, as an asset or a deduction from liability, to a ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer based on the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.
- (2) Reinsurance is effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.
- (3) The commissioner may require that complete copies of all reinsurance treaties and contracts be filed and approved.

R590-238-12. Service Providers.

- (1) A person may not act, in or from this state, as a captive insurance manager, broker, agent, salesperson, or reinsurance intermediary for captive business without the commissioner's authorization.
- (2) An application for authorization shall be on a form prescribed by the commissioner.

R590-238-13. Directors and Managers.

- (1) A company shall report any change in any executive officer, director, or manager to the commissioner within 30 days and shall include in its report a biographical affidavit of any new executive officer, director, or manager.
- (2) An officer, director, manager, or employee of a company may not, except on behalf of the company, accept or be the beneficiary of any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company.
- (3) An officer, director, manager, or employee may receive reasonable compensation for necessary services provided to the company in their usual private, professional, or business capacity.
- (4) Any profit or gain received by or on behalf of a person in violation of Subsection (2) shall inure to the company.

R590-238-14. Conflict of Interest.

- (1)(a) A company shall adopt a conflict of interest statement for its directors, managers, and key employees.
- (b) The conflict of interest statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert the individual from the individual's duty to further the interests of the company.
- (c) The conflict of interest statement does not preclude an individual from being an officer, director, or manager in more than one insurance company.
- (2) Each officer, director, manager, and key employee shall file a yearly disclosure with the board of directors.

R590-238-15. Suspension or Revocation.

- (1) In addition to the grounds in Section 31A-37-505, the commissioner may suspend or revoke the license of a company or place a company on probation for the following reasons:
 - (a) the company has not commenced business according to its plan of operation within two years of being licensed;
 - (b) the company ceased to carry on insurance business in or from Utah; or
 - (c) at the request of the company.
- (2) An action taken by the commissioner shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act.

R590-238-16. Change of Information in Initial Application.

- (1) A material change in a company's business plan, including changes to lines of coverage and limits filed with the commissioner at the time of initial application, requires prior approval of the commissioner.
- (2) A change in any other information filed with the initial application shall be submitted to the commissioner within 60 days, but does not require prior approval.

R590-238-17. Application.

- (1) An application to form a company shall be submitted to the commissioner on the Application to Form a Captive Insurance Company Form.
- (2) A complete application including forms, attachments, exhibits, and all other papers and supporting documents shall be filed electronically with the commissioner through the department's website, <https://insurance.utah.gov/captive>.
- (3)(a) The application shall be signed in the manner prescribed on the application form.
- (b) If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the application.
- (4)(a) A company shall include with its application a feasibility study of the company's business plan.
- (b) The department may test the feasibility of the study by examining the company's corporate records, including:
 - (i) the charter;
 - (ii) the bylaws and minute books;
 - (iii) verification of capital and surplus;
 - (iv) verification of principal place of business;

- (v) determination of assets and liabilities; and
- (vi) other factors the commissioner considers necessary.

R590-238-18. Fee Schedule; Initial Application; Renewal.

(1) An applicant for a certificate of authority under Title 31A, Chapter 37, Captive Insurance Companies Act, or Title 31A, Chapter 37a, Special Purpose Financial Captive Insurance Company Act, shall pay to the department, at the time the application is filed, a nonrefundable fee established [~~in Sections R590-102-8 and R590-102-9~~]by the Utah Legislature under Section 63J-1-504.

(2) An applicant may pay fees associated with the application:

- (a) in person;
- (b) online at <https://payment.uid.utah.gov/s/>;

(c) by mail, addressed to Office of the Commissioner, Utah Insurance Department, 4315 S. 2700 W., Suite 2300, Taylorsville, UT 84129, Attention: Captive Insurance Administrator; or

(d) by phone at 801-957-9200.

(3) A company shall pay an initial license fee for the initial year of registration and a renewal fee for each succeeding year in the amount annually established by [~~Sections R590-102-8 and R590-102-9~~]the Utah Legislature under Section 63J-1-504.

(4) A company, except for a captive cell company, shall pay the department [~~an annual~~]a nonrefundable electronic commerce fee in the amount annually established by [~~Section R590-102-23~~]the Utah Legislature under Section 63J-1-504.

(5) A company shall pay the department other fees annually established by [~~Section R590-102-24~~]the Utah Legislature under Section 63J-1-504.

R590-238-19. Authorized Forms.

(1) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying for a certificate of authority for a new company:

- (a) Application to Form a Captive Insurance Company;
- (b) Appointment of the Insurance Commissioner for the State of Utah as Attorney to Accept Service of Process;
- (c) Bank Capitalization Confirmation Form;
- (d) Biographical Affidavit for Captive Insurance Company;
- (e) Captive Insurance Company Annual Statement Form;
- (f) Statement of Economic Benefit to the State of Utah; and
- (g) Utah Approved Irrevocable Letter of Credit.

(2) An applicant shall use the following forms, available on the department's website, <https://insurance.utah.gov/captive>, when applying to become an approved captive insurance company service provider:

- (a) Application for Placement on Approved Captive Insurer Management Firm List;
- (b) Application to Certify Loss and Expense for Captive Insurance Companies Captive Actuary Application; and
- (c) Application for Authorization as an Independent Certified Public Accountant for Captive Insurance Companies.

(3) A company, except as provided under Subsection R590-238-4(2)(b), shall use the Captive Insurance Company Annual Statement Form.

(4) A company shall file a Statement of Economic Benefit to the State of Utah form with its initial application and for each year.

R590-238-20. Severability.

If any provision of this rule, Rule R590-238, 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: captive insurance

Date of Last Change: ~~2024~~~~December 22, 2023~~

Notice of Continuation: May 2, 2022

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-37-106

| NOTICE OF SUBSTANTIVE CHANGE | | |
|------------------------------|----------|------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R590-273 | Filing ID: 56657 |

Agency Information

| | |
|---------------------|------------------------------------|
| 1. Title catchline: | Insurance, Administration |
| Building: | Taylorsville State Office Building |
| Street address: | 4315 S 2700 W |
| City, state | Taylorsville, UT |

| | | |
|---------------------------------------------------------------------------------------------------|-------------------------------|-----------------|
| Mailing address: | PO Box 146901 | |
| City, state and zip: | Salt Lake City, UT 84114-6901 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R590-273. Continuing Care Provider Rule |
| 3. Purpose of the new rule or reason for the change: |
| This rule contains references to Rule R590-102, which was recently repealed. The changes are necessary to notify continuing care providers about how the Department of Insurance (Department) sets its fees. |
| 4. Summary of the new rule or change: |
| The rule filing updates two references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. |

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 state budget. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| B) Local governments: |
| There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated cost or savings to small businesses. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>): |
| There is no anticipated cost or savings to any other persons. |

The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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

There is no compliance cost for any affected persons.

The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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-44-202 | Section 31A-44-203 |
| Section 31A-44-401 | Section 31A-44-402 | Section 31A-44-502 |
| Section 31A-44-503 | Section 31A-44-601 | Section 31A-44-602 |

Public Notice Information

8. 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: 09/03/2024

9. This rule change MAY become effective on: 09/10/2024

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R590. Insurance, Administration.

R590-273. Continuing Care Provider Rule.

R590-273-1. Authority.

This rule is promulgated by the commissioner pursuant to Sections 31A-2-201, 31A-44-202, 31A-44-203, 31A-44-401, 31A-44-402, 31A-44-502, 31A-44-503, 31A-44-601, and 31A-44-602.

R590-273-2. Purpose and Scope.

- (1) The purpose of this rule is to:
 - (a) define financial hardship;
 - (b) establish procedures to register or renew as a provider;
 - (c) determine when an additional reserve fund is necessary;
 - (d) determine market value of land and infrastructure improvements of a facility in liquidation;
 - (e) set forth conditions when a lien is superior to a property lease; and
 - (f) establish enforcement procedures.
- (2) This rule applies to a provider that markets a continuing care facility project.

R590-273-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-44-102. Additional terms are defined as follows:

- (1) "Financial hardship," under Subsection 31A-44-401(3), means a resident of a continuing care facility:
 - (a) with regular monthly expenses exceeding the resident's regular monthly income; and
 - (b) with net assets of less than \$25,000, over and above the resident's entrance fee at the continuing care facility.
- (2) "Qualified actuary" means:
 - (a) a member of the American Academy of Actuaries;
 - (b) a member of the Society of Actuaries; or
 - (c) a person recognized by the commissioner as having comparable training or experience.

R590-273-4. Registration.

(1) Thirty days before entering into a continuing care contract or reservation agreement, a provider shall complete and submit electronically to the commissioner:

(a) an initial registration form, supporting documentation, and all attachments; and

(b) payment of the initial registration fee~~[under Rule R590-102]~~, in an amount annually established by the Utah Legislature under Section 63J-1-504, using the department's secure payment portal.

(2) Registration forms are available on the department's website, <https://insurance.utah.gov>.

R590-273-5. Registration Renewal.

(1) By September 30 of each year, a provider shall complete and submit electronically to the commissioner:

(a) a registration renewal form; and

(b) payment of the registration renewal fee~~[under Rule R590-102]~~, in an amount annually established by the Utah Legislature under Section 63J-1-504, using the department's secure payment portal.

(2) Registration renewal forms are available on the department's website, <https://insurance.utah.gov>.

R590-273-6. Additional Reserve Fund.

(1) A provider shall create an additional reserve fund if directed to do so by the commissioner.

(2) The additional reserve fund amount shall be determined by a qualified actuary.

(3) An independent actuarial review shall determine the adequacy of an additional reserve fund.

(4) A provider shall pay the reasonable costs of the actuarial review under Subsection 31A-44-603(4).

R590-273-7. Market Value of Land and Infrastructure Improvements in Rehabilitation or Liquidation.

To determine the market value of land and infrastructure improvements under an order of rehabilitation or liquidation pursuant to Subsection 31A-44-502(2)(d) or 31A-44-503(4)(e), the commissioner shall:

(1) consider the most probable price, as of a specified date, that the land and infrastructure improvements owned in fee by the ground lesser should sell for:

(a) after reasonable exposure in a competitive market;

(b) under all conditions of a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably, and in their self-interest; and

(d) assuming neither buyer nor seller acts under duress;

(2) disregard the existence or terms of the ground lease; and

(3) determine if a commercial appraisal is required to assign the market value.

R590-273-8. Lien Held by the Commissioner in Favor of a Resident or a Group of Residents.

The lien amount on a provider's property that is superior to the lien described in Subsection 31A-44-601(1) is limited to the portion of the funds secured by the lien used by the provider, including:

- (1) an amount used to pay fees and costs for the design of the facility, including architectural and engineering fees and costs;
- (2) an amount paid for engineering, environmental, and similar studies, reports, and surveys for the facility;
- (3) an amount paid for appraisals, marketing, and other reports and surveys for construction, acquisition, or improvement of the facility;
- (4) fees and costs paid to contractors, developers, brokers, salespersons, and other employees and agents, including affiliates of the provider;
- (5) a fee, charge, assessment, or tax charged or imposed by a governmental unit, district, or similar body having jurisdiction over the facility; and
- (6) reimbursement to a provider for expenditures that qualify under Subsection 31A-44-601(1) or this rule, if paid directly from loan proceeds.

R590-273-9. Enforcement.

- (1) The commissioner may conduct an examination or investigation of a provider to:
 - (a) determine the financial solvency of a facility;
 - (b) determine the adequacy of the additional reserve fund under Section R590-273-6;
 - (c) verify a statement contained in a disclosure or actuarial statement;
 - (d) act on a complaint against a provider or a facility;
 - (e) obtain documents requested by the commissioner; or
 - (f) take corrective action to enforce compliance.
- (2) The commissioner may take corrective action, including:
 - (a) suggesting corrective business practices;
 - (b) restricting or prohibiting behavior by a provider that is misleading, unfair, or abusive;
 - (c) ordering a provider to cease and desist from committing further violations;
 - (d) suspending, revoking, or non-renewing a provider's registration;
 - (e) requiring information to compare continuing care contracts, providers, or facilities;
 - (f) requiring disclosure of all terms and conditions of continuing care contracts and agreements;
 - (g) requiring disclosure of any financial risks; and
 - (h) promoting certain communications between the residents and the provider.
- (3)(a) The provider shall give the commissioner access to the books and papers relating to the business and affairs of the provider.
- (b) The books and records required under Subsection 31A-44-603(2)(a) shall be available for inspection by the commissioner during normal business hours from the date of the transaction and for no less than three years, plus the current calendar year.
- (4) The commissioner may bill the provider for the reasonable costs of an examination or investigation, including the cost of the review by an actuary.

R590-273-10. Severability.

If any provision of this rule, Rule R590-273, 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, continuing care facility

Date of Last Change: 2024~~February 8, 2023~~

Notice of Continuation: April 7, 2022

Authorizing, and Implemented or Interpreted Law: 31A-44-202(2); 31A-2-201; 31A-44-314; 31A-44-401(3); 31A-44-402(2); 31A-44-502(2)(d); 31A-44-503(4)(d); 31A-44-601(6)(f); 31A-44-602(2)(b); 31A-44-203(4)

| NOTICE OF SUBSTANTIVE CHANGE | | |
|----------------------------------|-------------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R590-282-3 | Filing ID: 56658 |

Agency Information

| | |
|-----------------------------|-----------------------------------|
| 1. Title catchline: | Insurance, Administration |
| Building: | Taylorville State Office Building |
| Street address: | 4315 S 2700 W |
| City, state | Taylorville, UT |
| Mailing address: | PO Box 146901 |
| City, state and zip: | Salt Lake City, UT 84114-6901 |

| | | |
|---------------------------------------------------------------------------------------------------|---------------|-----------------|
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R590-282-3. Licensing |
| 3. Purpose of the new rule or reason for the change: |
| This rule contains a reference to Rule R590-102, which was recently repealed. The change is necessary to notify pharmacy benefit managers about how the Department of Insurance (Department) sets its fees. |
| 4. Summary of the new rule or change: |
| The rule filing updates a reference to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. |

Fiscal Information

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| B) Local governments: |
| There is no anticipated cost or savings to local governments. This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated cost or savings to small businesses. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| 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 Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |
| E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an <i>agency</i>): |
| There is no anticipated cost or savings to any other persons. The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule. |

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

There is no compliance cost for any affected persons.

The Department's fees will continue to apply, but they will now be set by the Legislature in statute instead of the Department setting them in rule.

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

| Regulatory Impact Table | | | |
|------------------------------|------------|------------|------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |

H) Department head comments on fiscal impact and approval of regulatory impact analysis:

The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis.

Citation Information

6. 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-46-202 | Section 31A-46-301 |
|-------------------|--------------------|--------------------|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R590. Insurance, Administration.

R590-282. Pharmacy Benefit Managers.

R590-282-3. Licensing.

- (1)(a) To obtain or renew a pharmacy benefit manager license, an applicant shall:
 - (i) submit the Utah Insurance Department Pharmacy Benefit Manager Application and the required attachments; and

NOTICES OF PROPOSED RULES

(ii) pay the [fees in accordance with Rule R590-102, Insurance Department Fee Payment Rule] fee in an amount annually established by the Utah Legislature under Section 63J-1-504.

(b) The Utah Insurance Department Pharmacy Benefit Manager Application is available on the Department's website, <https://insurance.utah.gov>.

(2)(a) The licensing period begins on April 1 of each year and ends on March 31 of the following year.

(b) A license for which a renewal license application is not received by the commissioner before April 1 is considered expired.

(4) Any material changes to the information submitted in an application shall be reported to the commissioner no later than 30 days after the day on which the information changes.

KEY: insurance, pharmacy benefit manager

Date of Last Change: 2024[January 10, 2023]

Authorizing, and Implemented or Interpreted Law: 31A-2-201(3); 31A-46-301(3)(c)(ii); 31A-46-202(1)(a)

| NOTICE OF SUBSTANTIVE CHANGE | | |
|-------------------------------------|---------------|-------------------------|
| TYPE OF FILING: Amendment | | |
| Rule or Section Number: | R592-9 | Filing ID: 56659 |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|----------------------------------------|-----------------|
| 1. Title catchline: | Insurance, Title and Escrow Commission | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 146901 | |
| City, state and zip: | Salt Lake City, UT 84114-6901 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R592-9. Assessment for Title Insurance Recovery, Education, and Research Fund |
| 3. Purpose of the new rule or reason for the change: |
| This rule contains references to Rule R590-102, which was recently repealed. |
| The change is necessary to notify title insurance licensees about how the Department of Insurance (Department) sets the annual title insurance producer assessment. |
| The Title and Escrow Commission approved these changes in a 07/08/2024 meeting by a vote of 5 to 0. |
| 4. Summary of the new rule or change: |
| The rule filing updates three references to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. |

Fiscal Information

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|--------------------------------------------------------------------------------------------------------|
| 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 annual title insurance producer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule.

B) Local governments:

There is no anticipated cost or savings to local governments.

This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way.

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

There is no anticipated cost or savings to small businesses.

The annual title insurance producer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule.

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 annual title insurance producer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule.

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 annual title insurance producer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule.

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

There is no compliance cost for any affected persons.

The annual title insurance producer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule.

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

| Regulatory Impact Table | | | |
|--------------------------------|---------------|---------------|---------------|
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |

| | | | |
|----------------------------------------------------------------------------------------------------------------------------|------------|------------|------------|
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--|
| 6. 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-2-404 | Section 31A-41-202 | |

Public Notice Information

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 8. 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: | 09/03/2024 |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
| NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. | |

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R592. Insurance, Title and Escrow Commission.

R592-9. Assessment for Title Insurance Recovery, Education, and Research Fund.

R592-9-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Sections 31A-2-404 and 31A-41-202.

R592-9-2. Purpose and Scope.

- (1) The purpose of this rule is to:
 - (a) establish the amount for an individual title insurance producer assessment; and
 - (b) establish the amount for an agency title insurance producer assessment.
- (2) This rule applies to:
 - (a) an agency title insurance producer; and
 - (b) an individual title insurance producer.

R592-9-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301 and 31A-41-102.

R592-9-4. Establishing Assessment Amounts.

~~[(+)—]~~The Commission adopts the Annual Title Recovery, Education, and Research Fund assessment ~~[set forth in Rule R590-102, Insurance Department Fee Payment Rule]~~ in the amount annually established by the Utah Legislature under Section 63J-1-504.

R592-9-5. Individual Title Insurance Producer Assessment.

~~[(+)—]~~An individual title insurance producer assessment shall be paid in ~~[accordance with Rule R590-102, Insurance Department Fee Payment Rule]~~ an amount annually established by the Utah Legislature under Section 63J-1-504.

R592-9-6. Agency Title Insurance Producer Assessment.

~~[(+)—]~~An agency title insurance producer assessment shall be paid in ~~[accordance with Rule R590-102, Insurance Department Fee Payment Rule]~~ an amount annually established by the Utah Legislature under Section 63J-1-504.

R592-9-7. Severability.

If any provision of this rule, Rule R592-9, 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: title insurance recovery assessment

Date of Last Change: 2024[October 12, 2021]

Notice of Continuation: June 10, 2024

Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-41-202

NOTICE OF SUBSTANTIVE CHANGE

TYPE OF FILING: Amendment

Rule or Section Number:

R592-10

Filing ID: 56660

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|----------------------------------------|-----------------|
| 1. Title catchline: | Insurance, Title and Escrow Commission | |
| Building: | Taylorsville State Office Building | |
| Street address: | 4315 S 2700 W | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 146901 | |
| City, state and zip: | Salt Lake City, UT 84114-6901 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Steve Gooch | 801-957-9322 | sgooch@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R592-10. Assessment for the Title Licensee Enforcement Restricted Account |
| 3. Purpose of the new rule or reason for the change: |
| This rule contains a reference to Rule R590-102, which was recently repealed. The change is necessary to notify title insurers about how the Department of Insurance (Department) sets the annual title insurer assessment. A separate change updates the type of employee the assessment covers. The Title and Escrow Commission approved these changes in a 07/08/2024 meeting by a vote of 5 to 0. |
| 4. Summary of the new rule or change: |
| The rule filing updates a reference to the former Rule R590-102 to now point to the fee setting process contained in Section 63J-1-504. It also changes the type of employee covered by the assessment to be "one full-time equivalent employee" instead of a specific job title. This allows the Department flexibility in hiring a well-qualified candidate to fulfill requirements imposed in S.B. 31, passed during the 2024 General Session, that require a high degree of financial background and rigor. |

Fiscal Information

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| 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 annual title insurer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule. |

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|---------------|
| B) Local governments: | | | |
| There is no anticipated cost or savings to local governments. | | | |
| This rule governs the relationship between the Department and its licensees and does not apply to local governments in any way. | | | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | | | |
| There is no anticipated cost or savings to small businesses. | | | |
| The annual title insurer assessment applies only to title insurers licensed in Utah, none of which has fewer than 50 employees. | | | |
| 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 annual title insurer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule. | | | |
| 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 annual title insurer assessment only applies to title insurers and will not affect any other persons. | | | |
| F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): | | | |
| There is no compliance cost for any affected persons. | | | |
| The annual title insurer assessment will continue to apply, but will now be set by the Legislature in statute instead of the Department setting it in rule. | | | |
| G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.) | | | |
| Regulatory Impact Table | | | |
| Fiscal Cost | FY2025 | FY2026 | FY2027 |
| 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 | FY2025 | FY2026 | FY2027 |
| State Government | \$0 | \$0 | \$0 |
| Local Governments | \$0 | \$0 | \$0 |
| Small Businesses | \$0 | \$0 | \$0 |
| Non-Small Businesses | \$0 | \$0 | \$0 |
| Other Persons | \$0 | \$0 | \$0 |
| Total Fiscal Benefits | \$0 | \$0 | \$0 |
| Net Fiscal Benefits | \$0 | \$0 | \$0 |
| H) Department head comments on fiscal impact and approval of regulatory impact analysis: | | | |
| The Commissioner of the Insurance Department, Jonathan T. Pike, has reviewed and approved this regulatory impact analysis. | | | |

Citation Information

6. 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 31A-2-404(2)(d) | Subsection 31A-23a-415(2)(d) | |
|----------------------------|------------------------------|--|

Public Notice Information

8. 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: | 09/03/2024 |
|--------------------------------------------|------------|

| | |
|-----------------------------------------------------|------------|
| 9. This rule change MAY become effective on: | 09/10/2024 |
|-----------------------------------------------------|------------|

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

Agency Authorization Information

| | | | |
|-------------------------------------------|-----------------------------------------|--------------|------------|
| Agency head or designee and title: | Steve Gooch, Public Information Officer | Date: | 07/15/2024 |
|-------------------------------------------|-----------------------------------------|--------------|------------|

R592. Insurance, Title and Escrow Commission.**R592-10. Assessment for the Title Licensee Enforcement Restricted Account.****R592-10-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Subsections 31A-2-404(2)(d) and 31A-23a-415(2)(d).

R592-10-2. Purpose and Scope.

(1) The purpose of this rule is to:

- (a) determine the assessment on a title insurer and an agency title insurance producer;
 - (b) establish the costs and expenses covered by the assessment;
 - (c) require a title insurer and an agency title insurance producer to report the mailing address and physical location of each office in each county where the title insurer or agency title insurance producer maintains an office;
 - (d) calculate the number of title insurer or agency title insurance producer offices; and
 - (e) determine the premium year used in calculating the assessment of title insurers.
- (2) This rule applies to each title insurer and each agency title insurance producer.

R592-10-3. Definitions.

Terms used in this rule are defined in Sections 31A-1-301, 31A-2-402, and 31A-23a-415. Additional terms are defined as follows:

- (1)(a) "Office" means each physical location of a title insurer or an agency title insurance producer in a county.
- (b) "Office" includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The assessment under Section 31A-23a-415 covers the cost of ~~[a Market Conduct Examiner]~~ one full-time equivalent employee, as determined by the department's budget and approved by the ~~[legislature]~~ Legislature, including:

- (1) salary and state paid benefits;
- (2) travel expenses, including daily vehicle expenses;
- (3) computer hardware and software expenses;
- (4) e-commerce expenses;
- (5) wireless communications expenses; and
- (6) training expenses.

R592-10-5. Office Report.

(1) A title insurer and an agency title insurance producer shall submit a completed Office Report Form ~~[not later than]~~ within 30 days after the date a change described in this subsection occurs in a county where the title insurer or agency title insurance producer maintains an office:

- (a) the opening or closing of an office; or
 - (b) a change of address of an office.
- (2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.
- (3) The department's Office Report Form is available on the department's website, <https://insurance.utah.gov>.
- (a) ~~[An actual]~~ A copy of the form may be used or may be adapted to a particular word processing system.
 - (b) If adapted, the content, size, font, and format must be similar.
- (4) All offices reported under Section R592-10-5 are used to calculate the assessment.

NOTICES OF PROPOSED RULES

(5) An annual assessment calculation for a title insurer or an agency title insurance producer that uses an incorrect number of offices because the number of offices was incorrectly reported will not be recalculated.

R592-10-6. Premium Year for Title Insurer Assessment.

The title insurance assessment is calculated using direct premium written during the preceding calendar year and shall be taken from the insurer's annual statements for that year.

R592-10-7. Assessment Payment.

(1) An annual assessment shall be paid by the due date on the invoice.

(2) Payments shall be made in ~~[accordance with Rule R590-102, Insurance Department Fee Payment Rule]~~ an amount annually established by the Utah Legislature under Section 63J-1-504.

R592-10-8. Severability.

If any provision of this rule, Rule R592-10, 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: title insurance

Date of Last Change: 2024~~[October 12, 2024]~~

Notice of Continuation: July 7, 2023

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-415

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text (~~example~~). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-101 | Filing ID: 56635 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-101. Utah Procurement Rules, General Procurement Provisions |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides definitions, determines the applicability of Title R33, and provides general procurement provisions. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.**R33-101. Utah Procurement Rules, General Procurement Provisions.****R33-101-1. Definitions.**

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

(2) In addition:

(a) "Award" means the identification and selection of a vendor who may, upon satisfying the procurement unit's due diligence inquiry, contract with the state or procurement unit as the result of a standard procurement process or an exception allowed under Title 63G, Chapter 6a, Part 8, Exceptions to procurement requirements. Unless otherwise explicitly written in the standard procurement process or exception award documentation, an award or notice of an award does not create or constitute a binding contract until the resulting contract has been fully executed by all parties and approving authorities, or the purchase order documentation has been signed and delivered to the awarded vendor.

(b) "Bias" means:

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

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

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

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

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

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

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

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

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

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

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

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

(m) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including:

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

(ii) new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable; and;

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

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

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

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

(q) "Person" means:

(i) an individual;

(ii) an association;

(iii) an institution;

(iv) a corporation;

(v) a company;

(vi) a trust;

(vii) a limited liability company;

(viii) a partnership;

(ix) a political subdivision;

NOTICES OF 120-DAY (EMERGENCY) RULES

- (x) a government office, department, division, bureau, or other body of government; and
- (xi) any other organization or entity.
- (r) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.
- (s) "Price Data" means factual information concerning prices for procurement items.
- (t) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.
- (u) "Subjective Criteria" means the solicitation criteria that will be evaluated and scored based on the personal judgment, interpretations, and opinions of the evaluators after reviewing and analyzing the information provided in each vendor's solicitation response.
- (v) "Steering a Contract to a Favored Vendor" is defined as a person involved in any phase of the procurement process who acts with bias or prejudice in violation of the law to favor one vendor over another vendor in awarding a government contract. Steering a contract to a favored vendor includes:
 - (i) taking part in collusion or manipulation of the procurement process.
 - (ii) accepting any form of illegal gratuity, bribe, or kickback from a vendor in exchange for a contract award.
 - (iii) awarding a contract to a vendor without engaging in a standard procurement process without proper justification.
 - (iv) involvement in a bid rigging scheme.
 - (v) writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or that gives an unfair advantage to a particular vendor without proper justification.
 - (vi) intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Subsection 63G-6a-506(8).
 - (vii) leaking solicitation or other information to a particular vendor that is prejudicial to other vendors.
 - (viii) improperly avoiding engaging in a standard procurement process to extend the duration of a vendor's existing contract through means of a contract extension; or
 - (ix) participating in the procurement process while having a financial conflict of interest as set forth in Section R33-124-105.
- (w) "Technology" means any type of technology defined as "Information Technology" in Subsection 63A-16-102(8).

R33-101-2. Applicability of Rules.

Title R33 shall apply to:

- (1) a procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Subsection 63G-6a-103(77); and
- (2) a procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103 as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-101-2.5. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent.

When making a determination and a specific law or rule pertaining to the issue does not exist, the procurement official may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard in Section R33-101-1.

R33-101-3. Determinations by Procurement Official.

- (1) Unless specifically stated otherwise, determinations under Title 63G, Chapter 6a, Utah Procurement Code and Title R33 shall be made by the procurement official.
- (2) A determination by the procurement official shall be made:
 - (a) in accordance with the provisions set forth in Sections 63G-6a-106 and 63G-6a-303 and other rules and laws if applicable; or
 - (b) by applying the reasonable person standard to determine:
 - (i) if the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of Title 63G, Chapter 6a, Utah Procurement Code, or Title R33;
 - (ii) if the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of Title 63G, Chapter 6a, Utah Procurement Code, or Title R33 has occurred; or
 - (iii) if the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-101-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

- (1) Unless the procurement official issues a written exception in accordance with Title 63G, Chapter 6a, Utah Procurement Code, and applicable rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process when:
 - (a) public funds are expended or used to acquire a procurement item; or
 - (b) a procurement unit's property, name, influence, assets, resources, programs, or other things of value are used as consideration in the formation of a contract for a procurement item.
- (2) This rule does not apply to procurements made under Section 63G-6a-2503 or 63G-6a-2504.

R33-101-12. Mandatory Minimum Requirements in a Solicitation.

Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified vendors responding to a solicitation and to limit the number of vendors eligible to move forward to subsequent stages in the solicitation or evaluation process.

R33-101-13. Pre-Solicitation Conferences and Site Visits.

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

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

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

(i) teleconference;

(ii) webinar; or

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

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

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

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

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

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

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

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

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

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

(i) the attendance log;

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

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

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

R33-101-14. Addenda to Solicitation.

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

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

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

R33-101-15. Rejection of a Late Response -- Delivery and Time Requirements.

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

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

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

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

(5) If an error by the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-101-16. Voluntary Withdrawal of a Response.

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

NOTICES OF 120-DAY (EMERGENCY) RULES

R33-101-17. Errors Discovered After the Award of Contract.

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

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

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-102 | Filing ID: 56634 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: | R33-102. Rules of Procedure for Procurement Policy Board |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides rules of procedure for conducting business for the Procurement Policy Board, including providing the composition of the Board and responsibilities. |
| 5A) The agency finds that regular rulemaking would: | <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | Section 63G-6a-202(5) requires the Procurement Policy Board to adopt rules for conducting its business through rulemaking authority provided in Subsection 63G-6a-203(1). |

Fiscal Information

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|-------------------------------------------------------------------------------------------------|
| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
|-------------------------------------------------------------------------------------------------|

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--|
| 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 63G-6a-202(5) | Subsection 63G-6a-203(1) | |

Agency Authorization Information

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|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Administrative Services, Purchasing and General Services.

R33-102. Rules of Procedure for Procurement Policy Board.

R33-102-1. Purpose.

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

R33-102-2. Authority.

(1) This rule R33-102 is authorized under Subsection 63G-6a-202(5) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6a-203 et. seq.

R33-102-4. Composition of Board.

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

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

R33-102-5. Calling Meetings.

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

R33-102-6. Chair, Presiding Officer and Basic Responsibilities.

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

R33-102-7. Secretary to the Board.

- (1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Act. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings Act.
- (2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R33-102-8. Meetings.

- (1) The date, time and location of a meeting may be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R33-102-9. Compliance with Open and Public Meetings Act.

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

R33-102-10. Notice and Agenda.

- (1) Notice of each meeting shall be given in accordance with the Title 52, Chapter 4, Open and Public Meetings Act.
- (2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. A Board member may also contact the Chair or Director to request that an item be placed on the agenda.
- (3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.
- (4) A member of the Board, the Division, governmental agency and the public may submit a request to the Secretary to the Board for an item to be placed on the agenda subject to review and approval by the Presiding Officer or Director.
- (5) Each agenda shall include an agenda item that allows a Board member to request that an item be placed on a future agenda.

R33-102-11. Attendance, Quorum and Voting.

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

R33-102-12. Motions, Second to a Motion, Discussion, Continuances and Resolutions.

- (1) Any voting member may make or second a motion.
- (2) Items may be continued to any subsequent meeting by vote of the Board.
- (3) A second to a motion is required before discussion by Board members.
- (4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those who request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.
- (5) The Board may enact resolutions.

R33-102-13. Committees and Appeals Panel.

- (1) The Board Chair may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-117.

R33-102-14. Order at Meetings.

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

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

R33-102-15. Rules of Order.

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

R33-102-16. Electronic Meetings.

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

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

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

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

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

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

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

R33-102-17. Suspension of the Rules.

(1) By a vote of the Board, and to the extent allowed by law, any requirement of sections R33-102-1 through R33-102-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-202(5); 63G-6a-203(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-103 | Filing ID: 56633 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | |
|----------------------|--------------------------------------------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services |
| Building: | Taylorsville State Office Building, FL 3 |
| Street address: | 4315 S. 2700 W. |
| City, state | Taylorsville, UT |
| Mailing address: | PO Box 141061 |
| City, state and zip: | Salt Lake City, UT 84114 |

| Contact persons: | | |
|---------------------------------------------------------------------------------------------------|---------------|---------------------|
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-103. Procurement Organization |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides authority to the Chief Procurement Officer to delegate any authority under Section 63G-6a-304 as deemed appropriate. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements pursuant to Title 63G, Chapter 6a, Part 3, Chief Procurement Officer. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1) | | |
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Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-103. Procurement Organization.

R33-103-101. Delegation of Authority of the Chief Procurement Officer.

(1) Pursuant to Title 63G, Chapter 6a, Part 3, Chief Procurement Officer, the Chief Procurement Officer may delegate in writing any authority under Section 63G-6a-304 as deemed appropriate to any employees of the office of the chief procurement officer or of an executive branch procurement unit. These delegations shall remain in effect unless modified or revoked in writing.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-104 | Filing ID: 56632 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: |
| R33-104. Supplemental Procurement Procedures |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |

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| 4. Summary of the new rule or change: |
| This rule provides supplemental guidelines and requirements for a procurement unit, as well as supplemental procedures for various procurement processes. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.
R33-104. Supplemental Procurement Procedures.

R33-104-103. Specifications.

- (1) A public entity shall include in solicitation documents specifications for the procurement item sought.
- (2)(a) Each specification shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
- (b) Each specification shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
- (3) A person with a conflict of interest, or who anticipates responding to the proposal for which the specifications are written, may not participate in writing specifications. A procurement unit may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. The person retained to assist in writing specifications may not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
- (a) Subsection R33-104-103(3) does not apply to the following:
- (i) a design build construction project; and
- (ii) other procurements determined in writing by the procurement official.
- (b) Violations of this Subsection R33-104-103(3) may result in:
- (i) the bidder or offeror being declared ineligible for award of the contract;
- (ii) the solicitation being canceled;
- (iii) termination of an awarded contract; or
- (iv) any other action determined to be appropriate by the procurement official.
- (4) Requirements for brand name and equal specifications are as follows:
- (a) Brand name or equal specifications may be used when:
- (i) the phrase "or equivalent" is included within the specification; and
- (ii) as many other brand names as practicable are also included in the specification.
- (b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
- (c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
- (5) A brand name may be required if:
- (a) only one brand can meet the requirements set forth in the specifications, and the procurement unit solicits from as many providers of the brand as practicable; and
- (b) there is only one provider that can meet the requirements set forth in the specifications and the procurement unit conducts the procurement in accordance with Section 63G-6a-802 and Section R33-108-101.

R33-104-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.

- (1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:
- (a) a solicitation meeting the public notice requirements of Section 63G-6a-112 results in only one vendor submitting a solicitation response;
- (b) vendors on a multiple award contract, prequalification, or approved vendor list fail to respond to the procurement unit; or
- (c) a procurement unit makes a reasonable effort to invite each vendor known to the procurement unit to submit a solicitation response.
- (i) "Reasonable effort" as used in Subsection (c) means:
- (A) public notice under Section 63G-6a-112;
- (B) an electronic or manual search for vendors within the specific industry;
- (C) contacting industry-specific associations or manufacturers for the names of vendors within that industry; or
- (D) a determination by the procurement official that a reasonable effort has been made.
- (2) Before accepting a solicitation response from only one vendor, the procurement official, shall consider:
- (a) whether pricing is fair and reasonable;
- (b) canceling the procurement; and
- (c) a bid security requirement.
- (3) The procurement official shall maintain records documenting the circumstances and reasons why fewer than two solicitation responses were obtained.

R33-104-110. Use of Electronic, Telephone, or Written Quotes.

- (1) "Quote" means a purchasing process that solicits pricing information from several sources.
- (2) "Quotation" means a statement of price, terms of sale, and description of the procurement item offered by a vendor to a procurement unit. A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.
- (3) "Electronic" quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.
- (4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:
- (a) quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

NOTICES OF 120-DAY (EMERGENCY) RULES

- (b) the procurement unit informs the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and
- (c) the procurement unit maintains a public record that includes:
 - (i) the name of each vendor supplying a quotation; and
 - (ii) the amount of each vendor's quotation.
- (5) An executive branch procurement unit, subject to this rule:
 - (a) may obtain electronic, telephone, or written quotations for a procurement item costing less than \$10,000, unless the procurement official determines a lower amount by policy;
 - (b) shall send a request to obtain quotations for a procurement item costing more than \$10,000, unless the procurement official determines a lower amount by policy, to the Division of Purchasing who shall obtain quotations for executive branch procurement units for procurement items costing more than \$10,000; and
 - (c) may not obtain quotations for a procurement item available on a state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

KEY: government purchasing, general procurement provisions, specifications, small purchases
Date of Last Change: July 9, 2024
Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-105 | Filing ID: 56631 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| | |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-105. Other Standard Procurement Processes |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides requirements and guidelines on small purchases, including quote information, and provides standards for procurement units awarding contracts. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |

B) Specific reasons and justifications for this finding:
 Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements.

Fiscal Information

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

A) State budget:
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget.

B) Local governments:
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses.

D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons.

E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
 There are no anticipated compliance costs for affected persons as a result of this rule.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
 The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1) | | |
|----------------------------|--|--|

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-105. Other Standard Procurement Processes.

R33-105-101. Request for Information.

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

R33-105-104. Small Purchases.

(1) A small purchase shall be conducted in accordance with Section 63G-6a-506 and this administrative rule.
 (2) Unless otherwise required as part of another standard procurement process being used pursuant to the small purchase rule, small purchases conducted under this rule do not require a solicitation or public notice.

NOTICES OF 120-DAY (EMERGENCY) RULES

(3) The Individual Procurement Item threshold is \$5,000 unless the procurement official determines a lower amount. When purchasing an individual procurement item costing up to \$5,000, a procurement unit may select the best source by direct award without seeking competitive bids or quotes.

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

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

(6) When practicable, the Division and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

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

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

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

(3)(a) To ensure the fair and equitable treatment of each vendor on an approved vendor list, a procurement unit shall when using this rule in conjunction with an approved vendor list, select a minimum of three design professional firms from the approved vendor list using one or more of the following methods:

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

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

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

(iv) another method approved by the procurement official.

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

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

(d) Each procurement unit using an approved vendor list under this rule shall document that each vendor on the approved vendor list has a fair and equitable opportunity to obtain a contract.

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

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

R33-105-106. Small Purchases Threshold for Construction Projects.

(1) The small purchase threshold for an individual construction project is \$100,000 for direct construction costs, including design and allowable furniture or equipment costs;

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

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

(4) The procurement official may procure individual small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.

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

R33-105-106.5. Small Purchases Threshold for Construction Projects Using an Approved Vendor List.

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

(2) To ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall:

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

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

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

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

(iv) Another method approved by the procurement official;

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

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

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

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

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

(D) Another method approved by the procurement official;

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

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

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

R33-105-107. Quotes for Small Purchases from \$5,000 to \$50,000.

(1) For individual procurement items where the cost is greater than \$5,000 but up to a maximum of \$10,000, unless the procurement official determines a lower amount, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement items where the aggregate cost is greater than \$10,000 up to a maximum of \$50,000, unless the procurement official determines a lower amount, a procurement unit with independent procurement authority or the Division on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement items with an aggregate cost over \$50,000, a procurement unit with independent procurement authority or the Division on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) The Division may delegate limited purchasing authority for small purchases up to a maximum of \$50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

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

(6)(a) To ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall, when using this rule in conjunction with an approved vendor list, obtain a minimum of two quotes from vendors on the approved vendor list using one or more of the following methods to select vendors from whom to obtain quotes:

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

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

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

(iv) Another method approved by the procurement official;

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

(c) When using one of the methods listed in Subsection (6)(a) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the procurement unit using the approved vendor list;

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

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

R33-105-108. Small Purchases of Professional Service Providers and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000 per project by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals.

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

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

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

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

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

(iv) Another method approved by the procurement official;

NOTICES OF 120-DAY (EMERGENCY) RULES

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (4)(a), the procurement unit shall rank the firms or individuals in order and begin fee negotiations, up to \$100,000 with the highest ranked firm or individual. If an agreement cannot be reached with the highest ranked firm or individual, the procurement unit shall move to the next highest ranked firm or individual and so on until a fee agreement is reached.

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

R33-105-202. Contract Award Based on Established Terms.

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

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

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

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

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

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

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

(i) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-106-111 to resolve the tie; and

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

(b) Establish a cost threshold based on cost analysis as set forth in Sections R33-112-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

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

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

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

(iv) Another method approved by the procurement official; and

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

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

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

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

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

(d) Another method approved by the procurement official;

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

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

R33-105-203. Performance Rating System for Vendors.

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

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

(b) a statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be subject to a corrective action plan, which may include termination of the contract.

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

(a) make a written finding that:

(i) describes the performance rating system;

(ii) identifies the minimum performance rating threshold; and

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

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

R33-105-204. Approved Vendor Lists -- Using Small Purchase Process.

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

(a) Section R33-105-104. Small Purchases;

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

(c) Section R33-105-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-105-107. Quotes for Small Purchases from \$1,001, to \$50,000;

(e) Section R33-105-108. Small Purchases of Professional Service Providers and Consultants;

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

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-106 | Filing ID: 56630 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|--------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: | R33-106. Bidding |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides requirements and guidelines on the bidding process for procurement units, including the re-solicitation of bids and the publication of bid awards. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
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| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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| 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 63G-6a-107.7(1) |

Agency Authorization Information

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|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-106. Bidding.

R33-106-101. Competitive Sealed Bidding; Multiple Stage Bidding.

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

R33-106-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the procurement official determines that:
(a) a material change in the scope of work or specifications has occurred;
(b) procedures outlined in Title 63G, Chapter 6a were not followed;
(c) additional public notice is desired;
(d) there was a lack of adequate competition; or
(e) other reasons exist that are in the best interests of the procurement unit.
(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-106-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the procurement official will only accept the bidder's first bid and will not accept any other bids constituting multiple or alternate bids.

R33-106-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, and only one of the tie bids was submitted by a Utah resident bidder, the contract shall be awarded to the Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the procurement official to toss a coin in the presence of a minimum of three witnesses with the bidder first in alphabetical order being designated as "heads" for the coin toss.

(3) Other methods to resolve a tie bid may be used as deemed appropriate by the procurement official.

R33-106-112. Publication of Award.

(1) The procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price of the procurement item; and

(b) the names and the prices of each bidder to which the contract is not awarded.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-107 | Filing ID: 56629 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| | |
|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-107. Request for Proposals |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides requirements and guidelines on the request for proposals process, in accordance and conjunction with Title 63G, Chapter 6a, Part 7. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-107. Request for Proposals.

R33-107-101. Conducting the Request for Proposals Standard Procurement Process.

(1) The request for proposals standard procurement process shall be conducted in accordance with the requirements set forth in Utah Procurement Code 63G-6a, Part 7. The request for proposals process may be used by a procurement unit to select the proposal that provides the best value or is the most advantageous to the procurement unit. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-107-104. Exceptions to Terms and Conditions Published in the RFP.

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

(2) Exceptions or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the procurement official that it is not beneficial to the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions or additions by reference to a vendor's website or URL.

(4) A procurement unit may refuse to negotiate exceptions or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions or additions with offerors, beginning in order with the offeror submitting the fewest exceptions or additions to the offeror submitting the greatest number of exceptions or additions. Contracts may become effective as negotiations are completed.

(6) If, in the negotiations of exceptions or additions with a particular offeror, an agreement is not reached after a reasonable amount of time as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

R33-107-105. Protected Records.

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

(a) Trade Secrets, as defined in Section 13-24-2.

(b) Commercial information or non-individual financial information subject to Subsection 63G-2-305(2).

(c) Other Protected Records under GRAMA.

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

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

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

R33-107-106. Notification.

(1) A person who complies with Section R33-107-105 shall be notified by the procurement unit before the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA may not disclose a record claimed to be protected under Section R33-107-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-107-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror has been made public.

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

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

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

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

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

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

R33-107-501.5. Minimum Score Thresholds.

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

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

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

(i) Minimum scores for each evaluation category;

NOTICES OF 120-DAY (EMERGENCY) RULES

- (ii) The total of each minimum score in each evaluation category based on the total points available; or
- (iii) A combination of (i) and (ii).
- (b) Thresholds may not be based on:
 - (i) A natural break in scores that was not defined and set forth in the RFP; or
 - (ii) A predetermined number of offerors, unless authorized in writing by the procurement official.

R33-107-601. Best and Final Offers.

(1) Best and Final Offers (BAFO) shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5 of the Utah Procurement Code. Rule R33-107 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

- (a) BAFO process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.
- (b) The BAFO offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the request for proposal process.
- (c) A procurement unit may not use the BAFO process to allow offerors a second opportunity to respond to the entire request for proposals.

R33-107-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager or general contractor and the management fee described in Section 63G-6a-707 provided:

- (a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide, at a minimum:
 - (i) a management plan;
 - (ii) references;
 - (iii) statements of qualifications; and
 - (iv) a management fee.
- (b) the management fee contains only the following:
 - (i) preconstruction phase services;
 - (ii) monthly supervision fees for the construction phase; and
 - (iii) overhead and profit for the construction phase.
- (c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.
- (d) the contract awarded must be in the best interest of the procurement unit.

R33-107-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.

(1)(a) The procurement unit may conduct a review of proposals to determine if:

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

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

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

- (a) Explain the evaluation and scoring process;
- (b) Discuss requirements and prohibitions pertaining to:
 - (i) socialization with vendors as set forth in Section R33-124-104;
 - (ii) financial conflicts of interest as set forth in Section R33-124-105;
 - (iii) personal relationships, favoritism, or bias as set forth in Section R33-124-106;
 - (iv) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and
 - (v) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-124-108.
- (c) review the scoring sheet and evaluation criteria set forth in the RFP; and
- (d) provide a copy of Section R33-107-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(3) Before participating in any phase of the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest.

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

- (a) do not have a conflict of interest with any of the offerors;
- (b) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and
- (c) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(5) Unless an exception is authorized by the head of the procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized

its scoring of non-price technical criteria for each proposal and submitted those scores to the procurement unit as set forth in Section 63G-6a-707.

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

(b) The evaluation committee shall exercise independent judgment in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP.

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

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

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

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

(ii) resolve any factual disagreements;

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

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

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

(i) a proposal be rejected for:

(A) being non-responsive;

(B) not meeting the mandatory minimum requirements; or

(C) not meeting any applicable minimum score threshold; or

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

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

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

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

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

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

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

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

(9) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the procurement unit, unless the procurement unit authorizes that a best and final offer process is to be conducted.

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

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation;

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

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

(11) The evaluation committee may, with approval from the procurement unit, request BAFO from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP.

(12)(a) The procurement official may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the procurement official to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

NOTICES OF 120-DAY (EMERGENCY) RULES

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

R33-107-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals in the RFP Process.

(1) Scoring shall be based upon each applicable evaluation criteria as set forth in the RFP.

R33-107-705. Evaluation Committee Members Required to Exercise Independent Judgment.

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

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

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

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

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

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

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

R33-107-802. Publicizing Awards.

(1) The following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract entered into as a result of the selection and the successful proposal, except for those portions that are to be non-disclosed under Section R33-107-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-107-105;

(c) the rankings of the proposals;

(d) the names of the members of any evaluation committee;

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

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-107-105.

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

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

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

(c) non-public financial statements; and

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

R33-107-900. Public-Private Partnerships.

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

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-108 | Filing ID: 56628 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: |
| R33-108. Exceptions to Standard Procurement Process |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides information, requirements, and guidelines governing exceptions to the standard procurement process, including sole source contracts, emergency procurements, and purchases from Utah Correctional Industries. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |

D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons.

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

There are no anticipated compliance costs for affected persons as a result of this rule.

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1) | | |
|----------------------------|--|--|

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-108. Exceptions to Standard Procurement Process.

R33-108-101. Award of Contract Without Engaging in a Standard Procurement Process.

(1) Under the provisions set forth in Section 63G-6a-802, the procurement official may award a contract without engaging in a standard procurement process under the following circumstances:

(a) There is only one source for the procurement item;

(b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

R33-108-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of Title 63G, Chapter 61, Utah Procurement Code, are to ensure the fair and equitable treatment of each person who deals with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process when public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted by the procurement unit to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

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

(a) a procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

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

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

(3) Before awarding a sole source contract, the procurement official shall, when practicable, conduct a price analysis in accordance with Section R33-112-603.

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

R33-108-101b. Transitional Costs -- Cost-Benefit Analysis.

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

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

(i) performance;

- (ii) specifications;
- (iii) scope of work; and
- (iv) provider qualifications, certifications, and licensing.
- (b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.
- (c) "Significant," "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:
 - (i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and
 - (ii) provides a compelling justification for not conducting a competitive standard procurement process.
- (2) Transitional costs that must be considered in a cost-benefit analysis include:
 - (a) costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and
 - (b) a full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items to determine which procurement item is more cost-effective.
- (3) Transitional costs that may be considered in a cost-benefit analysis include:
 - (a) costs identified in Section 63G-6a-103;
 - (b) costs offered by a competing provider for a competing type of procurement item in a competitive bid or request for proposals process conducted within the last 12 months;
 - (c) costs offered by a competing provider for a competing type of procurement item in a competitive bid or RFP process conducted before the most recent 12 months, updated using an applicable price index;
 - (d) written cost estimates obtained by the procurement unit from a competing provider for a competing type of procurement item;
- and
 - (e) other transitional costs determined to be applicable by the procurement official.
- (4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:
 - (a) costs prohibited in Section 63G-6a-103;
 - (b) data provided by the existing provider for establishing:
 - (i) the market value of the existing type of procurement item; or
 - (ii) a competing provider's price for a competing type of procurement item;
 - (c) costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;
 - (d) non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;
 - (e) factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item;
- and
 - (f) other transitional costs or other information deemed inappropriate by the procurement official.
- (5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.
- (6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-108-101c. Other Circumstances That May Make Awarding a Contract Through a Standard Procurement Process Impractical.

- (1) In accordance with Subsection 63G-6a-802(1)(c), the procurement official may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:
 - (a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;
 - (b) public utility services, when only one public utility service is available in an area;
 - (c) an item where compatibility is the overriding consideration; or
 - (d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-108-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

- (1)(a) The division shall make available a form titled: "Notice of Intent to Award a Contract without Engaging in a Standard Procurement Process" that requires the procurement unit to provide, at a minimum, the following information:
 - (i) a description of the procurement item, including, when applicable, the proposed scope of work;
 - (ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;
 - (iii) the duration of the proposed contract;
 - (iv) the signature of an authorized official of the procurement unit; and
 - (v) research completed by the procurement unit documenting that:

NOTICES OF 120-DAY (EMERGENCY) RULES

(A) there are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-108-101a;

(B) transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-108-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-108-101c.

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

(c) The conducting procurement unit shall submit in writing a completed notice of intent to award a contract without engaging in a standard procurement process form to the procurement official for approval to award a contract without engaging in a standard procurement process.

R33-108-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a notice of intent to award a contract without engaging in a standard procurement process shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds \$50,000.

(2)(a) When making a determination under Sections R33-108-101a, R33-108-101b, or R33-108-101c, the procurement official may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

(i) procurements of \$50,000 or less;

(ii) public utility services;

(iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;

(iv) conference fees, including materials;

(v) speakers or trainers with unique or proprietary presentations or training materials;

(vi) hosting of in-state, out-of-state, and international dignitaries;

(vii) international, national, or local promotion of the state or a public entity;

(viii) an award when the Legislature identifies the intended recipient of a contract;

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

(x) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or

(xi) other circumstances as determined in writing by the procurement official.

(b) The procurement official may require publication of a notice of intent to award a contract without engaging in a standard procurement process for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-108-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

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

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation that:

(i) there are other competing sources for the procurement item;

(ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or

(iii) a standard procurement process is in the best interest of the conducting procurement unit.

(2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the procurement official shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

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

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

(3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, Protests, is not waived by a vendor's actions to contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-108-101f.

R33-108-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of Title 63G-6a is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to

achieve this is by conducting a standard procurement process when public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

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

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

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

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

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

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

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

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

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

R33-108-201. Trial Use or Testing of a Procurement Item, Including New Technology.

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

R33-108-401. Emergency Procurement.

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

(2) An emergency procurement is a procurement procedure where the procurement unit may obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

(ii) failure or imminent failure of a public building, equipment, road, bridge or utility;

(iii) terrorist activity;

(iv) epidemics;

(v) civil unrest;

(vi) events that impair the ability of a public entity to function or perform required services;

(vii) situations that may cause harm or injury to life or property; or

(viii) other conditions as determined in writing by the procurement official, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-108-501. Declaration of "Official State of Emergency."

(1) Upon a declaration of an "Official State of Emergency" by the authorized state official, the procurement official shall implement the division's Continuity of Operations Plan. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-109 | Filing ID: 56627 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphyayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-109. Cancellations, Rejections, and Debarment |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides requirements and guidelines governing cancellations of solicitations as well as rejections for vendor responses. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. | |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |

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| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-109. Cancellations, Rejections, and Debarment.

R33-109-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled before the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the procurement official. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

- (a) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or
- (b) withdraw the requisition for the procurement item.

R33-109-102. Re-solicitation.

(1) In the event there is no response to an initial solicitation, the procurement official may:

- (a) contact the known supplier community to determine why there were no responses to the solicitation;
- (b) research the potential vendor community; and
- (c) based upon the information in Subsections (a) and (b) require the procurement unit to modify the solicitation documents.

(2) If the procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the procurement official shall:

- (a) require the procurement unit to further modify the procurement documents; or
- (b) cancel the requisition for the procurement item.

(3) An executive branch procurement unit may not reissue a canceled solicitation unless the procurement official determines the issues identified in the written justification for canceling the solicitation set forth in Section R33-109-103 have been resolved.

R33-109-103. Cancellation Before Award but After Opening.

(1) A solicitation under a standard procurement process may be cancelled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

- (a) the scope of work or other requirements contained in the solicitation documents were not met by any person and all solicitation responses have been determined to be either nonresponsive or not responsible;
- (b) an infraction of code, rule, or policy has occurred;
- (c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;
- (d) the specifications in the solicitation have been or must be revised;
- (e) the procurement item being solicited are no longer required;

(f) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service, and maintenance;

(g) solicitation responses received show that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

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

(i) other reasons specified in Title 63G, Chapter 6a, Utah Procurement Code or administrative rule; or

(j) other circumstances deemed to constitute reasonable cause by the procurement official.

(2) Notwithstanding Subsection R33-109-103(1) a procurement unit may not cancel and reissue a solicitation:

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

(b) Except as permitted under the protest and appeal provisions set forth in Title 63G, Chapter 6a Part 16, Protests and Title 63G, Chapter 6a Part 17, Procurement Appeals Board, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

R33-109-104. Alternative to Cancellation.

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

R33-109-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first 12 months of the contract term and the procurement item is still needed by the procurement unit, the procurement official shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:

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

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

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

(A) the request for proposals procurement process set forth in 63G-6a, Part 7, Requests for Proposals and Title R33;

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

(C) the design professional procurement process set forth in 63G-6a, Part 15, Design Professional Services and Title R33; or

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

(2) The procurement official shall consider the following when making a determination under Subsection (1):

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

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

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

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

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

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

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

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

(3) This rule may not be used:

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

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

(c) If a contract is cancelled after the first 12 months of the contract period.

R33-109-106. Cancellation of Award Before Contract Execution.

(1) After an award is made, but before the execution of a contract or purchase order, the procurement official may cancel an award when it is in the best interest of the procurement unit or other allowable reasons under Utah Procurement Code in accordance with Sections 63G-6a-102, 63G-6a-902, and 63G-6a-903.

(2) To promote the purposes of the Utah Procurement Code and to ensure fairness and transparency, cancelling an award under this section may occur when new information or changed circumstances become known to the procurement unit that made the award.

R33-109-201. Rejection of a Solicitation Response.

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

R33-109-202. Conformity to Solicitation Requirements.

- (1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.
- (b) Any solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate solicitation responses and the procurement item offered as alternates meet the requirements specified in the solicitation.
- (c) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

R33-109-204. Rejection for Nonresponsibility or Nonresponsiveness.

- (1) The procurement official:
 - (a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsible;
 - (b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsible; and
 - (c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.
- (2) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.
- (3) All written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

R33-109-301. Rejection for Suspension or Debarment.

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

KEY: government purchasing, cancellations, rejections, debarment

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|-------------------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-110 | Filing ID: 56626 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphyayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|-----------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-110. Preferences |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |

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| 4. Summary of the new rule or change: |
| This rule provides oversight on providing preferences, in specific circumstances, to in-state contractors, in addition to requirements contained in Section 63G-6a-1002. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.
R33-110. Preferences.

R33-110-101. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-110 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions at Section 63G-6a-103 shall apply to this rule unless otherwise specified in this rule. This rule provides additional requirements and procedures and must be used in conjunction with Sections 63G-6a-608 and 63G-6a-1003.

(2) In the event there is more than one equally low preferred bidder, the procurement official shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Section R33-106-110.

R33-110-102. Preference for Resident Contractors.

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

(2) In the event there is more than one equally low preferred resident contractor, the procurement official shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and Section R33-106-110.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-608; 63G-6a-1003

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-111 | Filing ID: 56625 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphyayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-111. Form of Bonds |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides oversight on bonds used in the procurement process, including bid bonds for bid security, performance bonds for contracts, and surety and payment bonds. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |

B) Specific reasons and justifications for this finding:
 Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements.

Fiscal Information

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

A) State budget:
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget.

B) Local governments:
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments.

C) Small businesses ("small business" means a business employing 1-49 persons):
 There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses.

D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons.

E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):
 There are no anticipated compliance costs for affected persons as a result of this rule.

F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):
 The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1) | | |
|----------------------------|--|--|

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-111. Form of Bonds.

R33-111-101. Definitions.

(1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-111-201. Bid Security Requirements for Projects.

(1) Invitations for bids and requests for proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.

(2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the procurement official determines it is in the best interest of the procurement unit.

(3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Sections R33-106-108, R33-106-109 or R33-111-202.

(4) The procurement official may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Subsection R33-111-201(1).

R33-111-202. Acceptable Bid Security Not Furnished.

(1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the procurement officer to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(a) the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection R33-111-303(1)(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security;
or

(b) only one bid is received, and there is not sufficient time to re-solicit; or

(c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

(2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Section R33-111-2, then the bidder's bid security may be forfeited.

R33-111-301. Performance Bonds for Construction Contracts.

A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

R33-111-302. Surety or Performance Bonds for Non-construction Procurement Items.

(1) A surety or performance bond may be required on any non-construction contract if the procurement official deems it necessary to guarantee the satisfactory completion of a contract, provided:

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

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

(ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

(iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

(iv) the Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and

(b) The solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or performance bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

R33-111-303. Payment Bonds.

(1) A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer. For executive branch procurement units:

(a) bid bonds, payment bonds and performance bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Subsection R33-111-303(1)(b) and must be on the required bond forms; and

(b) a surety firm must be authorized to do business in Utah and be listed in the U.S. Department of the Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies," for an amount not less than the amount of the bond to be issued.

(2) The procurement official may waive any bonding requirement if it is determined in writing by the procurement official that:

(a) bonds cannot reasonably be obtained for the work involved;

(b) the cost of the bond exceeds the risk to the procurement unit; or

(c) bonds are not necessary to protect the interests of the procurement unit.

(3) If the procurement unit fails to obtain a payment bond it shall be subject to Section 14-1-19.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-112 | Filing ID: 56624 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-112. Terms and Conditions, Contracts, Change Orders and Costs |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule establishes language for terms and conditions and provides information on public entities establishing terms and conditions, provides insights on multiple award contracts, and provides oversight on change orders and costs. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. | |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |

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| <p>C) Small businesses ("small business" means a business employing 1-49 persons):</p> <p>There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses.</p> |
| <p>D) Persons other than 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):</p> <p>There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons.</p> |
| <p>E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):</p> <p>There are no anticipated compliance costs for affected persons as a result of this rule.</p> |
| <p>F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):</p> <p>The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.</p> |

Citation Information

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--|--|
| <p>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:</p> | | | |
| <table border="1"> <tr> <td>Subsection 63G-6a-107.7(1)</td> <td></td> <td></td> </tr> </table> | Subsection 63G-6a-107.7(1) | | |
| Subsection 63G-6a-107.7(1) | | | |

Agency Authorization Information

| | | | |
|--------------------------------------------------|-------------------------------------------|---------------------|-------------------|
| <p>Agency head or designee and title:</p> | <p>Windy Aphayrath, Division Director</p> | <p>Date:</p> | <p>07/09/2024</p> |
|--------------------------------------------------|-------------------------------------------|---------------------|-------------------|

R33. Government Operations, Purchasing and General Services.

R33-112. Terms and Conditions, Contracts, Change Orders and Costs.

R33-112-101. Required Contract Clauses.

Public entities shall comply with Section 63G-6a-1202 concerning clauses for contracts. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-112-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the standard terms and conditions adopted by the division for each particular procurement unless exceptions or additions are granted by the procurement official after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

- (a) a category of procurement items;
- (b) a specific procurement item;
- (c) general use in procurements;
- (d) the special needs of a procurement unit; or
- (e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

- (a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:
 - (i) the terms and conditions are unduly restrictive;
 - (ii) will unreasonably increase the cost of the procurement item; or
 - (iii) places the state at increased risk.
- (b) the procurement official may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-112-301. Awarding a Multiple Award Contract.

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on a multiple award contract pursuant to the procedures established in Section R33-112-301b.

NOTICES OF 120-DAY (EMERGENCY) RULES

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

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

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

(i) delivery;

(ii) service;

(iii) product availability; or

(iv) compatibility with existing equipment or infrastructure.

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

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

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

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

(5) A multiple award contract in an invitation for bids shall be conducted and awarded in accordance with Title 63G, Chapter 6a, Part 6, Other Standard Procurement Processes to the lowest responsive and responsible bidder who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

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

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

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

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

(b) lowest bid by category provided:

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

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

(c) lowest bid by line item provided:

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

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

(d) other specific objective methodology described in the solicitation, such as Section R33-112-302 for primary and secondary contracts, approved by the procurement official.

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

R33-112-301a. Multiple Award Contracts for Unidentified Procurement Items.

(1) An unidentified procurement item is defined as a procurement item when the solicitation is issued:

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

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

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

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-104-102.

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

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

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

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

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

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

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

R33-112-301b. Ordering From a Multiple Award Contract.

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

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in Subsection R33-112-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in Subsection R33-112-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in Subsection R33-112-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in Subsection R33-112-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in Subsection R33-112-301(5)(c);

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

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

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

R33-112-302. Primary and Secondary Contracts.

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

(2) When the procurement official determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability.

R33-112-303. Intent to Use.

If a multiple award is anticipated before issuing a solicitation, the method of award shall be stated in the solicitation.

R33-112-401. Contracts and Change Orders -- Contract Types.

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

R33-112-402. Prepayments.

(1) The procurement official may determine that it is necessary or beneficial for the procurement unit to pay for the procurement item before the procurement unit receives the procurement item.

(2) In accordance with Subsection 63G-6a-1208(2)(b), a procurement official's written determination is not necessary for the following circumstances:

(a) The procurement item is:

(i) software subscription services;

(ii) online information, media, or database subscription services;

(iii) online Marketplace purchases;

(iv) trade show booth space rentals; or

(v) deposits for venue rental for group gatherings; and

(b) The prepayment is:

(i) below the individual procurement threshold, unless the procurement official determines a lower amount; or

(ii) for a procurement item available through an existing contract entered into in compliance with Title 63G, Chapter 6a, Utah Procurement Code.

R33-112-403. Leases of Personal Property.

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

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

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

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

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- (ii) all conditions for renewal and costs of termination are set forth in the lease; and
- (iii) the lease is not used to avoid a competitive procurement.
- (c) Lease contracts shall be conducted with as much competition as practicable.
- (d) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:
 - (i) investigate alternative means of procuring comparable procurement items; and
 - (ii) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-112-404. Multi-Year Contracts.

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

R33-112-405. Installment Payments.

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

R33-112-501. Change Orders.

- (1) In addition to the requirements in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under Subsections 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the procurement official before the commencement of any work to be performed under a contract change order unless:
 - (a) the procurement unit has authority Subsection 63G-6a-304(1) and Section R33-103-101 to authorize contract change orders up to the amount delegated; or
 - (b) The change order is:
 - (i) requisite to avert an emergency; or
 - (ii) required as an emergency.
- (2) For purposes of Subsection (1)(b) "emergency" is described in Subsection R33-108-401(3) and is subject to Section 63G-6a-803.
- (3) Any contract change order authorized by a procurement unit under Subsection R33-112-501(1)(c) shall, as soon as practicable, be submitted to the procurement official and included in the division's contract file.

R33-112-502. Contract Modifications for New Technology and Technological Upgrades.

- (1) A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:
 - (a) The solicitation contains a statement indicating that:
 - (i) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:
 - (A) systems;
 - (B) apparatuses;
 - (C) modules;
 - (D) components; and
 - (E) other supplementary items;
 - (ii) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and
 - (iii) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.
 - (2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.
 - (3) Before executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Director of the Division of Technology Services.
 - (4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

R33-112-601. Requirements for Cost or Pricing Data.

- (1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
 - (2) Cost or pricing data exceptions:
 - (a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
 - (b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the procurement official may request additional cost or pricing data; or
 - (c) the procurement official may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R33-112-602. Defective Cost or Pricing Data.

- (1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.
- (2) If a settlement cannot be negotiated, either party may seek relief through the courts.

R33-112-603. Price Analysis.

- (1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:
- (a) there are a limited number of vendors, bidders, or offerors;
 - (b) awarding a sole source or other contract without engaging in a standard procurement process; or
 - (c) identifying prices that are significantly lower or higher than other vendors, bidders, or offerors.
- (2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms, and conditions, and so on.
- (3) Examples of a price analysis include:
- (a) prices submitted by other prospective bidders or offerors;
 - (b) price quotations;
 - (c) previous contract prices;
 - (d) comparisons to the existing contracts of other public entities; and
 - (e) prices published in catalogs or price lists.

R33-112-604. Cost Analysis.

- (1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
- (a) specific elements of costs;
 - (b) total cost of ownership and life-cycle cost;
 - (c) supplemental cost schedules;
 - (d) market basket cost of similar items;
 - (e) the necessity for certain costs;
 - (f) the reasonableness of allowances for contingencies;
 - (g) the basis used for allocation of indirect costs; and
 - (h) the reasonableness of the total cost or price.

R33-112-605. Right to Audit.

- (1) As used in this rule:
- (a) "Authorized representative" includes:
 - (i) a purchasing procurement unit;
 - (ii) an internal auditor or other employee of the procurement unit;
 - (iii) an audit firm, consultant, or examiner under contract with the procurement unit;
 - (iv) the State Auditor;
 - (v) the Legislative Auditor General; or
 - (vi) federal auditors.
 - (b) "Books and records" mean written or electronic information pertaining to the applicable contract between the procurement unit and the contractor including:
 - (i) accounting information, financial statements, files, invoices, reports, and statements;
 - (ii) pricing data;
 - (iii) usage reports;
 - (iv) transaction histories;
 - (v) delivery logs;
 - (vi) contracts, contract amendments, and other legal documents; and
 - (vii) performance evaluations.
- (2) Any contract between a contractor and a procurement unit that involves the expenditure of public funds may include or incorporate by reference a right to audit clause that may contain the following provisions:
- (a) a statement indicating that the procurement unit or its authorized representative has the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract;
 - (b) notification procedures for initiating an audit and reporting audit findings;
 - (c) dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;
 - (d) a statement requiring the contractor and its subcontractors to:
 - (i) maintain books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until audits initiated under this section within the six-year period have been completed, whichever is later;
 - (ii) establish and maintain an accounting and record-keeping system that enables the procurement unit or its authorized representative to readily have access to the contractor's books and records in both written and electronic format;
 - (iii) upon request, provide to the procurement unit or its authorized representative an electronic copy of the contractor's books and records within 30 days of the request;

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

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

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

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

(e) a statement indicating that:

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

(ii) an audit or other request shall:

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

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

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

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

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

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

(iii) cancel the contract;

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

(i) failure to respond to an audit;

(ii) failure to correct errors or repay overcharges;

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

(iv) other reasons as determined by the procurement official.

R33-112-607. Applicable Credits.

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

R33-112-608. Use of Federal Cost Principles.

(1) In dealing with contractors operating according to federal cost principles, the procurement official may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in contract negotiations.

(2) In contracts not awarded under a program which is funded by federal assistance funds, the procurement official may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement official and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.

(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

R33-112-609. Authority to Deviate from Cost Principles.

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

R33-112-701. Inspections.

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

(a) whether the definition of "responsible," has been met or is capable of being met; and

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

R33-112-702. Access to Contractor's Manufacturing or Production Facilities.

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

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

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-112-605; and

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

R33-112-703. Inspection of Supplies and Services.

Contracts may provide that the procurement unit or procurement official may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R33-112-704. Conduct of Inspections.

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

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

KEY: terms and conditions, contracts, change orders, costs

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-1202; 63G-6a-1204; 63G-6a-1205; 63G-6a-1207; 63G-6a-1209

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-113 | Filing ID: 56623 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

| | |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-113. General Construction Provisions |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule establishes oversight on construction contract management as well as drug and alcohol testing for state contracts. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-113. General Construction Provisions.

R33-113-101. Purpose.

(1) The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-113-201. Construction Management Rule.

(1) As required by Section 63G-6a-1302, this rule contains provisions applicable to:

- (a) selecting the appropriate method of management for construction contracts;
- (b) documenting the selection of a particular method of construction contract management; and
- (c) the selection of a construction manager/general contractor.

R33-113-202. Application.

(1) The provisions of Rules R33-113-201 through R33-113-205 shall apply to all procurements of construction. Rule R33-105-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security and bonding requirements are contained in Part 11 of the Utah Procurement Code and Rule R33-111.

R33-113-203. Methods of Construction Contract Management.

- (1) This section contains provisions applicable to the selection of the appropriate type of construction contract management.
- (2) It is intended that the procurement official have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.
- (3) Before choosing the construction contracting method to use, a careful assessment must be made by the procurement official of requirements the project shall consider, at a minimum, the following factors:
- (a) when the project must be ready to be occupied;
 - (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
 - (c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;
 - (d) the location of the project;
 - (e) the size, scope, complexity, and economics of the project;
 - (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing or nonlapsing status and legislative intent language;
 - (g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;
 - (h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;
 - (i) the results achieved on similar projects in the past and the methods used; and
 - (j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.
- (4) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.
- (a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.
 - (b) Multiple Prime Contractors. Under the multiple prime contractor method, the procurement unit contracts directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the procurement unit's drawings and specifications. The procurement unit may have primary responsibility for successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.
 - (c) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.
 - (d) Construction Manager Not at Risk. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.
 - (e) Construction Manager or General Contractor (Construction Manager at Risk). The procurement unit may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R33-113-204. Selection of Construction Method Documentation.

- (1) The procurement official shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R33-113-205. Special Provisions Regarding Construction Manager/General Contractor.

- (1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements.
- (2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager or general contractor's cost proposal, the CM/GC shall procure the subcontractor by using a standard procurement process as defined in Section 63G-6a-103 of the Procurement Code or an exception to the requirement to use a standard procurement process, described in Title 63G, Chapter 6a, Part 8, Exceptions to Procurement Requirements.
- (3)(a) As used in this rule, "management fee" includes only the following fees of the CM/GC:
- (i) preconstruction phase services;
 - (ii) monthly supervision fees for the construction phase; and

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- (iii) overhead and profit for the construction phase.
- (b) When selecting a CM/GC for a construction project, the evaluation committee:
 - (i) may score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;
 - (ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;
 - (iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and
 - (iv) except as provided in Section 63G-6a-707, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on other criteria to the procurement unit.

R33-113-301. Drug and Alcohol Testing Required for State Contracts: Definitions.

- (1) The following definitions shall apply to any term used in Rules R33-113-301 through R33-113-304:
 - (a) "Covered individual" means an individual who:
 - (i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and
 - (ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.
 - (b) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
 - (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or
 - (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.
 - (c) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:
 - (i) in accordance with a drug and alcohol testing policy; and
 - (ii) on the basis of a random selection process.
 - (d) For purposes of Subsection R33-113-302(5), "state" includes any of the following of the state:
 - (i) a department;
 - (ii) a division;
 - (iii) an agency;
 - (iv) a board including the Procurement Policy Board;
 - (v) a commission;
 - (vi) a council;
 - (vii) a committee; and
 - (viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.
 - (e) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-113-302 through R33-113-304.
- (2) In addition:
 - (a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.
 - (b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6a-1303.
 - (c) "State" as used throughout this Rule R33-113-302 through R33-113-304 means the State of Utah except that it also includes those entities described in Subsection R33-113-302(1)(e) as the term "state" is used in Subsection R33-113-302(5).

R33-113-302. Drug and Alcohol Testing.

- (1) Except as provided in Section R33-113-303, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:
 - (a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:
 - (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;
 - (ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-113-302(1)(a)(i); and
 - (iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-113-302(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.
 - (b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges these Rules R33-113-302 through R33-113-304 and agrees to comply with all aspects of these Rules R33-113-302 through R33-113-304, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:
 - (i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-113-302(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-113-302(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R33-113-302(2), if a contractor or subcontractor fails to comply with Subsection R33-113-302(1), the contractor or subcontractor may be suspended or debarred in accordance with these Rules R33-113-302 through R33-113-304.

(b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to these Rules R33-113-302 through R33-113-304.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-113-302(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R33-113-302(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-113-302(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-113-302(1), shall comply with all provisions of these Rules R33-113-302 through R33-113-304 as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of these Rules R33-113-302 through R33-113-304 and Section 63G-6a-1303.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Sections 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-113-302(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under the Utah Procurement Code; and

(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.

(b) The state is not liable in any action related to Section 63G-6a-1303 and these Rules R33-113-302 through R33-113-304, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R33-113-303. Non-applicability.

(1) These Rules R33-113-302 through R33-113-304 and Section 63G-6a-1303 does not apply if the State Public Procurement Unit determines that the application of these Rules R33-113-302 through R33-113-304 or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R33-113-304. Not Limit Other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and these Rules R33-113-302 through R33-113-304, this Rule R33-113 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-1303

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-114 | Filing ID: 56622 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 80-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: | R33-114. Procurement of Design-Build Transportation Project Contracts |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides information on administrative rules governing the procurement of design-build transportation projects promulgated by the Utah Department of Transportation. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. | |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |

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| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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| 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 63G-6a-107.7(1) |

Agency Authorization Information

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|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-114. Procurement of Design-Build Transportation Project Contracts.

R33-114-1. Procurement of Design-Build Transportation Project Contracts.

(1) In accordance with Section 63G-6a-1402(3)(a)(ii), the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects. Rule R916-3 provides guidance under which the Utah Department of Transportation may use the design-build approach for transportation projects.

KEY: design-build transportation projects, contracts, procurement

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-115 | Filing ID: 56621 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-----------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |

| | | |
|---------------------------------------------------------------------------------------------------|--------------|-------------------|
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: |
| R33-115. Procurement of Design Professional Services |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides requirements and guidelines on the procurement of design professional services and the awarding process. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) | | |
|----------------------------|--|--|

Agency Authorization Information

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|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.**R33-115. Procurement of Design Professional Services.****R33-115-101. Application.**

(1) Title 63G, Chapter 6a, Part 15, Design Professional Services applies to each procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-104-109. definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the procurement code.

R33-115-201. Architect-Engineer Evaluation Committee.

(1) The procurement official shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707, at least one of which is well qualified in the profession of architecture or engineering.

R33-115-301. Request for Statement of Qualifications.

- (1) A procurement unit shall issue a public notice for a request for a statement of qualifications to rank architects or engineers.
- (2) A procurement unit that issues a request for statement of qualifications shall:
- (a) state in the request for statement of qualifications:
 - (i) the type of procurement item to which the request for statement of qualifications relates;
 - (ii) the scope of work to be performed;
 - (iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;
 - (iv) criteria used to evaluate statements of qualifications including:
 - (A) basic information about the person or firm;
 - (B) experience and work history;
 - (C) management and staff;
 - (D) qualifications and certification;
 - (E) licenses and certifications;
 - (F) applicable performance ratings;
 - (G) financial statements; and
 - (H) other pertinent information.
 - (b) Key personnel identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.
- (3) Architects and engineers shall not include cost in a response to a request for statement of qualifications

R33-115-302. Evaluation of Statement of Qualifications.

(1) The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers.

R33-115-303. Negotiation and Award of Contract.

(1) The procurement official shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

R33-115-304. Failure to Negotiate Contract With the Highest Ranked Firm.

(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the procurement official shall advise the firm in writing of the termination of negotiations.

(2) Upon failure to negotiate a contract with the highest ranked firm, the procurement official shall proceed in accordance with Section 63G-6a-1505.

R33-115-305. Notice of Award.

(1) The procurement official shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(2) Notice of the award shall be made available to the public.

NOTICES OF 120-DAY (EMERGENCY) RULES

R33-115-401. Written Justification Statements.

(1) Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

KEY: architects, engineers, government purchasing

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-15

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-116 | Filing ID: 56620 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: | R33-116. Protests |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides additional requirements and procedures for protests in conjunction with the Procurement Code as well as Title 63G, Chapter 6a, Part 16, Protests. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
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| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-116. Protests.

R33-116-101. Conduct.

(1) Protests shall be conducted in accordance with the requirements set forth in Utah Code 63G-6a, Part 16. All definitions in the Utah Procurement Code shall apply to this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-116-101a. Grounds for a Protest.

- (1) This rule applies to protests filed under Section 63G-6a-1602.
- (2) In accordance with the requirements in Section 63G-6a-1602, a person filing a protest must include a concise statement of the grounds upon which the protest is made.
 - (a) A concise statement of the grounds for a protest must include the relevant facts and evidence leading the protestor to contend that a grievance has occurred, including:
 - (i) an alleged violation of Title 63G, Chapter 6a, Utah Procurement Code;
 - (ii) an alleged violation of Title R33 or other applicable rule;
 - (iii) a provision of the solicitation allegedly not being followed;
 - (iv) a provision of the solicitation alleged to be:
 - (A) ambiguous;
 - (B) confusing;
 - (C) contradictory;

NOTICES OF 120-DAY (EMERGENCY) RULES

- _____ (D) unduly restrictive;
- _____ (E) erroneous;
- _____ (F) anticompetitive; or
- _____ (G) unlawful;
- _____ (v) an alleged error made by the evaluation committee or procurement unit;
- _____ (vi) an allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or
- _____ (vii) a scoring criterion allegedly not being correctly applied or calculated.
- _____ (b) "Relevant Facts and Evidence" as referred to in Section 63G-6a-1602, must be specific enough to enable the protest officer to determine, if such facts and evidence are proven to be true, whether a legitimate basis for the protest exists.
- _____ (c) None of the following qualify as a concise statement of the grounds for a protest:
 - _____ (i) claims made after the applicable deadlines set forth in law, rule, or the solicitation document, that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;
 - _____ (ii) vague or unsubstantiated claims or allegations that do not reference specific facts and evidence including, but not limited to, vague or unsubstantiated claims or allegations such as:
 - _____ (A) the protestor should have received a higher score;
 - _____ (B) another vendor should have received a lower score;
 - _____ (C) a service or product provided by a protestor is better than another vendor's service or product;
 - _____ (D) another vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation;
 - _____ (E) the procurement unit's eProcurement system or other electronic procurement system:
 - _____ (I) was slow, not operating properly, or was difficult to use or understand;
 - _____ (II) could not be accessed or did not allow documents to be downloaded; or
 - _____ (III) did not allow a response to be submitted after the deadline for receiving responses expired;
 - _____ (F) the protestor did not receive individual notice of a solicitation or was otherwise unaware of a solicitation when a procurement unit has complied with the public notice requirement in Section 63G-6a-112; or
 - _____ (G) officials representing the procurement unit or the evaluation committee or an individual committee member acted in a biased or discriminatory manner against the protestor;
 - _____ (iii) filing a protest requesting:
 - _____ (A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708;
 - _____ (B) protected information beyond what is provided under the disclosure provisions of Title 63G, Chapter 6a; or
 - _____ (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this rule by the protest officer.
- _____ (3) Each of the claims and allegations listed in Subsection (2)(c)(ii) could serve as legitimate grounds for filing a protest if properly supported by relevant facts and evidence.
- _____ (4) In accordance with Section 63G-6a-1603, a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with Title 63G, Chapter 6a, Part 16, Protests, or this rule.

R33-116-201. Verification of Legal Authority.

- _____ (1) A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a protest.

R33-116-301. Intervention in a Protest.

- _____ (1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.
- _____ (2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.
- _____ (3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.
- _____ (4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:
 - _____ (a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;
 - _____ (b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:
 - _____ (i) consumer;
 - _____ (ii) customer;
 - _____ (iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-116-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of Title 63G, Chapter 6a, or rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, procurement official may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-16

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-117 | Filing ID: 56619 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule or section catchline: | R33-117. Procurement Appeals Panel |
| 3. Purpose of the new rule or reason for the change: | Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: | This rule provides additional requirements and procedures for procurement appeals conducted through the procurement appeals panel in conjunction with Title 63G, Chapter 6a, Part 17, Procurement Appeals Board, and Title 63G, Chapter 6a, Utah Procurement Code. |
| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-117. Procurement Appeals Panel.

R33-117-101. Statutory Requirements.

(1) Appeals of a protest decision shall be conducted in accordance with the requirements set forth in 63G-6a, Part 17, Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule.

R33-117-101.1. Definitions.

(1) "Administrative review" as used in this rule means, in accordance with the provisions set forth in Utah Code 63G-6a-1702, an examination conducted by a procurement appeals panel of:

(a) The notice of appeal;

(b) The protest appeal record pertaining to a protest officer's written decision;

(c) If an optional informal hearing was held, responses to questions asked by a procurement appeals panel to assist the panel in understanding the basis of the appeal and information contained in the protest appeal record, but otherwise without taking any additional evidence or any additional ground for the appeal.

(2)(a) "Appeal" as used in this rule means: a protestor filing a notice of appeal requesting an administrative review of the protest appeal record pertaining to a protest officer's decision in accordance with all provisions set forth in Utah Code 63G-6a, Part 17; and

(b) Does not include the appeal of a debarment or suspension under 63G-6a-904.

(3) "Protestor" as used in this rule means: a person who files a protest under Utah Code 63G-6a, Part 16, including any intervening party authorized under Utah Code 63G-6a-1603 and Rule R33-116-301.

(4) "Uphold the Decision of the Protest Officer" as used in this rule means: to support and maintain the decision of the protest officer, including giving deference to the protest officer's decision on questions of fact because the protest officer stands in a superior position, in terms of understanding the procurement, the needs of the agency, applicable laws, rules, ordinances, and policies, from which to evaluate and weigh the evidence and assess the credibility and accuracy of the facts, evidence, laws, and, if applicable, witnesses.

R33-117-101.5. Procedures for Filing a Notice of Appeal.

(1) When filing a notice of appeal, a protestor shall:

(a) File the notice of appeal in accordance with the requirements set forth in Utah Code 63G-6a, Part 17 and the following procedures:

(b) File the notice of appeal with the chair of the procurement policy board by the deadline for filing and include:

(i) The address of record and email address of record of the party filing the notice of appeal;

(ii) A statement indicating that:

(A) The protestor is filing a notice of appeal; and

(B) Requesting an administrative review of the protest officer's decision;

(iii) A copy of the written protest decision;

(iv) If applicable, the required security deposit or bond; and

(v) Any other requirement set forth in Utah Code 63G-6a, Part 17;

(c) Not base a notice of appeal on a ground not specified in the person's protest under Section 63G-6a-1602 or new or additional evidence not considered by the protest officer.

(2) Any part of a notice of appeal that fails to comply with each of the requirements set forth in Utah Code 63G-6a, Part 17, this rule, a ground not specified in the person's protest under Section 63G-6a-1602, or new or additional evidence not considered by the protest officer shall be dismissed by the chair of the procurement policy board or the procurement appeals panel appointed to conduct the administrative review.

(3) The protest appeal record is restricted to the following:

(a) A copy of the protest officer's written decision;

(b) All documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;

(c) The recording of the hearing, if the protest officer held a hearing;

(d) A copy of the protestor's written protest; and

(e) All documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.

R33-117-101.8. Procedures for Conducting an Administrative Review.

(1) When conducting an administrative review of a protest officer's decision, a procurement appeals panel:

(a) shall:

(i) Comply with all requirements set forth in Utah Code 63G-6a, Part 17 and this rule;

(ii) Conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later agreed to date, unless the appeal is dismissed by the chair of the procurement policy board;

(iii) Consider and decide the appeal based solely on:

(A) Without conducting a hearing:

(I) the notice of appeal; and

(II) the protest appeal record; or

(B) If an informal hearing is held:

(I) responses received during the informal hearing,

(II) the notice of appeal; and

(III) the protest appeal record; and

(iv) Not otherwise take any additional evidence or consider any additional ground for the appeal;

(v) Not consider any claim in the notice of appeal dismissed by the chair of the procurement policy board in consultation with the attorney general's office for noncompliance with Sections 63G-6a-1702(2)(3)(4), or 1703;

(vi) Uphold a protest officer's decision unless the procurement appeals panel determines that the protest officer's decision is arbitrary and capricious or clearly erroneous; and

(vii) Within seven days after the day on which the procurement appeals panel concludes the administrative review:

(A) issue a written decision of the appeal; and

(B) mail, email, or had deliver the written decision on the appeal to the parties to the appeal and to the protest officer; and

(b) May:

(i) Consult with the assistant attorney general assigned to the appeal;

- (ii) Conduct the administrative review without conducting a hearing;
- (iii) At the sole discretion of the procurement appeals panel, conduct an informal hearing if the procurement appeals panel considers a hearing to be necessary;
- (A) ask questions and receive responses during the informal hearing to assist the procurement appeals panel in understanding the basis of the appeal and information contained in the protest appeal record;
- (B) not take any additional evidence or consider any additional ground for the appeal; and
- (iv) Dismiss an appeal if the appeal does not comply with the requirements of Utah Code 63G-6a.

R33-117-101.10. Determination Regarding Arbitrary and Capricious.

- (1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:
 - (a) There is a reasonable basis for the decision made by the protest officer and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not arbitrary and capricious and shall uphold the decision of the protest officer; or
 - (b) There is no reasonable basis for the protest officer's decision and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was arbitrary and capricious and shall remand the matter to the protest officer to cure the problem or render a new decision.
- (2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was arbitrary and capricious.

R33-117-101.13. Determination Regarding Clearly Erroneous.

- (1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:
 - (a) There is a reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not clearly erroneous and shall uphold the decision of the protest officer; or
 - (b) There is no reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was clearly erroneous and shall remand the matter to the protest officer to cure the problem or render a new decision.
- (2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was clearly erroneous.

R33-117-102. Verification of Legal Authority.

- (1) A person filing an appeal to a protest decision may be asked to verify that the person has legal authority to file an appeal on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a notice of appeal.

R33-117-103. Informal Hearing.

- (1) A hearing conducted under Part 17 shall be an informal procedure wherein the rules of evidence and civil procedures do not apply.
- (2) A procurement appeals panel shall establish procedures for conducting an informal hearing including:
 - (a) establishing time limits and deadlines;
 - (b) determining who may address the procurement appeals panel; and
 - (c) determining other procedural matters.
- (3) All communication during the informal hearing shall be directed to the coordinator of the procurement appeals panel.
 - (a) A recording shall be made of each informal hearing held on an appeal under Utah Code 63G-6a, Part 17.

R33-117-104. Expedited Proceedings.

- (1) A party to a protest having standing may submit a written request to the coordinator of the procurement appeals panel requesting that the administrative review be expedited. The coordinator of the procurement appeals panel shall consider the request and, if possible and practical, accommodate the request.

R33-117-105. Electronic Participation.

- (1) Any panel member or, if applicable, participant may participate electronically if:
 - (a) a request to participate electronically is submitted to the coordinator of the panel at least 24 hours in advance of the proceeding;
 - (b) the means for electronic participation, by phone, computer or otherwise, is available at the location; and
 - (c) the electronic means allows other members of the panel and, if applicable, other participants to hear the person or persons participating electronically.

KEY: hearings, Procurement Appeals Board, verification of legal authority**Date of Last Change: July 9, 2024****Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-17****NOTICE OF EMERGENCY (120-DAY) RULE**

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-118 | Filing ID: 56618 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-118. Appeals to Court and Court Proceedings |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides oversight on the appeal process after an appeal through the procurement appeals panel to the Utah Court of Appeals. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |

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| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

Citation Information

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-118. Appeals to Court and Court Proceedings.

R33-118-101. Process.

(1) A person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Utah Code 63G-6a, Part 18. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-118-201. Appeals by Procurement Units -- Limitations.

(1) A procurement unit may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

KEY: appeals, protests, Utah Court of Appeals

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-18

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-119 | Filing ID: 56617 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | |
|----------------------------|--------------------------------------------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services |
|----------------------------|--------------------------------------------------------|

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------------|---------------------|
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-119. General Provisions Related to Protest or Appeal |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides provisions related to protests or appeals, in conjunction with Title 63G, Chapter 6a, Utah Procurement Code. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-119. General Provisions Related to Protest or Appeal.

R33-119-101. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this rule unless otherwise specified in this rule. This rule provides additional requirements and procedures and must be used in conjunction with Title 63G, Chapter 6a.

(2) Title 63G, Chapter 6a, Part 19 contains provisions regarding:

(a) limitations on challenges of:

(i) a procurement;

(ii) a procurement process;

(iii) the award of a contract relating to a procurement;

(iv) a debarment; or

(v) a suspension;

(b) the effect of a timely protest or appeal;

(c) the costs to or against a protester;

(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;

(e) the effect of a violation found after award of a contract;

(f) the effect of a violation found prior to the award of a contract;

(g) interest rates; and

(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

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

KEY: appeals, protests, general provisions, procurement code

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-19

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-120 | Filing ID: 56616 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | |
|----------------------------|--------------------------------------------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services |
| Building: | Taylorville State Office Building, FL 3 |
| Street address: | 4315 S. 2700 W. |
| City, state | Taylorville, UT |
| Mailing address: | PO Box 141061 |

| | | |
|---------------------------------------------------------------------------------------------------|--------------------------|---------------------|
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-120. General Provisions Related to Records |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides information on provisions related to records, in conjunction with Title 63G, Chapter 6a, Part 20. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1) | | |
|----------------------------|--|--|

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-120. Records.

R33-120-101. General Provisions Related to Records.

(1) General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R33-112.

KEY: records, general provisions, procurement code

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-20

NOTICE OF EMERGENCY (120-DAY) RULE

| | | |
|--------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-121 | Filing ID: 56615 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | | |
|---------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|--|
| 1. Title catchline: | Government Operations, Purchasing and General Services | | |
| Building: | Taylorsville State Office Building, FL 3 | | |
| Street address: | 4315 S. 2700 W. | | |
| City, state | Taylorsville, UT | | |
| Mailing address: | PO Box 141061 | | |
| City, state and zip: | Salt Lake City, UT 84114 | | |
| Contact persons: | | | |
| Name: | Phone: | Email: | |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov | |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov | |
| Please address questions regarding information on this notice to the persons listed above. | | | |

General Information

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-121. Interaction Between Procurement Units |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides information and oversight on cooperative contracting and purchasing, and additionally allows discount pricing for large volume purchasing on state contracts. |

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| 5A) The agency finds that regular rulemaking would: | |
| <input type="checkbox"/> | cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> | cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> | place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: | |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. | |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: | |
| A) State budget: | |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. | |
| B) Local governments: | |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. | |
| C) Small businesses ("small business" means a business employing 1-49 persons): | |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. | |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. | |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): | |
| There are no anticipated compliance costs for affected persons as a result of this rule. | |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): | |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. | |

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 63G-6a-107.7(1) | | |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-121. Interaction Between Procurement Units.

R33-121-101. Cooperative Purchasing.

(1) Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-121-201. State Cooperative Contracts.

(1) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(2) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-121-201e. Division May Charge Administrative Fees on State Cooperative Contracts -- Prohibition Against Other Procurement Units Charging Fees on State Contracts.

(1) In accordance with Section 63A-1-109.5, 63A-2-103, 63G-6a-303(2), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

R33-121-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with Section R33-121-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-124 | Filing ID: 56614 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | |
|---------------------|--------------------------------------------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services |
|---------------------|--------------------------------------------------------|

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------------|---------------------|
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-124. Unlawful Conduct and Ethical Standards |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides ethical and conduct standards for procurement professionals, officials, vendors, and any other involved in the procurement process. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |

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

There are no anticipated compliance costs for affected persons as a result of this rule.

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63G-6a-107.7(1)

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-124. Unlawful Conduct and Ethical Standards.

R33-124-101. Unlawful Conduct.

(1) Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this rule unless otherwise specified in this rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-124-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

- (a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties;"
- (b) Executive Order EO/002/2014 issued by the Governor;
- (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
- (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
- (e) any other applicable law.

R33-124-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

- (a) Executive Order EO/002/2014 issued by the Governor;
- (b) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"
- (c) Section 76-8-103, "Bribery or Offering a Bribe;" and
- (d) any other applicable law.

R33-124-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

- (a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;
- (b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or
- (c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If a procurement professional participates in a social activity prohibited under Subsection R33-124-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-124-105. Financial Conflict of Interests Prohibited.

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

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

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

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

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

R33-124-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

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

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

R33-124-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Section R33-124-105, Section R33-124-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order, EO 002 2014, "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

R33-124-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.

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

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

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1)

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|------------|------------------|
| Rule or Section Number: | R33-125 | Filing ID: 56613 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services | |
| Building: | Taylorsville State Office Building, FL 3 | |
| Street address: | 4315 S. 2700 W. | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 141061 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-125. Executive Branch Insurance Procurement |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides the process and method on insurance procurement for the executive branch of state government. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |
| F) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head): |
| The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact. |

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 63G-6a-107.7(1) |

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-125. Executive Branch Insurance Procurement.

R33-125-101. Applicability and Standard Procurement Method.

- (1) This rule only applies to executive branch procurement units.
- (2) All new or renewal insurance purchases will be made in accordance with this Rule and the Utah Procurement Code.
- (3) A procurement unit may use the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 to award a contract for insurance agents, brokers, and underwriting companies.
- (4) A procurement unit may consider the following criteria to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in a request for proposals procurement process:
 - (a) financial resources of agent, broker and underwriting company;
 - (b) quality of prior service rendered to the state;
 - (c) service facilities available in-state;
 - (d) service reputation;
 - (e) experience and expertise in providing similar types of insurance;
 - (f) coverages and services to be provided;
 - (g) qualifications of key personnel; and
 - (h) any other criteria that will help to ensure the best possible coverage and service to the procurement unit.
- (5) A procurement unit may establish minimum requirements and score thresholds to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in the request for proposals procurement process.
- (6) During the evaluation process, the evaluation committee may make a recommendation to the procurement unit that an agent, broker, or underwriting company be rejected for being deemed not responsible, not meeting the mandatory minimum requirements, not meeting any applicable minimum score threshold or whose proposal is not responsive.

R33-125-102. Alternate Multiple Stage Bid Process.

- (1) This rule only applies to executive branch procurement units.
- (2) To avoid oversaturation of limited primary or reinsurance markets, a multiple stage bid process may be used at the option of the procurement unit.
- (3) Agents, brokers, and underwriting companies must be qualified according to the evaluation criteria described in R33-125-101.
- (4) The three highest ranked agents, brokers, or underwriting companies, as determined by the evaluation committee, will be deemed qualified to proceed to the final stage.
- (5) Agents, brokers or underwriting companies who are qualified to proceed to the final stage must submit a list of markets in order of preference to the procurement unit. The procurement unit will, as equitably as practicable, assign no more than five and no less than three markets to each final bidder, based upon their preferences.
- (6) Qualified agents, brokers or underwriting companies must then submit a responsive bid for each assigned market.
- (7) Upon receipt of the bids, the procurement and contract award shall be conducted in accordance with Part 6 of the Utah Procurement Code.

KEY: alternate multiple stage bid process, executive branch insurance procurement, procurement methods, government purchasing

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63G-6a-107.7(1); 63G-6a-7

| NOTICE OF EMERGENCY (120-DAY) RULE | | |
|------------------------------------|-------------------|-------------------------|
| Rule or Section Number: | R33-126 | Filing ID: 56612 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | |
|-----------------------------|--------------------------------------------------------|
| 1. Title catchline: | Government Operations, Purchasing and General Services |
| Building: | Taylorville State Office Building, FL 3 |
| Street address: | 4315 S. 2700 W. |
| City, state | Taylorville, UT |
| Mailing address: | PO Box 141061 |
| City, state and zip: | Salt Lake City, UT 84114 |

| Contact persons: | | |
|---------------------------------------------------------------------------------------------------|---------------|---------------------|
| Name: | Phone: | Email: |
| Windy Aphayrath | 801-957-7138 | waphayrath@utah.gov |
| Tara Eutsler | 801-957-7150 | teutsler@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule or section catchline: |
| R33-126. State Surplus Property |
| 3. Purpose of the new rule or reason for the change: |
| Five-year review deadlines were missed on this rule, and this emergency filing is being submitted to provide necessary oversight. |
| 4. Summary of the new rule or change: |
| This rule provides policies and procedures governing the acquisition and disposition of state-owned and federal surplus property, items, and vehicles. |
| 5A) The agency finds that regular rulemaking would: |
| <input type="checkbox"/> cause an imminent peril to the public health, safety, or welfare; |
| <input type="checkbox"/> cause an imminent budget reduction because of budget restraints or federal requirements; or |
| <input checked="" type="checkbox"/> place the agency in violation of federal or state law. |
| B) Specific reasons and justifications for this finding: |
| Section 63G-6a-107.7 requires a procurement unit to make rules relating to the management and control of procurements and procurement procedures. Without this rule in effect, the procurement unit is not following statute requirements. |

Fiscal Information

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| 6. Provide an estimate and written explanation of the aggregate anticipated cost or savings to: |
| A) State budget: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to the state budget. |
| B) Local governments: |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to local governments. |
| C) Small businesses ("small business" means a business employing 1-49 persons): |
| There is no anticipated fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to small businesses. |
| D) Persons other than 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 fiscal impact as a result of this emergency rule filing. As it does not require, remove, or modify any regulation or standards beyond what has already been in place, there should be no working impact to other persons. |
| E) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?): |
| There are no anticipated compliance costs for affected persons as a result of this rule. |

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

The Executive Director of the Department of Government Operations, Marvin Dodge, has stated there to be no fiscal impact to businesses as a result of this emergency rule and has reviewed the rest of this fiscal impact.

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 63A-2-401(6)

Agency Authorization Information

| | | | |
|-------------------------------------------|------------------------------------|--------------|------------|
| Agency head or designee and title: | Windy Aphayrath, Division Director | Date: | 07/09/2024 |
|-------------------------------------------|------------------------------------|--------------|------------|

R33. Government Operations, Purchasing and General Services.

R33-126. State Surplus Property.

R33-126-101. State-Owned Surplus Property -- General.

This rule sets forth policies and procedures which govern the acquisition and disposition of State-owned and federal surplus property items, and vehicles. It applies to all State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the State Surplus Property agency.

R33-126-102. Requirements.

(1) Under Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(a) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(b) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property and information technology equipment.

R33-126-103. Definitions.

(1) All definitions in Section 63A-2-101.5 shall apply to Rule R33-126. In addition, the following definitions shall apply to Rule R33-126:

(a) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Section R33-126-103 designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(c) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(d) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(e) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(f) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(g) "Division" means the Division of Purchasing and General Services within the Department of Government Operations created under Section 63A-2-101.

(h) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(i) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(j) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(k) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(l) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(m) As used in this section "Personal handheld electronic device":

NOTICES OF 120-DAY (EMERGENCY) RULES

- (i) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and
- (ii) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.
- (n) "Personal Watercraft" means a motorboat that is:
- (i) less than 16 feet in length;
- (ii) propelled by a water jet pump; and
- (iii) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.
- (o)(i) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.
- (ii) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.
- (p) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.
- (q)(i) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.
- (ii) "Recreational vehicle" includes:
- (A) a travel trailer;
- (B) a camping trailer;
- (C) a motor home;
- (D) a fifth wheel trailer; and
- (E) a van.
- (r) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.
- (s) "Sailboat" means any vessel having one or more sails and propelled by wind.
- (t) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.
- (u)(i) "Special mobile equipment" means every vehicle:
- (A) not designed or used primarily for the transportation of persons or property;
- (B) not designed to operate in traffic; and
- (C) only incidentally operated or moved over the highways.
- (ii) "special mobile equipment" includes:
- (A) farm tractors;
- (B) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;
- (C) ditch-digging apparatus; and
- (D) forklifts, warehouse equipment, golf carts, electric carts.
- (v) "State agency" means any executive branch department, division, or other agency of the state.
- (w) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.
- (x) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.
- (y) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.
- (z) "Vehicle" means:
- (i) all-terrain vehicle type I and II;
- (ii) aircraft;
- (iii) camper;
- (iv) farm tractor;
- (v) motor boat;
- (vi) motorcycle;
- (vii) motor vehicle;
- (viii) off-highway vehicle;
- (ix) personal watercraft;
- (x) pickup truck;
- (xi) reconstructed vehicle;
- (xii) recreational vehicle;
- (xiii) road tractor;
- (xiv) sailboat;
- (xv) semitrailer;
- (xvi) special mobile equipment;
- (xvii) trailer;

- (xviii) travel trailer;
- (xix) truck tractor;
- (xx) vessel; and
- (aa) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-126-200. Disposition of State-Owned Surplus Property Items.

- (1) The State surplus property program shall determine the appropriate method for disposing of state surplus property.
- (2) When a state agency determines to dispose of state surplus property that is a non-vehicle item it shall, to comply with Subsection 63A-2-401(2), complete Form SP-1 and electronically send it to the State Surplus Property agency.
- (3) Each state agency with state surplus property will be responsible for:
 - (a) Storing state surplus property on site until:
 - (i) picked up by the person to whom the item has been sold;
 - (ii) disposed of or donated by the state agency; or
 - (iii) picked up by State Surplus property program;
 - (b) Assigning an employee of the agency to assist the public and State Surplus with the sale of the State-owned property; and
 - (c) Developing internal policies regarding employees:
 - (i) assisting the public with lifting and transporting State-owned surplus property items; and
 - (ii) transporting State-owned surplus property items with a minimal value to charities for donation.
- (4) State Surplus property with a minimal value as described in Section 63A-2-411 may be disposed of by:
 - (a) destroying the surplus property;
 - (b) disposing of the surplus property as waste; or
 - (c) donating the surplus property to:
 - (i) a public entity;
 - (ii) a charitable organization; or
 - (iii) another person or entity approved by the director of state surplus.
- (5) The State Surplus Property program is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

R33-126-201. Non-vehicle Disposition Procedures.

- (1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated, or otherwise disposed of unless the procedures set forth in this rule are followed.
- (2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.
- (3) When a state agency determines that state-owned non-vehicle personal property is in excess of current needs, it will:
 - (a) transfer the state-owned, non-vehicle surplus property items directly to another state agency without involvement of the division;
- or
- (b) notify the State Surplus Property agency that the agency has a State-owned surplus property item.

R33-126-202. Disposal of State-Owned Surplus Electronic Data Devices.

- (1) For the purpose of this rule, Electronic Data Device means any informational technology device identified by the Division of Technology Services.
- (2) Each State agency shall ensure that all surplus property that is considered an electronic data device is disposed of in accordance with the following procedures identified in this rule.
- (3) Before selling or transferring of an electronic data device, the following requirements shall be completed:
 - (a) remove, or cause to be removed, from the electronic data device any:
 - (i) software owned or licensed by the agency as required by the software license agreement;
 - (ii) information that is classified as protected, private, or controlled under the Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (iii) any other state-owned records and data.
 - (b) submit an SP-1 to State Surplus Property agency with a description of the items to be included in the sale of the electronic data device including the make, model, serial number, specifications, list of accessories, software; and
 - (c) ensure in writing that the service contract is void to the agency or transferable to the purchaser.
- (4) In coordination with the Division of Technology Services, the State Surplus program may decide on limitations on the selling or transferring of electronic data devices.
- (5) Electronic Data devices that are not sold or transferred must be disposed of in accordance with the Division of Technology Services.

R33-126-204. Federal Surplus Property.

- (1) Federal surplus property items are not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online but are regulated and accomplished by the U.S. General Services Administration.

R33-126-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Title 63A, Chapter 2, Division of Purchasing and General Services. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:

(a) has purchasing authority;

(b) has maintenance authority;

(c) has disposition or signature authority;

(d) has authority regarding the disposal price;

(e) has access to restricted information; and

(f) may be perceived to be a related party using other criteria which may prohibit independence.

R33-126-206. Priorities.

(1) Public agencies are given priority for the purchase of State-owned surplus property items.

(2) Property that is determined by the division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by Surplus Property.

(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:

(a) state agencies;

(b) state universities, colleges, and community colleges;

(c) other tax-supported educational agencies or political subdivisions in the state including cities, towns, counties and local law enforcement agencies;

(d) other tax-supported educational entities; and

(e) non-profit health and educational institutions.

(4) State-owned surplus property items that are not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

(a) the cost to the State;

(b) the potential liability to the State;

(c) the overall best interest of the State.

R33-126-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all State and federal surplus property items.

(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Before the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Government Operations.

R33-126-302. Reimbursement.

(1) Reimbursement to state agencies from the sale of their surplus property items will be made through the Division of Finance via interagency transfers or warrant requests.

(2) The State Surplus Property program may charge a rate for the services provided to an agency.

R33-126-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle before sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-126-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and the Administrative Procedures Act Title 63G, Chapter 4, et seq.

R33-126-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, the Administrative Procedures Act, will be informal in nature for purposes of adjudication. The director of the Division of Purchasing and General Services or their designee will be the presiding officer.

R33-126-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response needs to be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or their designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within 30 days after the close of any hearing, the director of the Division of Purchasing and General Services or their designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision made by the director of the Division of Purchasing and General Services, or their designee, shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under this rule shall be the final order and then may be appealed to the appropriate district court.

R33-126-900. Charges and Fees Assessed for State Surplus Property Agency Services.

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 63J-1-504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions

Date of Last Change: July 9, 2024

Authorizing, and Implemented or Interpreted Law: 63A-2-401

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at adminrules.utah.gov. 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.

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

| | | |
|------------------------|------------|-------------------------|
| Rule Number: | R123-6 | Filing ID: 56331 |
| Effective Date: | 07/15/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|----------------------------|--------------------|
| 1. Title catchline: | Auditor, Administration | |
| Building: | East Capitol Building | |
| Street address: | Utah State Capitol Complex | |
| City, state | Salt Lake City, UT | |
| Mailing address: | 350 N State St., Ste 310 | |
| City, state and zip: | Salt Lake City, UT 84114 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Mandy Teerlink | 801-538-1363 | mteerlink@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule catchline: | R123-6. Allocation of Money in the Property Tax Valuation Agency Fund |
| 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 59-2-303.1 sets the valuation and uniform assessment levels of property in receiving counties. |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: | No comments regarding this rule have been received.. |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: | This rule allows counties to receive funds from the multi-county levy. Many of these counties rely on these funds. Therefore, this rule should be continued. |

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Agency Authorization Information

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|-------------------------------------------|---------------------------------------|--------------|------------|
| Agency head or designee and title: | Seth Oveson, Local Government Manager | Date: | 07/15/2024 |
|-------------------------------------------|---------------------------------------|--------------|------------|

| NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION | | |
|----------------------------------------------------------|------------|-------------------------|
| Rule Number: | R307-125 | Filing ID: 50589 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|-------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state | Salt Lake City, UT | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Courtney Ehrlich | 385-232-5157 | cehrlich@utah.gov |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule catchline: | R307-125. Clean Air Retrofit, Replacement, and Off-Road Technology 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: | <p>The Air Quality Board is allowed by Subsection 19-2-104(1)(a) to make rules "... regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source".</p> <p>Also, Subsection 19-2-104(3)(q) allows the Board to "...meet the requirements of federal air pollution laws." The Utah Legislature enacted the Clean Air Retrofit, Replacement, and Off-Road Technology (CARROT) Program during the 2014 General Session through H.B. 61.</p> <p>CARROT allows grants or other programs such as exchange, rebate, or low-cost purchase programs for activities that reduce emissions from non-road or heavy-duty diesel, on road engines. H.B. 61 gives authority to the Air Quality Board to make rules specifying the requirements and procedures of the CARROT Program, which this rule does.</p> | |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: | No comments have been received since the last five-year review on 09/05/2019. | |
| 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 R307-125 specifies the requirements and procedures of the Clean Air Retrofit, Replacement and Off-Road Technology Program that is authorized in Section 19-2-203, including how the director may allocate funds and how grants and exchange, rebate, or low-cost purchase awards are applied for and awarded. Therefore, this rule should be continued. | |

Agency Authorization Information

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|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 05/20/2024 |
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NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

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|------------------------|-------------------|-------------------------|
| Rule Number: | R307-501 | Filing ID: 50656 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|---------------------------------------------------------------------------------------------------|------------------------------------|------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi-Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state | Salt Lake City, UT | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Sheila Vance | 801-536-4001 | svance@utah.gov |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule catchline: |
| R307-501. Oil and Gas Industry: General 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: |
| The Air Quality Board is allowed by Subsection 19-2-104(1)(a) to make rules "... regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source". |
| Also, Subsection 19-2-104(3)(q) allows the Board to "...meet the requirements of federal air pollution laws." In 2012, the state of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions. |
| Rule R307-501 establishes general requirements for prevention of emissions and use of good air pollution control practices for all oil and gas exploration, production, transmission and distribution operations; well production facilities; natural gas compressor stations; and natural gas processing plants. |
| 4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule: |
| No comments were received since the last five-year review on 09/05/2019. |
| 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 R307-501 is one of four rules that combats high ozone levels by lowering VOC emissions. This rule helps us to address the EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uinta Basin. |

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Rule R307-501 establishes general requirements for prevention of emissions and use of good air pollution control practices for all oil and gas exploration, production, transmission, and distribution operations; well production facilities; natural gas compressor stations; and natural gas processing plants. Therefore, this rule should be continued.

Agency Authorization Information

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|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 05/20/2024 |
|-------------------------------------------|--------------------------------------------------|--------------|------------|

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

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|------------------------|-------------------|-------------------------|
| Rule Number: | R307-502 | Filing ID: 50651 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|---------------------------------------------------------------------------------------------------|------------------------------------|------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state | Salt Lake City, UT | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Sheila Vance | 801-536-4001 | svance@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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| 2. Rule catchline: |
| R307-502. Oil and Gas Industry: Pneumatic Controllers |
| 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 Air Quality Board is allowed by Subsection 19-2-104(1)(a) to make rules "... regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source". |
| Also, Subsection 19-2-104(3)(q) allows the Board to "...meet the requirements of federal air pollution laws." In 2012, the state of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uintah Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uinta Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions. Pneumatic controllers powered by pressurized natural gas are used in the oil and gas industry. |
| In the past, high-bleed devices that vent natural gas to the atmosphere were commonly used. Oil and gas New Source Performance Standard (NSPS) OOOO requires the use of low-bleed controllers in most circumstances. Rule R307-502 would require the replacement of existing high-bleed devices with low-bleed devices so that all pneumatic controllers in the state would meet the NSPS standard. |
| Rule R307-502 requires the replacement of existing high-bleed devices with low-bleed devices so that all pneumatic controllers in the state would meet the NSPS standard. |
| 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: |

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

No comments have been received since the last five-year review on 09/05/2019.

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 R307-502 is one of four rules that combat high ozone levels by lowering VOC emissions. This rule helps us to address the EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uintah Basin. Rule R307-502 requires the replacement of existing high-bleed devices with low-bleed devices so that all pneumatic controllers in the state would meet the NSPS standard. Ozone continues to be monitored at levels above the National Ambient Air Quality Standard along the Wasatch Front and Uintah Basin.

As operators have already invested to comply with the rule there is no additional impact to continue to comply and reduce emissions of ozone precursors. Therefore, this rule should be continued.

Agency Authorization Information

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|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 05/20/2024 |
|-------------------------------------------|--------------------------------------------------|--------------|------------|

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

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|------------------------|-------------------|-------------------------|
| Rule Number: | R307-503 | Filing ID: 50654 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state | Salt Lake City, UT | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Sheila Vance | 801-536-4001 | svance@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

2. Rule catchline:

R307-503. Oil and Gas Industry: Flares

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 Air Quality Board is allowed by Subsection 19-2-104(1)(a) to make rules "... regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source".

Also, Subsection 19-2-104(3)(q) allows the Board to "...meet the requirements of federal air pollution laws." In 2012, the state of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uintah Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uintah Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions.

New or modified oil and gas well production sites are required to capture and control VOC emissions, and the typical control device is a flare. Utah's General Approval Order (GAO) for a Crude Oil and Natural Gas Well Site and/or Tank Battery requires

the VOC control device to reduce VOC emissions by 98%. The GAO requires continuous compliance with this control efficiency standard. Rule R307-503 would require all new flares to be equipped with a self-igniter to relight the pilot light if the flame is extinguished.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received since the last five-year review on 09/05/2019.

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 R307-503 is one of four rules that combat high ozone levels by lowering VOC emissions. This rule helps us to address the EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uintah Basin. Further, Rule R307-503 addresses the issue of unmanned well production sites.

Unmanned well production sites are an issue because of a possible wind or surge of gas blowing out the pilot light possibly causing the combustion device to cease working for an extended period until personnel visit the site and relight the pilot light. Rule R307-503 would require all new flares to be equipped with a self-igniter to relight the pilot light if the flame is extinguished. Ozone continues to be monitored at levels above the National Ambient Air Quality Standard along the Wasatch Front and Uintah Basin.

As operators have already invested to comply with the rule there is no additional impact to continue to comply and reduce emissions of ozone precursors. Therefore, this rule should be continued.

Agency Authorization Information

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|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 05/20/2024 |
|-------------------------------------------|--------------------------------------------------|--------------|------------|

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

| | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R307-504 | Filing ID: 50658 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|------------------------------------|------------------|
| 1. Title catchline: | Environmental Quality, Air Quality | |
| Building: | Multi Agency State Office Building | |
| Street address: | 195 N 1950 W | |
| City, state | Salt Lake City, UT | |
| Mailing address: | PO Box 144820 | |
| City, state and zip: | Salt Lake City, UT 84114-4820 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Erica Pryor | 385-499-3416 | epryor1@utah.gov |
| Sheila Vance | 801-536-4001 | svance@utah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. Rule catchline: |
| R307-504. Oil and Gas Industry: Tank Truck Loading |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

The Air Quality Board is allowed by Subsection 19-2-104(1)(a) to make rules "... regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source".

Also, Subsection 19-2-104(3)(q) allows the Board to "...meet the requirements of federal air pollution laws." In 2012, the state of Utah entered into EPA's Ozone Advance Program with the goal to proactively lower ozone values in the Uintah Basin. Ozone is created by photochemical reaction, and the main precursors are volatile organic compounds (VOC) and (NOx). In the Uintah Basin, oil and gas production accounts for 97% of anthropogenic VOC emissions.

The General Approval Order for a Crude Oil and Natural Gas Well Site and/or Tank Battery contains a requirement that all tanker trucks loading on-site use either bottom filling or submerged filling to reduce VOC emissions created by splashing of liquids when loading oil, condensate, or produced water.

Rule R307-504 expands this requirement to all existing operations.

4. A summary of written comments received during and since the last five-year review of this rule from interested persons supporting or opposing this rule:

No comments have been received since the last five-year review on 09/05/2019.

5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any:

Since 01/01/2015, tank trucks used for intermediate hydrocarbon liquid or produced water are required to load using bottom filling or submerged fill pipe. The rule applies to any person who loads or permits the loading of any intermediate hydrocarbon liquid or produced water at a well production facility. Ozone continues to be monitored at levels above the National Ambient Air Quality Standard along the Wasatch Front and Uintah Basin.

As operators have already invested to comply with the rule there is no additional impact to continue to comply and reduce emissions of ozone precursors. Therefore, this rule should be continued.

Agency Authorization Information

| | | | |
|-------------------------------------------|--------------------------------------------------|--------------|------------|
| Agency head or designee and title: | Bryce C. Bird, Director, Division of Air Quality | Date: | 05/20/2024 |
|-------------------------------------------|--------------------------------------------------|--------------|------------|

NOTICE OF FIVE-YEAR REVIEW AND STATEMENT OF CONTINUATION

| | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R746-401 | Filing ID: 51983 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | | |
|---------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------|--|
| 1. Title catchline: | Public Service Commission, Administration | | |
| Building: | Heber M. Wells Building | | |
| Street address: | 160 E 300 S, 4th Floor | | |
| City, state | Salt Lake City, UT | | |
| Mailing address: | PO Box 4558 | | |
| City, state and zip: | Salt Lake City, UT 84114-4558 | | |
| Contact persons: | | | |
| Name: | Phone: | Email: | |
| John Delaney | 801-530-6724 | jdelaney@utah.gov | |
| Please address questions regarding information on this notice to the persons listed above. | | | |

General Information

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| 2. Rule catchline: |
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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| R746-401. Reporting of Construction, Purchase, Acquisition, Sale, Transfer or Disposition of Assets |
| 3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require this rule: |
| <p>Section 54-4-1 requires supervision and regulation of utility companies within the Public Service Commission's (PSC) jurisdiction.</p> <p>The PSC is also directed to supervise all of the business of every such public utility in this state and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction.</p> <p>Section 54-4-7 requires the PSC to determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced, or employed, and shall fix the same by its order, rule, or regulation.</p> |
| 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: |
| <p>The PSC has received no written comments from any interested person supporting or opposing this rule since the last five-year review.</p> |
| 5. A reasoned justification for continuation of this rule, including reasons why the agency disagrees with comments in opposition to this rule, if any: |
| <p>This rule provides guidelines for utilities for the reporting of the construction, sale, transfer, or disposition of utility assets.</p> <p>This rule is necessary to allow the PSC to carry out its statutory mandate under the above cited statutes. Therefore, this rule should be continued.</p> |

Agency Authorization Information

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|-------------------------------------------|--------------------------|--------------|------------|
| Agency head or designee and title: | Jerry D. Fenn, PSC Chair | Date: | 07/09/2024 |
|-------------------------------------------|--------------------------|--------------|------------|

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

NOTICE OF FIVE-YEAR REVIEW EXTENSION

| | | |
|---------------------------|------------|-------------------------|
| Rule Number: | R914-4 | Filing ID: 52108 |
| New Deadline Date: | 11/20/2024 | |

Agency Information

| | | |
|---------------------------------------------------------------------------------------------------|-----------------------------------------|------------------------|
| 1. Title catchline: | Transportation, Operations, Aeronautics | |
| Building: | Calvin Rampton | |
| Street address: | 4501 S 2700 W | |
| City, state | Taylorsville, UT | |
| Mailing address: | PO Box 148455 | |
| City, state and zip: | Salt Lake City, UT 84114-8455 | |
| Contact persons: | | |
| Name: | Phone: | Email: |
| Leif Elder | 801-580-8296 | lelder@utah.gov |
| James Godin | 801-965-4026 | Mgalindo1@utah.gov |
| Lori Edwards | 801-573-7181 | jamesjgodin@agutah.gov |
| Marlene Galindo | 801-965-4048 | loriedwards@agutah.gov |
| Please address questions regarding information on this notice to the persons listed above. | | |

General Information

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|--|
| 2. Rule catchline: | R914-4. Challenging Corrective Action Orders | |
| 3. Reason for requesting the extension: | | |
| The Department of Transportation (Department) is working on reviewing and amending this rule but will not have the amendments or review completed and approved before this rule's five-year review deadline. | | |
| Therefore, the Department needs more time to review and amend this rule. | | |

Agency Authorization Information

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|-------------------------------------------|--------------------------------------------|-------------------------|
| Agency head or designee and title: | Carlos M. Braceras, PE, Executive Director | Date: 07/05/2024 |
|-------------------------------------------|--------------------------------------------|-------------------------|

End of the Notices of Five-Year Review Extensions Section

NOTICES OF FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) is required to notify agencies of rules due for review at least 180 days prior to the anniversary date. If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR EXTENSION (EXTENSION)** with the Office. However, if the agency fails to file either the **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION** or the **EXTENSION** by the date provide by the Office, the rule expires.

Upon expiration of the rule, the Office files a **NOTICE OF FIVE-YEAR EXPIRATION (EXPIRATION)** to document the action. The Office is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule and it must follow regular rulemaking procedures to replace the rule if it is still needed.

The Office has filed **EXPIRATIONS** for each of the rules listed below which were not reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

| NOTICE OF EXPIRED RULE | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R33-1 | Filing ID: 55013 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-1. Utah Procurement Rules, General Procurement Provisions |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. |
| (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-101 is under ID 56635 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

| NOTICE OF EXPIRED RULE | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R33-2 | Filing ID: 54464 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-2. Rules of Procedure for Procurement Policy Board |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-102 is under ID 56634 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-3 | Filing ID: 53511 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-3. Procurement Organization |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-103 is under ID 56633 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-4 | Filing ID: 54465 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-4. Supplemental Procurement Procedures |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-104 is under ID 56632 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-5 | Filing ID: 54466 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-5. Other Standard Procurement Processes |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-105 is under ID 56631 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-6 | Filing ID: 54467 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-6. Bidding |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-106 is under ID 56630 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-7 | Filing ID: 54468 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-7. Request for Proposals |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-107 is under ID 56629 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-8 | Filing ID: 54469 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-8. Exceptions to Standard Procurement Process |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-108 is under ID 56628 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-9 | Filing ID: 54470 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-9. Cancellations, Rejections, and Debarment |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-109 is under ID 56627 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-10 | Filing ID: 53518 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-10. Preferences |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-110 is under ID 56626 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-11 | Filing ID: 54461 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-11. Form of Bonds |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-111 is under ID 56625 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-12 | Filing ID: 54471 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-12. Terms and Conditions, Contracts, Change Orders and Costs |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-112 is under ID 56624 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-13 | Filing ID: 53522 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-13. General Construction Provisions |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-113 is under ID 56623 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

| | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R33-14 | Filing ID: 53523 |
| Effective Date: | 07/09/2024 | |

Agency Information

| | | |
|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-14. Procurement of Design-Build Transportation Project Contracts |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-114 is under ID 56622 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

| | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R33-15 | Filing ID: 53524 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-15. Procurement of Design Professional Services |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-115 is under ID 56621 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-16 | Filing ID: 54462 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-16. Protests |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-116 is under ID 56620 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-17 | Filing ID: 53526 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-17. Procurement Appeals Panel |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-117 is under ID 56619 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-18 | Filing ID: 53527 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-18. Appeals to Court and Court Proceedings |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-118 is under ID 56618 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-19 | Filing ID: 53528 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-19. General Provisions Related to Protest or Appeal |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-119 is under ID 56617 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-20 | Filing ID: 53529 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-20. Records |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-120 is under ID 56616 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-21 | Filing ID: 53530 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-21. Interaction Between Procurement Units |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-121 is under ID 56615 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-22 | Filing ID: 53355 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-22. Reserved |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-23 | Filing ID: 53356 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-23. Reserved |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-24 | Filing ID: 54472 |
| Effective Date: | 07/09/2024 | |

Agency Information

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| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |

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|---------------------------|---------------|----------------------|
| 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): |
| R33-24. Unlawful Conduct and Ethical Standards |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-124 is under ID 56614 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-25 | Filing ID: 53532 |
| Effective Date: | 07/09/2024 | |

Agency Information

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|-------------------------------|--------------------------------------------------------|----------------------|
| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |
| 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): |
| R33-25. Executive Branch Insurance Procurement |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-125 is under ID 56613 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

NOTICE OF EXPIRED RULE

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|------------------------|-------------------|-------------------------|
| Rule Number: | R33-26 | Filing ID: 55302 |
| Effective Date: | 07/09/2024 | |

Agency Information

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| 1. Department, Agency: | Government Operations, Purchasing and General Services | |
| Street address: | 4315 S. 2700 W. | |
| City and state: | Taylorsville, UT | |

NOTICES OF FIVE YEAR EXPIRATIONS

| 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): |
| R33-26. State Surplus Property |
| 3. Summary: |
| The five-year review and notice of continuation deadline was missed. This rule has expired and was removed from the Utah Administrative Code. (EDITOR'S NOTE: A corresponding 120-day (emergency) rule that is numbered R33-126 is under ID 56612 and is effective 07/09/2024 to put the rule back in place, The filing is in this issue, August 1, 2024, of the Bulletin.) |

| NOTICE OF EXPIRED RULE | | |
|------------------------|-------------------|-------------------------|
| Rule Number: | R156-78 | Filing ID: 50309 |
| Effective Date: | 07/16/2024 | |

Agency Information

| 1. Department, Agency: | Commerce, Professional Licensing | |
|-------------------------------|----------------------------------|----------------------|
| Street address: | 160 E 300 S | |
| City, state, and zip: | Salt Lake City, UT 84111-2316 | |
| 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): |
| R156-78. Vocational Rehabilitation Counselors Licensing Act Rule |
| 3. Summary: |
| During the 2024 General Session, S.B. 26 passed and it became effective on 05/01/2024. One of the provisions in S.B. 26 was that the statute (Title 58, Chapter 79) governing licensure and regulation of vocational rehabilitation counselors was repealed and the Division of Professional Licensing (Division) no longer regulates this profession type as of 05/01/2024. As a result, the Division did not file a five-year review and notice of continuation and allowed Rule R156-78 to expire as of 07/16/2024. |

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

Medical Cannabis and Industrial Hemp

No. 56504 (New Rule) R66-4: Independent Cannabis Testing Laboratory

Published: 06/01/2024

Effective: 07/19/2024

No. 56533 (Amendment) R66-5: Medical Cannabis Pharmacy

Published: 06/15/2024

Effective: 07/25/2024

No. 56534 (Amendment) R66-9: Cannabis Licensing Process

Published: 06/15/2024

Effective: 07/25/2024

Commerce

Professional Licensing

No. 56531 (Amendment) R156-26a: Certified Public Accountant Licensing Act Rule

Published: 06/15/2024

Effective: 07/29/2024

Artificial Intelligence Policy

No. 56528 (New Rule) R166-72: Artificial Intelligence Learning Laboratory Program

Published: 06/01/2024

Effective: 07/09/2024

Education

Administration

No. 56513 (Amendment) R277-115: LEA Supervision and Monitoring Requirements of Third Party Providers and Contracts

Published: 06/01/2024

Effective: 07/09/2024

No. 56514 (Amendment) R277-301: Educator Licensing

Published: 06/01/2024

Effective: 07/09/2024

No. 56515 (Amendment) R277-303: Educator Preparation Programs

Published: 06/01/2024

Effective: 07/09/2024

NOTICES OF RULE EFFECTIVE DATES

No. 56516 (New Rule) R277-323: Public Educator Evaluation
Published: 06/01/2024
Effective: 07/09/2024

No. 56517 (Amendment) R277-469: Instructional Materials Commission Operating Procedures
Published: 06/01/2024
Effective: 07/09/2024

No. 56518 (Amendment) R277-480: Charter School Revolving Account
Published: 06/01/2024
Effective: 07/09/2024

No. 56519 (Amendment) R277-490: Beverley Taylor Sorenson Elementary Arts Learning Program (BTS Arts)
Published: 06/01/2024
Effective: 07/09/2024

No. 56520 (Repeal) R277-531: Public Educator Evaluation Requirements (PEER)
Published: 06/01/2024
Effective: 07/09/2024

No. 56521 (Repeal) R277-533: Educator Evaluation Systems
Published: 06/01/2024
Effective: 07/09/2024

No. 56522 (Amendment) R277-602: Carson Smith Scholarships -- Funding and Procedures
Published: 06/01/2024
Effective: 07/09/2024

No. 56523 (Amendment) R277-626: Special Needs Opportunity Scholarship Program
Published: 06/01/2024
Effective: 07/09/2024

No. 56524 (Amendment) R277-733: Adult Education Programs
Published: 06/01/2024
Effective: 07/09/2024

No. 56525 (Amendment) R277-929: State Council on Military Children
Published: 06/01/2024
Effective: 07/09/2024

No. 56526 (New Rule) R277-932: Information on Public School Options
Published: 06/01/2024
Effective: 07/09/2024

Environmental Quality

Environmental Response and Remediation

No. 56497 (Amendment) R311-203: Petroleum Storage Tanks: Technical Standards
Published: 06/01/2024
Effective: 07/12/2024

No. 56499 (Amendment) R311-206: Petroleum Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms
Published: 06/01/2024
Effective: 07/12/2024

Waste Management and Radiation Control, Radiation

No. 56501 (Amendment) R313-17: Administrative Procedures
Published: 06/01/2024
Effective: 07/15/2024

Waste Management and Radiation Control, Radiation
No. 56502 (Amendment) R313-24: Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements
Published: 06/01/2024
Effective: 07/15/2024

Government Operations

Human Resource Management
No. 56473 (Amendment) R477-1: Definitions
Published: 05/15/2024
Effective: 07/03/2024

No. 56474 (Amendment) R477-6: Compensation
Published: 05/15/2024
Effective: 07/03/2024

No. 56475 (Amendment) R477-7: Leave
Published: 05/15/2024
Effective: 07/03/2024

No. 56476 (Amendment) R477-8: Working Conditions
Published: 05/15/2024
Effective: 07/03/2024

No. 56478 (Amendment) R477-9: Employee Conduct
Published: 05/15/2024
Effective: 07/03/2024

No. 56479 (Amendment) R477-10: Employee Development
Published: 05/15/2024
Effective: 07/03/2024

No. 56480 (Amendment) R477-11: Discipline
Published: 05/15/2024
Effective: 07/03/2024

Health and Human Services

Children's Health Insurance Program
No. 56472 (Amendment) R382-10: Eligibility
Published: 05/15/2024
Effective: 07/01/2024

Health and Human Services

Integrated Healthcare
No. 56511 (Amendment) R414-60: Reimbursement
Published: 06/01/2024
Effective: 07/19/2024

No. 56445 (Amendment) R414-307-3: General Requirements for Home and Community-Based Services Waivers
Published: 05/15/2024
Effective: 07/01/2024

No. 56446 (Amendment) R414-320-16: Benefits
Published: 05/15/2024
Effective: 07/01/2024

No. 56447 (Amendment) R414-401-5: Penalties and Interest
Published: 05/15/2024
Effective: 07/01/2024

NOTICES OF RULE EFFECTIVE DATES

No. 56459 (Amendment) R414-516-3: Quality Improvement Program Requirements of Participation
Published: 05/15/2024
Effective: 07/01/2024

Data, Systems and Evaluation, Research and Evaluation, Health Care Statistics
No. 56510 (Amendment) R428-1: Health Data Plan and Incorporated Documents
Published: 06/01/2024
Effective: 07/19/2024

Data, Systems and Evaluation, Vital Records and Statistics
No. 56509 (Amendment) R436-13: Disclosure of Records
Published: 06/01/2024
Effective: 07/19/2024

No. 56393 (Repeal) R436-16: Violation of Rules
Published: 04/15/2024
Effective: 07/19/2024

Disease Control and Prevention, Medical Examiner
No. 56541 (Repeal) R448-10: Unattended Death and Reporting Requirements
Published: 06/15/2024
Effective: 07/23/2024

Higher Education (Utah Board of)

Salt Lake Community College
No. 56527 (Amendment) R784-1: Government Records Access and Management Act Rules
Published: 06/01/2024
Effective: 07/17/2024

Insurance

Administration
No. 56471 (Repeal) R590-102: Insurance Department Fee Payment Rule
Published: 05/15/2024
Effective: 07/01/2024

No. 56542 (Amendment) R590-164: Electronic Data Interchange Transactions
Published: 06/15/2024
Effective: 07/23/2024

No. 56543 (Amendment) R590-271: Data Reporting for Consumer Quality Comparison
Published: 06/15/2024
Effective: 07/23/2024

Natural Resources

Wildlife Resources
No. 56506 (Amendment) R657-5: Taking Big Game
Published: 06/01/2024
Effective: 07/09/2024

Public Safety

Driver License
No. 56539 (Amendment) R708-7: Functional Ability In Driving: Responsibilities for Physicians and Drivers
Published: 06/15/2024
Effective: 07/23/2024

No. 56540 (Amendment) R708-22: Commercial Driver License Administrative Proceedings
Published: 06/15/2024
Effective: 07/23/2024

Emergency Medical Services

No. 56485 (New Rule) R911-1: General Definitions
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56486 (New Rule) R911-2: Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56488 (New Rule) R911-3: Licensure
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56489 (New Rule) R911-4: Operations
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56490 (New Rule) R911-5: Emergency Medical Services Training, Endorsement, Certification, and Licensing Standards
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56491 (New Rule) R911-6: Emergency Medical Services Per Capita Grants and Competitive Grants Program
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56492 (New Rule) R911-7: Emergency Medical Services Prehospital Data System Rules
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56493 (New Rule) R911-8: Emergency Medical Services Ground Ambulance Rates and Charges
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56494 (New Rule) R911-9: Specialty Care Systems Facility Designations
 Published: 05/15/2024
 Effective: 07/01/2024

No. 56495 (New Rule) R911-10: Air Ambulance Licensure and Operations
 Published: 05/15/2024
 Effective: 07/01/2024

Public Service CommissionAdministration

No. 56434 (Amendment) R746-8-301: Calculation and Application of UUSF Surcharge
 Published: 05/01/2024
 Effective: 07/01/2024

No. 56505 (Amendment) R746-409: Pipeline Safety
 Published: 06/01/2024
 Effective: 07/08/2024

Workforce ServicesHousing and Community Development

No. 56544 (Amendment) R990-300: Review Process for Plan for Moderate Income Housing Reports
 Published: 06/15/2024
 Effective: 08/01/2024

End of the Notices of Rule Effective Dates Section